



Tips no longer top up pay

The legislative amendments to the National Minimum Wage (NMW) on October 1st has directly impacted on all employers within the hospitality, licensed taxi and service industries where tipping is a common way of rewarding over and above basic pay. From this date, using tips to ensure an employee's pay meets minimum wage levels has been prohibited.

For the purposes of these new laws "tips" are defined as service charges, tips, gratuities and cover charges. These are generally discretionary and spontaneous payments donated by a customer either in cash, cheque or added to a credit or debit card payment.

A service charge is an amount added to the customer's bill before it is presented to the customer and is often referred to as a purely discretionary amount with no obligation to pay. A cover charge is a mandatory fixed amount, often per head, that pays for entertainment and other services.

Previously, the NMW directed that where tips and gratuities are given directly to a worker, such as a waiter or car parking valet, these amount to a gift from the customer to the worker and did not form part of the worker's pay. However, in instances where a service charge was added to all bills automatically, the charge was deemed to be the property of the employer and the employer could choose to share it between the workers as desired. Furthermore, where a tip was paid by a customer on a credit card or cheque, this additional payment also became the property of the employer. Both could form part of the worker's wages if

In this issue

- Tips no longer top up pay
- Swine Flu - not to be sneezed at
- November event
- Your Questions Answered
- Further Assistance

paid through the payroll and could have counted towards NMW pay.

From October 1st 2009, these loopholes have now been addressed to prevent employers from topping up staff wages with tips. Those employers who have used tip and gratuities to top up pay to the National Minimum Wage are now required to ensure these are no longer counted towards the NMW in their payroll system. Employers may also have to amend contracts of employment to reflect this change in the law.

By continuing to use tips to meet NMW your organisation can now be fined for breaking the law. If your business operates in a sector where tipping is common, it is imperative to act now to ensure your payroll and contractual obligations have been changed to reflect these important changes. Pinnacle is on hand to assist you in meeting these laws before your next payroll, so call us on 0800 907 1015 immediately if you are concerned about your organisation's ability to comply, or email contact@pds-hr.com.

Swine flu - it's not to be sneezed at!

Since schools returned at the start of September and the holiday season in the UK drops off for many, the predictions that Swine Flu will make a steady comeback and peak at the start of winter look likely to become reality. The Government is already working around the clock with the health services to ensure information, medical advice and, in some instances, immunisations are readily available. But a sharp increase in absences caused by workers feeling common symptoms can hit the SME business hard.



Pinnacle have sourced some top tips for preventing an outbreak on your work premises and dealing with absences to ensure they do not adversely affect your organisation's productivity and profit margins:

- 1 Introduce a hygiene policy.** Swine Flu is highly contagious but measures can be taken within the workplace to reduce the risk. Ensure the office washroom facilities and communal areas have sufficient anti-viral alcohol-based cleansers for all to use. Equip office cleaning staff with the advised detergents and insist extra care is taken to wipe door handles, stair rails, telephones, soft furnishings, photocopies and other frequently used machinery. It may be necessary in the future to wear face masks, especially in densely populated areas such as city centres. Providing your staff with these and access to anti-viral tissues etc will help to keep inter-office epidemics under control.
- 2 Communicate the organisation's expectations.** All organisations are advised to create a policy setting out how the organisation will act and how it expects employees to behave during a pandemic, and ensure it is communicated and displayed in all communal areas. The policy should cover hygiene responsibilities, action to be taken if an employee shows symptoms, sickness and absence procedures, and disciplinary procedures if any part of the policy is abused or disregarded, such as refusing to come to work even though a worker does not have any symptoms.
- 3 Refuse entry to sufferers.** It would be wise to display the responsibilities of social hygiene in public areas such as a visitor's reception area or staff entrance to discourage symptoms being brought into the workplace and state that people showing symptoms will be refused entry.
- 4 Be flexible.** If an employee suspects they or a member of their family has Swine Flu, often it's a decision between risking them bringing the virus into the workplace for others to catch or having them work from home if they are physically able. Identifying a strategy for home or flexible working if childcare issues for example cause employees difficulty in coming into the office because the main carer is unwell should enable deadlines and service levels to be met. As the pandemic spreads,

schools and other public institutions will close and this will undoubtedly impact on the ability of employees to work their usual patterns.

- 5 Use information technology.** Almost all employees have the use of mobile phones and a fair number are given access to laptops or virtual network providers on home PCs to access emails, intranet and other systems. This makes it much more practical to carry on business from several virtual offices and keep team members in touch. Managed professionally, customers rarely notice the difference.
- 6 Deal with issues fairly.** Even if Swine Flu cripples the business, managers should still ensure that decisions are taken lawfully and fairly to preserve good employee relations and help prevent employment tribunals.
- 7 Ensure employees are fit to return to work.** Before an employee returns to work ensure that they are fit to do so. If they still feel they have symptoms, then for the wellness of your other staff it would be best for them to remain at home. If they, or you, are in any doubt, then they should seek medical advice before they return. At present, a 'fit to return work' certificate is not required. Many conscientious employees will feel a natural urge to return before they have returned to peak condition, which not only puts their colleagues at risk of contagion but also can set their own full recovery back by several days to the detriment of their productivity.
- 8 Keep up to date with government information.** As viruses spread, they can change and information communicated by the authorities will be updated regularly as more is known. Keeping your own employees informed of new developments will not only demonstrate a duty of care but will also minimise anxiety and discourage time dwelling on scaremongering, enabling them to focus on their business activities.

For more information on creating new policies that cover the above suggestions, or for help relating to any sickness and absenteeism issues or disciplinary advice, the experts at Pinnacle can help. We are just a phone call away on 0800 907 1015 or email contact@pds-hr.com.

November Event

Pinnacle is holding a FREE Employment Contract briefing on 26 November 2009 at Basepoint Ipswich. It will feature short time working, layoffs and many other common employment contract pitfalls. Join us for a buffet breakfast and networking opportunities from 8 am before the briefing at 8.30 am, finishing by 9.45 am.

Following the briefing, we are offering you the chance to book a 10 minute appointment with an HR expert in our HR surgery - also free of charge! Why not bring your organisation's contract of employment along for a quick review?

Please email contact@pds-hr.com or call 0800 907 1015 to book, saying whether you would like to attend the briefing, the surgery or both. Places are



strictly limited and will be allocated on a first come, first served basis. Don't miss out on this great opportunity - contact us now!

Your questions answered...

"I am worried that with the predicted resurgence of the Swine Flu pandemic and the Government's planned contingency measure of allowing employees to self-certificate for up to 14 days, rather than the normal seven days, that not only will I have genuine cases to deal with as I did earlier in the year but now have to deal with those employees who will be trying to take advantage of the increased certification period."

The Government have a contingency plan to introduce an interim extended self-certification requirement in an attempt to reduce the pressure on health services and contain the spread of the Swine Flu virus through asking people to remain at home if they have the symptoms and through self diagnosis, which have been widely publicised, and arrange for a friend collect their Tamiflu prescription.

If you follow the advice contained in the previous article and take the appropriate preventative and educational measures you should help to minimise the risk of an outbreak of swine flu within your organisation.

With regard to individuals taking advantage of the additional self certification period, I am afraid there will always be those individuals who will seek to exploit any new rules and gain an advantage however they can; it's just a fact of life that we have to deal with. However, we should not allow this fact to cloud our judgement of all employees, as this could lead to the wrong assumptions and decisions being made by your organisation and result in a potential Discrimination Claim.



Here are some of our top tips for dealing with absences, which if applied will not only help during this extended period, if introduced, but also stand your organisation in good stead for dealing with all future absences.

1 Absence & Attendance Policy

It is vital your organisation has a robust absence policy in place, which clearly defines the standards you expect in relation to attendance and details how absences will be dealt with, managed and the level of support offered.

If you do have an absence policy, now would be the time to review it and ensure it follows best practice advice and takes an account of the Swine Flu virus.

If you have a sound policy it may be enough to just issue a Policy Addendum to cover Swine flu, providing advice to your employees and detailing how as an organisation you will be dealing with the absences.

2 Treat all Absences as Genuine

Above all else you **MUST** make sure that you treat all absences as genuine regardless of whether you have suspicions that an individual is taking advantage of the new self certification rules.

Deal with every absence in line with your absence policy (if you have one) and ensure you are applying your decisions consistently and in a fair manner.

3 Maintain Contact

When an employee calls to advise you of their expected two week absence, there is nothing to stop you at that point scheduling **Contact Calls**. You can arrange to call the employee on agreed days and times to check they are ok, assess whether there is any additional support you can provide and lastly, when they expect to return to work.

This will not only help you keep track of the absence and allow you to assess the situation with the employee, it will also send a clear message to your employees that you are actively managing all absences and potentially deter those who would be inclined to abuse and take advantage of the system.

Remember - Keep a balanced contact arrangement, you don't want to be calling them every day while they are off ill, which could be seen as harassment. We would suggest approximately three calls over the two week period.

4 Return To Work Interviews

These are most powerful tool an organisation can use to help curb absenteeism. As the name suggests, they are a structured interview, which should be conducted on the day the employee returns to work and before they resume their

Further assistance

If you would like further information on any issues raised by this bulletin, or require advice or assistance with any other human resources matters, please call us on 0800 907 1015 or send us an email.

The information in this newsletter is of a general nature and is not intended to replace professional advice. We recommend you to ask for specific professional advice before taking any action.

Pinnacle Development Solutions
Westbury House, 630 Woodbridge Road, Ipswich, Suffolk IP4 4PG

The logo for Pinnacle Development Solutions features the word "Pinnacle" in a large, bold, serif font. The letter "i" in "Pinnacle" is stylized with a red dot and a red shadow. Below "Pinnacle" is the phrase "Development Solutions" in a smaller, sans-serif font.

normal duties. As an employer you have a duty of care to ensure the health, safety and welfare of your employees and that they are fit to return to work and resume their normal duties.

The interview can be used as part formality to collect the appropriate paperwork, i.e. the **Self Certificate**, but also to discuss how they are feeling. If you have concerns about their general absence record and state of fitness, you can bring those into the discussion.

5 Plan Ahead

As our previous article states, the Swine Flu virus will return and although you can take some preventative measures, some of your employees will be struck down with it. So prepare for that eventuality - yes they may not be able to attend work but there may be work that they can successfully complete at home, distinct projects that they can undertake. You may need to supply them with a laptop and /or access to your network and IT systems to allow this. So plan ahead and prepare work that can be undertaken at home and improve IT systems to help facilitate this.

Remember - Don't force them to work, they are ill: it has to be agreed with them.

Pinnacle will keep you posted when and if the Government proposes to introduce the new self certification contingency. Following the tips above should help your organisation to manage any absence, not only the increased levels predicted as a result of Swine Flu.

If your organisation requires assistance in developing absence policies and procedures or help with dealing with absence issues generally then speak to one of Pinnacle's experts who will be only too willing to help. We are just a call away on 0800 907 1015 or email contact@pds-hr.com.

And if you'd like complete protection against anything the growing volumes of employment law can find to throw at you, don't forget our HR Toolkit - the must-have business accessory for 2008!

Call us on 0800 907 1015
or email contact@pds-hr.com