



# Evolving your workforce Strategy

**Minimising cost and maximising flexibility in the year ahead**

27 April 2021



# Agenda

01

**Eloise Knapton** – Introduction

02

**Caroline Laffey** - Worker status, OPW and managing risk

03

**Eloise Knapton** - The impact of NMW and the meaning of 'Working Time'

04



**Donna Sharp** - The impact of recent case law on workforce strategy including holiday pay, sick pay and equal pay

05

**Matthew Hunnybun**  
– Poll results and Q&A Panel



# Off Payroll workers - categorisation



|                   | Employee   | Self Employed  | Worker   |
|-------------------|--|--|--|
| Typical hallmarks | <ul style="list-style-type: none"> <li>— Contract of service</li> <li>— High degree of control</li> <li>— Mutuality of obligations</li> <li>— No financial risk</li> <li>— No right of substitution</li> </ul> | <ul style="list-style-type: none"> <li>— Contract for services<br/>no control</li> <li>— No mutuality of obligations</li> <li>— Financial risk<br/>Substitution (?)</li> </ul> | <ul style="list-style-type: none"> <li>— High degree of control<br/>contract for services</li> <li>— Some control</li> <li>— Offered work 'as and when'</li> </ul> |
| Employment rights | <ul style="list-style-type: none"> <li>— NMW</li> <li>— Holiday pay</li> <li>— Unfair dismissal</li> <li>— Pension auto enrolment</li> <li>— Redundancy</li> <li>— Request flexibility</li> </ul>              | <ul style="list-style-type: none"> <li>— N/A</li> </ul>  | <ul style="list-style-type: none"> <li>— NMW</li> <li>— Holiday pay</li> <li>— Pension auto enrolment (if jobholder)</li> </ul>                                    |
| Tax               | <ul style="list-style-type: none"> <li>— PAYE</li> <li>— Employer NIC and apprenticeship levy</li> </ul>   | <ul style="list-style-type: none"> <li>— Income Tax &amp; NIC via self assessment</li> </ul>   | <ul style="list-style-type: none"> <li>— Income Tax &amp; NIC via self assessment</li> </ul>   |

# Managing risk - umbrella companies

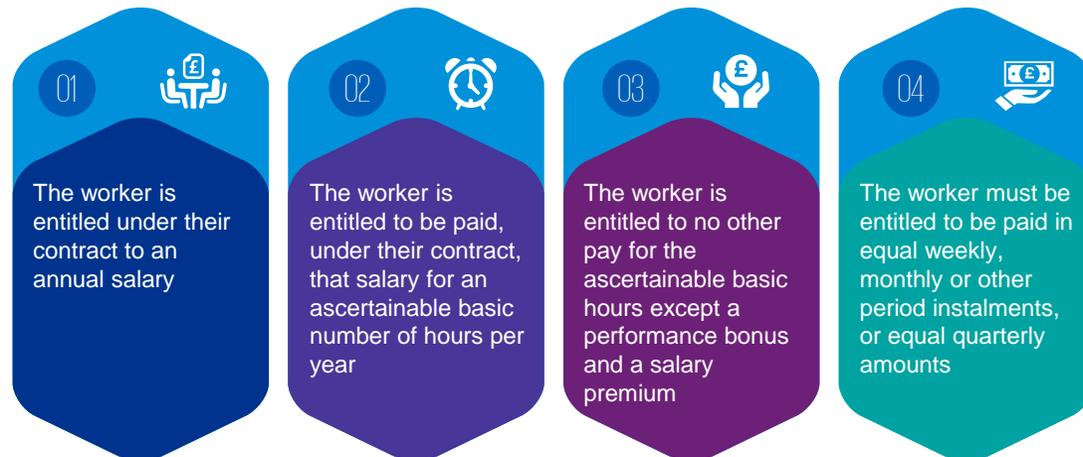
- 01 Checks
- 02 Are individuals employed by the umbrella company?
- 03 What payments are made to the workers and how much is subject to PAYE and NIC?
- 04 Which entity engages and pays the individuals – are they onshore or offshore?
- 05 Request details of how holiday pay and pensions are calculated
- 06 Understand if the agency regulations are being applied
- 07 Confirm that PAYE and NIC is being operated on all payments to the worker



# NMW- Worker Categorisation

- 1 Establish the worker population
- 2 Identify categories of workers
- 3 Identify working time
- 4 Review benefits provided
- 5 Analyse pay elements
- 6 Establish any NMW underpayments
- 7 Communication of any NMW arrears

## Salaried Worker Requirements -



**Type of work**

**Four categories of worker for NMW purposes:**

- Salaried hours work – pay based on set number of hours in a year, set out in the employment contract
- Time work – pay according to the number of hours worker works
- Output work – pay according to number of things worker makes/tasks performed
- Unmeasured work – where none of the above apply, i.e. require worker to work when needed

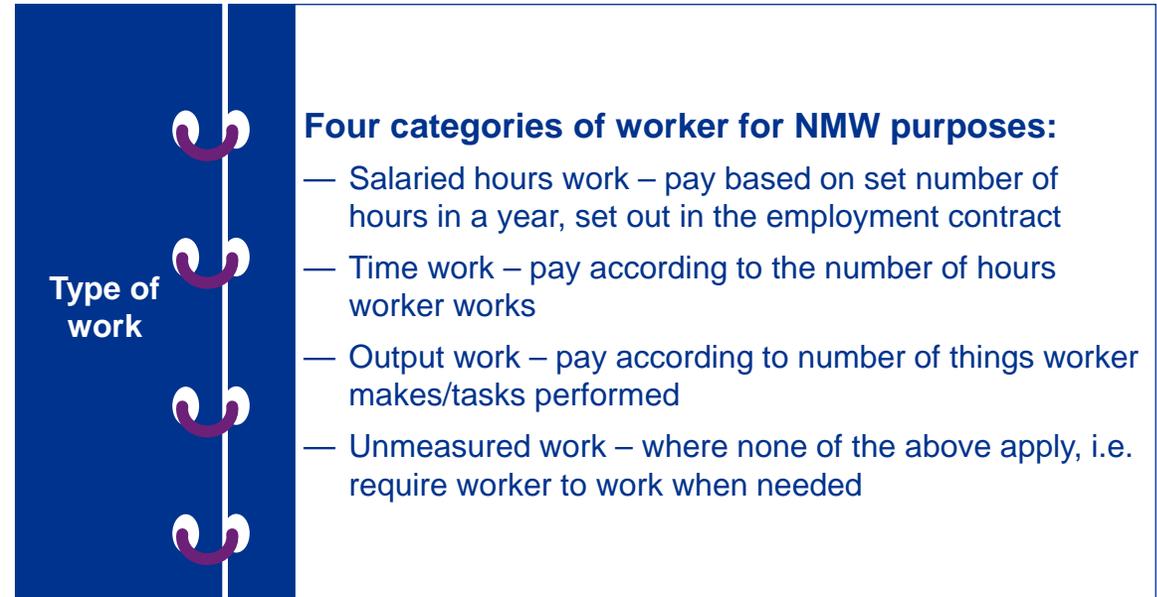
 

Employers should consider the NMW categorisation of their workers to ensure they manage that categorisation, and therefore their NMW risk, in a strategic way. For example:

- Do the changes mean you will have salaried workers in some parts of the business? Is that an outcome you want and how are you managing that?
- Do you need to notify your workforce of any changes to their work status or calculation year?

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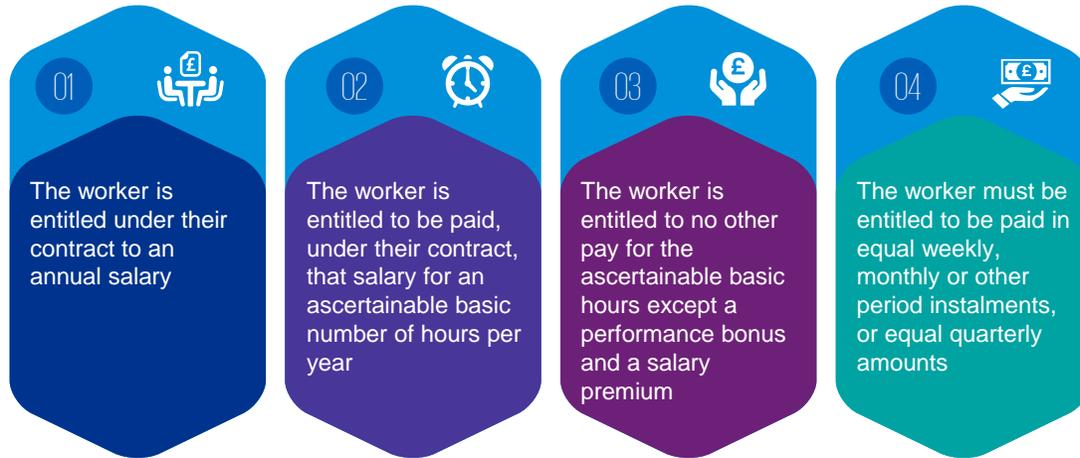
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# Requirements

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# Equal Pay

## How do you bring an equal pay claim:

- What sort of equal work are you performing? Like work, work of equal value, work rated as equivalent?
- **What sort of comparator do you have?**
  - Real and not hypothetical
  - Employed by the same, or an associated, employer; and
  - Employed either at the same establishment (or location) as the claimant, or at another location.
- If comparator is at another location there must be 'common terms' governing their employment.

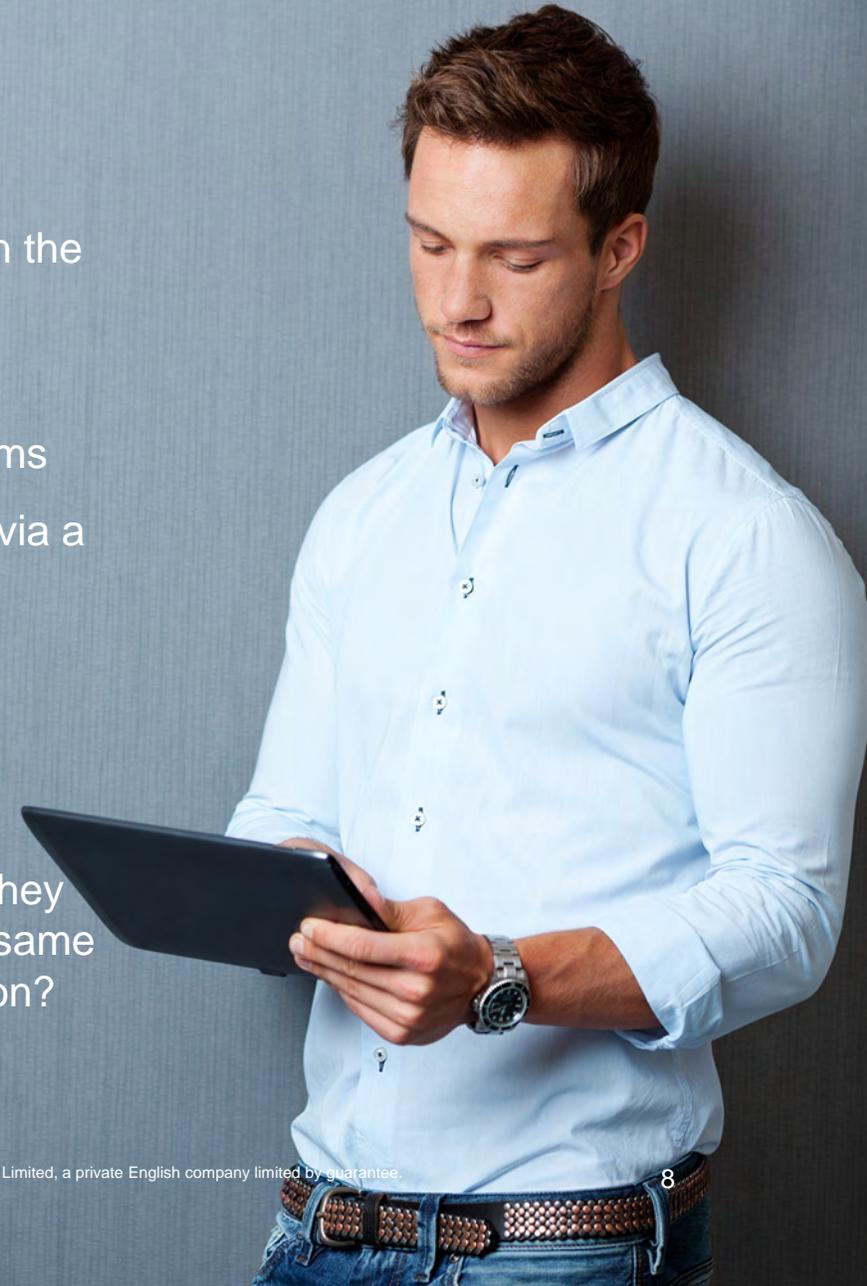
## Interesting factors:

- No geographical link between the groups at all
- Run separately as division
- No commonality in actual terms
- One was collectively agreed via a recognised TU, one now



## Supreme Court said :

- **Key question was** – would they have been employed on the same terms if worked at that location?



# Holiday pay

## — Context:

- Brexit
- Taylor review – Reform of law and enforcement of it
- Uber decision – protection of vulnerable workforces

## — What is the entitlement?

- What causes the complexity – Flexible working
- What's a week's holiday?
- What's a week's pay
- What should be included in a week's pay – commission, overtime etc.

- What is the reference period?
- Does it make a difference if you actually took the holiday or not?

## — What happens if you get it wrong





Thank you





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