

Employment law: the basics

Employment law is a complex area full of pitfalls. Getting it right means keeping in touch with developments, thinking out your policies and implementing them with care. Getting it wrong could be extremely expensive.

This briefing covers:

- Recruitment.
- Terms and conditions.
- Employee rights.
- What to do when things go wrong.

1 Recruitment

1.1 Do not allow **prejudice** (conscious or unconscious) to affect your decisions.

- Discrimination (see 4) is illegal.
- Focus only on the requirements of the job.
- Maintain records, so you can explain why you chose one candidate over another. Remember that applicants can request to see any interview notes.

1.2 A **contract of employment** exists as soon as a candidate accepts your offer of a job, whether it is in writing or not.

- Make it clear at the interview that you are not offering a job at that stage.
- In any job-offer letter, explain that the contract will be governed by written terms and conditions to be provided later.
- A contract can be conditional on the potential employee providing evidence of suitability — such as adequate references. If the condition is not met and the employee has not yet started work, the contract does not take effect.

1.3 You must provide a **written statement** of terms and conditions within the first two months of employment.

- This must cover specified areas including pay, working hours, holiday entitlement, job title (or job description) and place of work.
- Include a statement that you reserve the right to amend the job description.
- Reserve the right to change your employee's place of work. Otherwise, you would be in breach of contract if the business was relocated.

The contract may state that in cases of summary dismissal (dismissal without notice) no compensation will be payable except for an amount for accrued holiday under the working time regulations.

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Working parents

A **pregnant woman** has a number of rights:

- A** Paid **time off** for ante-natal care.
- B** 26 weeks' ordinary **maternity leave**, during which all her contractual rights (except remuneration) continue.
 - It is illegal to let a woman return to work within two weeks of childbirth, or within four weeks if the work is in a factory.
- C** 39 weeks statutory **maternity pay** (SMP) of £136.78 a week, regardless of length of service.
 - Most, if not all of this, may be deductible from employer's NI contributions.
 - A woman who is ineligible for SMP but has paid enough NI can claim maternity allowance from Jobcentre Plus.
- D** Up to 26 weeks' **additional maternity leave**, during which all her contractual rights (except remuneration) continue.
- E** The right to **return to work** up to one year after having the baby.
- F** The right to claim automatic **unfair dismissal** and **sex discrimination** if she is dismissed for any reason to do with the pregnancy or childbirth.
 - If she is dismissed, you must give her written reasons for the dismissal.

Fathers also have a number of rights:

- A** Two weeks' paid ordinary paternity leave.
 - This must be taken within 56 days of the birth (or the EWC if the birth is early).
- B** Statutory paternity pay (SSP) of £136.78 a week or 90% of average pay if lower.
 - This can be offset against NICs.
- C** Up to 26 weeks' additional paternity leave (APL).
 - The father must have at least 26 weeks' continuous service to be eligible and the mother must have returned to their work before APL can be taken.

Employees who adopt a child are entitled to the same leave and pay as maternity and paternity provisions.

1.4 You cannot **change the terms** of the contract unilaterally.

- Altering fundamental terms and conditions without the employee's consent can be a breach of contract. Unless the change benefits the employee, you could be sued for constructive dismissal, breach of contract, or both.

2 Hours, leave and pay

2.1 You must comply with **statutory requirements** on working hours and leave.

- Most employees are entitled to work a maximum 48-hour average working week. Employees can voluntarily agree in writing to disapply the rules. Pressuring workers to agree to disapply the limit is a breach of the working time regulations.
- Employers may consult on and agree a system of annualised hours whereby the total number of hours worked do not exceed an average of 48 hours per week over a period of one year.
- There are detailed regulations on minimum rest periods.
- Employees are entitled to a minimum of 5.6 weeks' paid leave a year.
- Employees can also be entitled to maternity leave, paternity or adoption leave, parental leave and leave for family reasons. The latter two are unpaid, and there are limits on how much can be taken and when.
- A parent or carer of a child under 17, a disabled child under 18 or a dependent adult has the right to make a request for flexible working.

- Part-time workers have the right to be treated no less favourably than full-timers. So, for instance, part-timers are entitled to holiday on a pro rata basis.

2.2 Employees have the right to the **national minimum wage (NMW)**.

- NMW stands at £6.31 an hour for staff aged 21 and over. £5.03 for those aged 18 to 20, £3.72 for employees aged 16 and 17.
- Apprentices under the age of 19, or older than this but in the first year of their apprenticeship, must be paid at least £2.68 an hour.
- Service charges, tips, gratuities and cover charges paid to a worker through payroll do not count towards NMW.

“Apart from careful recruitment, probably the best methods of preventing legal disputes with your employees are training and regular performance appraisals.”
Liz Trumper,
management consultant

“Set up basic HR systems to save time and to help protect yourself against unwittingly breaking the law.”
Neil Thomson,
T>Learning and Development

2.3 Employer's National Insurance (NI) contributions are payable on employees' pay and taxable benefits.

2.4 You must deduct your **employees' tax and NI** contributions from their wages, and pay them to HM Revenue & Customs under PAYE (Pay As You Earn).

2.5 You also have to account for employees' tax and NI on most **benefits in kind**.

- Some benefits are free of tax and NI.

3 Employee rights

Employees have some rights which are implied (but not spelt out) in their contracts. They also have rights which the contract cannot override.

3.1 Employers must not take any action which might undermine the relationship of '**trust and confidence**' with their employees.

- Employees have reciprocal obligations to serve the employer honestly and faithfully and to work with due diligence and care.

3.2 Employers must provide a secure, safe and healthy **working environment**.

3.3 Employees have the right to belong (or not to belong) to a **trade union**.

- Unions must be recognised (in businesses with 21 or more employees) where a specified percentage of the workforce votes for recognition.

3.4 Employees are entitled to a reasonable degree of **privacy**.

- The circumstances under which employers may monitor phone calls, emails or internet use are regulated under the Data Protection Act and the Regulation of Investigatory Powers Act.

3.5 Employees are entitled to **protection against discrimination** (see 4).

3.6 Employees are entitled to **blow the whistle** on their employer's wrongdoings.

- If they are subsequently sacked or demoted, they can sue for full compensation — there is no monetary limit — for any losses incurred.

3.7 Each employee must get a **pay statement**.

- This must show total gross pay, deductions and net pay.
- Deductions (eg pension contributions and union subscriptions) must be itemised.

3.8 All employees with more than one month's service are entitled to a **notice period**.

- The statutory minimum is one week (after one month's service), rising to two weeks after two years, with a maximum of 12 weeks after 12 years.

3.9 Most employees are entitled to keep their jobs even if the **business changes hands**.

- In most cases, sackings would constitute unfair dismissal under the TUPE Regulations.

3.10 Employees are entitled to have **discipline and grievance** issues dealt with using 'fair and reasonable' procedures. See the Acas Code of Practice at www.acas.org.uk.

4 Discrimination

4.1 Treating someone less favourably because of their race, sex or gender reassignment, age, disability, sexual orientation, religion, philosophical belief, membership or non-membership of a trade union, marital or civil partnership status, pregnancy, maternity, care responsibilities or part-time status is **illegal**.

4.2 Indirect discrimination occurs if you impose a 'provision, criterion or practice' which members of one sex or one racial group are much less likely to be able to comply with, and which cannot be objectively justified.

4.3 If you treat someone less favourably because of their actions (or potential actions) in connection with discrimination proceedings, it could count as **victimisation**.

4.4 For **people with disabilities**, you must be prepared to make 'reasonable adjustments' to enable them to work.

- In some circumstances, you may be justified in refusing to make adjustments.

4.5 You can **no longer compulsorily retire** employees.

► Employees adopting 'employee-owner' or 'employee-shareholder' status give up some of their employment rights in exchange for shares in the business. Employee-owners: are not eligible for statutory redundancy pay; are not entitled to ordinary unfair dismissal protection; must give 16 weeks' notice (instead of the normal eight) if they want to return early from maternity or adoption leave; do not have the statutory right to request flexible working or to protection against dismissal for making a request for flexible working (except in relation to requests to work flexibly on return from parental leave).

4.6 As an employer, **you are responsible** for any discrimination practised by you or your employees.

5 Sickness

5.1 You must pay **statutory sick pay** (SSP) to qualifying workers (including part-time, full-time and agency workers) for up to 28 weeks.

- Workers qualify from the fourth day of incapacity onwards.
- They must earn more than the lower earnings limit of £109 per week.
- You can withhold SSP under certain circumstances.

5.2 Many employers pay **higher levels**.

- It is common to continue with full pay for a given period, often up to six months.

5.3 If a worker's continued or repeated absences are causing problems, you may be able to end their **employment**.

- You must be able to prove your actions were reasonable.

5.4 The **'fit note'** is issued by doctors and will indicate whether an individual:

- is not fit for work
- may be fit for work

A 'may be fit for work' note means a doctor believes the condition may allow them to work if given appropriate support.

6 Disciplinary issues

6.1 Make sure you have **disciplinary and grievance** procedures in place which conform to the Acas Code of Practice (www.acas.org.uk).

- Include basic disciplinary and grievance information in your written terms and conditions.
- Make sure employees know what offences merit disciplinary action, and apply the rules consistently.

6.2 If you have to **dismiss** an employee, you may have to prove that you had good cause - such as gross misconduct or incompetence - and that you acted fairly and reasonably.

- Inability to do the job because of frequent or prolonged absences due to sickness or injury might be grounds for dismissal.
- Redundancy might also be grounds for dismissal. But the reason must be genuine and the selection fair. Processes and timescales are carefully prescribed, and it is essential to follow them.

6.3 **Unlawful dismissal** could land you in front of a tribunal.

- It is illegal to dismiss anyone on grounds of race, sex, disability, sexual orientation, pregnancy or age. There is no statutory upper limit on the amount of compensation that can be awarded in such cases.
- You can no longer retire employees unless there is a fair reason or it can be objectively justified. You must follow a fair procedure.

6.4 An employee can claim **unfair dismissal** if he or she has been dismissed for an 'unfair' reason or if unfair procedures are followed. In general, they must have two years' service (one year if employment started before 5 April 2012).

- If you have breached a fundamental term of the employment contract, or made it impossible for employees to do their job, they can sue for 'constructive' (unfair) dismissal.
- Employees must raise a grievance first and you have 28 days to respond.
- The basic award can be up to £13,500 and compensation for financial loss up to a maximum of £74,200.

► Employment law is complex and changing rapidly. This briefing reflects our understanding of the basic legal position as known at the last update. Obtain legal advice on your own specific circumstances and check whether any relevant rules have changed.

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