

THE APPRENTICESHIP LEVY

and changes to apprenticeship funding

The Apprenticeship Levy ("the Levy") came into force in the UK on 6 April 2017 for employers with a wage bill of £3m or more. Although the Government has stated that it will affect only 2% of UK employers, estimates are that it could apply to up to 22,000 organisations. According to research earlier this year, one third of these organisations are even unaware of its existence. For employers in England (whether or not they pay the Levy), there are also a number of changes to the way apprenticeships are funded.

PAYING THE LEVY

Employers who had a wage bill of £3m or more in the previous tax year, or expect to do so in a tax year commencing on or after 6 April 2017, must notify HMRC of their Levy liability. The Levy is 0.5% of the employer's wage bill, less an allowance of £15,000. The wage bill is based on the total amount of earnings on which the employer is liable for secondary NICs in that tax year (even if the NIC rate is 0% for certain types of employee). The Levy must be paid at the same time as PAYE payments, i.e. in monthly instalments.

'Connected' companies or charities with a combined wage bill of £3m or more will be liable to pay the Levy, with one £15,000 allowance between them. They must notify HMRC how to divide the allowance between them. In most cases there are no 'connection' rules for public authorities (unless they are charities or companies).

Anti-avoidance provisions prevent employers from moving a payroll liability into a different tax year to avoid the levy or gain an advantage. Employers are not allowed to recover the cost of the levy from employees.

Employers who currently pay an industry-specific levy will not be exempt from the Levy, although there are ongoing discussions about how the levies will interact with each other.

SPENDING THE LEVY

Levy-paying employers in England can register for the online 'apprenticeship service', which opened on 13 February 2017. This is a digital account which will hold the Levy funds available to pay for apprenticeships in England which start on or after 1 May 2017. Any funds not used within 2 years will be

lost. The Government will top up the employer's Levy payments each month by 10%.

However, although the Levy is UK-wide, the digital account service only applies to England. Skills are a devolved matter and therefore Wales, Scotland and Northern Ireland have decided separately how to spend the Levy. For example, in Wales the relevant apprenticeship authority is SkillsGateway, and it has been confirmed that there will be no digital service in Wales. The Welsh Government has recently published its Apprenticeship Policy and five year action plan. The Levy funding will go to the Welsh Government which plans to create a minimum number of 100,000 high quality, all-age apprenticeships over the next five years including in certain priority areas such as ICT, engineering, construction and financial and professional services.

Where a business has employees across the UK, the home addresses of its employees living in England will be used to determine how much is available in the digital account to spend on apprenticeships in England. The funds can then only be used on apprenticeships where the apprentice will spend at least 50% of their working hours in England.

One major criticism of the Levy is that even employers in England who have a digital account will not see any return on the Levy unless they can spend it directly on apprentice courses via registered apprenticeship training providers. An apprenticeship must involve a real job and must last at least 12 months (based on a 30-hour week). In addition, 20% of the apprentice's time must be allocated to "off-the-job" training. Usually this will be at the premises of the apprenticeship training provider. However it can be undertaken at the workplace provided it does not involve normal work duties.

The Levy can be used to fund this training via the apprenticeship training provider but it cannot be used

to cover management time and other internal resources of the employer spent helping apprentices. The Government has produced "*Apprenticeship funding: Rules and Guidance for employers (May 2017 to March 2018)*" which gives guidance on what cannot be covered, as well as certain costs which may be covered provided they fall within the price negotiated with the apprenticeship training provider.

Employers in England who can engage apprentices through apprenticeship training providers (or who have the resources and structure to become apprenticeship training providers themselves) will be able to make use of the Levy they pay. If they cannot engage apprentices in this way, or not enough apprentices to use up the Levy fund, the Levy will simply amount to a tax.

Because the Levy funds in the digital account can only be spent on apprenticeships, not on other types of training, there is also a concern that other training provided by employers will be scrapped and/or rebadged as apprenticeships in order to make use of the Levy, especially if the Levy effectively wipes out an organisation's training budget.

To use the digital funds for an apprenticeship in England, there are a number of rules, including a requirement for the employer to be satisfied that there is a new job role, or an existing job role where the individual needs significant new knowledge and skills. The Education and Skills Funding Agency has pledged to monitor potential abuse and recruitment practices which may be detrimental to an apprentice or the apprenticeship brand. However, some employers may take the valid approach of, for example, restructuring graduate training schemes to ensure they count as apprenticeships. In the long term we are likely to see employers embracing a new approach to apprenticeships, for example encouraging degree- and masters-level apprenticeships for the recruitment and upskilling of more senior staff.

The CBI has heavily criticised introducing the Levy in the light of other new or increased costs such as the Immigration Skills Charge and the National Living Wage.

CHANGES TO APPRENTICESHIP FUNDING IN ENGLAND

For all employers in England – whether or not they are obliged to pay the Levy – funding changes apply to apprenticeships which start on or after 1 May 2017. Non Levy-paying employers (or Levy-paying

employers who want to spend more than their Levy contribution) will be able to engage apprentices through the Apprenticeship Service and will have to 'co-invest' only 10% of the cost, with the other 90% met by the Government. Employers with less than 50 employees will not have to 'co-invest' for 16-18 year olds, or 19-24 year olds who have been in care or with a Local Authority Education, Health and Care plan. In some cases an additional 20% funding will be available to adapt to the new funding model.

Apprenticeships are allocated into a relevant "Standard" or "Framework" category based on the type of work. "Frameworks" are currently being phased out but are still used where no new apprenticeship "Standard" has been set up. New allocated funding bands, depending on the relevant "Standard" or "Framework", set the maximum the Government will pay towards that apprenticeship. These bands range between £1,500 and £27,000. Employers will need to ensure that they have negotiated a price with the apprenticeship training provider that falls within the relevant funding band or they will have to pay the difference.

CONTRACTUAL DOCUMENTATION

Note that apprentices must be engaged on the right "Apprenticeship Agreement", through which they are treated largely in the same way as other employees. Failure to use the right agreement could expose the employer to engaging an apprentice on a "contract of apprenticeship" where it can be extremely difficult to terminate the apprenticeship even in misconduct or redundancy situations, and the employer could end up paying compensation to cover the duration of the apprenticeship. Apprenticeship Agreements are no longer the same in England as they are in Wales, and also depend on whether the apprenticeship comes under a new "Standard" or an old "Framework". Please contact us for advice on the correct legal document to use.

Many organisations have been planning how to utilise effectively their Levy funds for some time. However, if you are not one of them, it is not too late and we are able to help you both with the legal requirements and your future use of apprentices as part of your wider business and recruitment planning.

RESOURCES

Further details can be accessed as follows:

Government Guidance on paying the Levy:

<https://www.gov.uk/guidance/pay-apprenticeship-levy>

Government Guidance on how the Levy will work:

<https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work>

Government Guidance on apprenticeship funding in England:

<https://www.gov.uk/guidance/manage-apprenticeship-funds>

<https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018>

Information on the Levy in the devolved nations:

<https://businesswales.gov.wales/skillsgateway/apprenticeships>

<https://www.apprenticeships.scot/>

<https://www.nidirect.gov.uk/campaigns/apprenticeships>

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