

# IS YOUR BUSINESS AT RISK?

- Employment law
- Health & Safety

## Find out with the Lawrite HR Healthcheck

Welcome to the Lawrite HR Healthcheck for Employers.

This document runs through the different areas of the employment process that are affected by the law and what you should be doing to comply, not just with your legal obligations but also with established HR good practice.

It uses a simple “traffic light” system to assess your current provisions, with a red light for danger, amber for a warning and a green light if you appear to be doing things the right way.

This Healthcheck is divided into sections, starting with recruitment.

Each section starts with an outline of the law and what you have to do to comply, followed by three assessments identified by the traffic light key. Just choose the assessment that is closest to how you deal with the issues.

Proceed to the next page to get started!



- **Recruitment;**
- **Terms and conditions of employment;**
- **Wages, equal pay, sick pay, working hours, work breaks and annual leave;**
- **Fixed-term and part-time employees;**
- **Dismissals, disciplinary, grievance and performance review procedures, and redundancy;**
- **Discrimination, harassment and bullying at work;**
- **Time off work other than annual leave;**
- **Working parents and carers;**
- **Health and safety.**

### Traffic lights — the key to the health of your business



#### GREEN

If you get a green light, well done! It looks like you're doing things right.



#### AMBER

If you get an amber light it's a warning, you could be heading for trouble.



#### RED

If the red light assessment matches you then a legal disaster awaits.

## Part 1: Recruitment

The recruitment process is fraught with hidden dangers from the moment you compose your job advertisement. It is unlawful to discriminate during the recruitment process on the grounds of someone's sex, sexual orientation, status as a married person or a civil partner, race, colour, age, nationality, ethnic origin, religion, beliefs or because of a disability, pregnancy or

childbirth, or subsequent maternity leave or because they are a member or non-member of a trade union.

Someone might be able to take you to an Employment Tribunal, even though they're not an employee, if they believe they weren't selected for a particular job as a result of discrimination.

### Your assessment – which one matches your business?



**GREEN LIGHT:** You and your managers who are involved in the recruitment process are fully aware of the issues and have a clear understanding of how to compose job advertisements, make selections and conduct interviews in a manner which will not leave you open to accusations of discrimination.

You use a job application form and recruitment process letters which are legally compliant, up to date and make clear your commitment to avoid discrimination during the recruitment process and allow you to identify any need to make adjustments to compensate for disabilities.

You make checks to ensure candidates are eligible for employment in the UK.

**Verdict:** Well done, you appear to be aware of the issues and have made an effort to comply. It is likely you have turned to an outsourced HR provider to get to this stage, but why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal advice whenever you need it? You'll get an efficient service and probably save a good deal of money compared to what you have paid your present provider.



**AMBER LIGHT:** You have some understanding of some of the issue but are not sure if your managers are aware of the pitfalls or whether the documents and letters you use during the recruitment process are safe or not, or whether the checks you make for illegal employees are sufficient.

**Verdict:** You need Lawrite HR! The Lawrite Employment Law Service will give you full guidance about the legal issues together with a carefully designed job application form and templates for letters to use during the recruitment process so that you can clearly demonstrate that you are an employer who does not discriminate during recruitment.



**RED LIGHT:** You are not really aware of the issues involved and there are no set policies or procedures to use during recruitment. Sometimes you recruit people without putting anything in writing at all, let alone making any checks to ensure candidate are legal to work in the UK.

**Verdict:** Your current handling of recruitment is a disaster waiting to happen! Ignorance of the law is no defence as far as an Employment Tribunal is concerned and handling recruitment in this dangerous potentially discriminatory fashion is a recipe for disaster. There are harsh penalties for employers who take on illegal workers so failing to make proper checks in that area is just foolhardy. Using the Lawrite Employment Law Service will give you the information and tools you need to recruit fairly and lawfully. It's very cost effective, so why take the risk?

## Part 2: Terms and conditions of employment

Employees are entitled by law to receive a written statement of their terms and conditions of employment within two months of starting work.

This must contain certain information including the name of the employer and details of pay, hours holidays, notice period and references to disciplinary and grievance procedures.

However the statement is not a written contract, and since there are many areas outside the statutory list of terms which it is good practice to define in writing, most employment lawyers advise employers to provide proper written contracts from the outset to avoid

disputes or potential Tribunal claims later. For example, most deductions from pay will be unlawful unless the employee has given prior written consent, which can be done by way of a suitably worded clause in a written contract of employment.

A properly-drafted contract can define what is expected of the employee in many other areas of the employment relationship including qualifications and training, business protection (what happens if the employee goes to work for one of your competitors), care of uniforms, work clothing and equipment, use of company vehicles, smoking drugs and alcohol at work, etc.

### Your assessment – which one matches your business?



**GREEN LIGHT:** You issue each employee with a written contract of employment that is either professionally drafted by a solicitor or prepared by you or your HR professional from template documents prepared by lawyers such as those supplied by Lawrite HR.

**Verdict:** Well done, you appear to be aware of the issues and have made an effort to comply with the law and also protect your business by putting in place proper written contracts. It is likely you have turned to a solicitor or an outsourced HR provider to get to this stage, but why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal advice whenever you need it? You'll get an efficient service and probably save a good deal of money compared to what you have paid your present provider.



**AMBER LIGHT:** Employees receive a written statement of terms and conditions within two months of starting work or the information was put in a letter of appointment. You think you provide all the statutory information.

**Verdict:** You need Lawrite HR! You are not sure if what you do is compliant or following best practice. If you haven't issued proper contracts there are many areas where you could end up in a dispute or where an employee has a legitimate reason to raise a grievance. Why take the risk? The Lawrite Employment Law Service will give you full guidance about the legal issues together with template documents for contracts of employment that are ready for you to edit and use with your employees. Or, if you opt for our Managed HR service we will draft the contracts for you after taking your instructions.



**RED LIGHT:** You don't have written contracts and have not issued all staff with statutory statements of terms and conditions within the required period. Or, some employees may have received letters of appointment but you have no idea if this is legally compliant. Or, you don't put anything in writing.

**Verdict:** You are operating your business unlawfully and each of the employees who has not received a statement of terms and conditions within two months of starting work has the right to make a claim against you to an Employment Tribunal and could be entitled to receive compensation. By not defining the contract with each of your employees in writing you are leaving the door wide open for employees to raise a grievance or get into a dispute with you. It's yet another disaster just waiting to happen.

## Part 3: Wages, equal pay, sick pay, working hours, work breaks and annual leave

Employees must receive at least the National Minimum Wage and are legally entitled to an itemised pay statement at or before the time of payment.

Men and women must receive equal pay for work that is alike, work rated as the equivalent and work that is of equal value.

All qualifying employees must receive statutory sick pay

from the fourth day of incapacity. Employers must not ask workers to work an average of more than 48 hours a week unless they have given their voluntary consent in writing.

Employers must provide correct daily and weekly rest periods. All workers are entitled to a minimum of 28 days paid annual leave a year.

### Your assessment – which one matches your business?



**GREEN LIGHT:** All workers receive at least the minimum wage and are issued with itemised pay slips. Men and women are paid equally for the same work and part-timers are paid pro-rata at the same rates as comparable full-time staff. You have a clear sick pay scheme in operation which exceeds statutory sick pay, or you only pay SSP. You monitor workers' hours to ensure you don't ask them to work more than 48 hours a week, and if you do need people to work more than 48 hours a week you get their written consent, and all workers get at least the minimum work breaks. Your holiday pay scheme gives all workers a minimum of 28 days annual leave or pro-rata for part-time workers. All workers are aware of their entitlements in clear written policies contained in your staff handbook.

**Verdict:** You appear to be complying with the law, but there have recently been changes to the annual leave entitlement and it is changing again soon, so it is important to keep up to date, so why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal advice whenever you need it? You'll get an efficient service and probably save a good deal of money compared to what you have paid your present provider.



**AMBER LIGHT:** Some or all of this applies to you: All your workers probably receive at least the minimum wage and you issue wage slips. You don't think there are equal pay issues and you pay SSP where applicable. Some staff are paid when off sick on an ad hoc basis. As far as you are aware all workers receive sufficient annual leave and their hours and breaks comply with the working time regulations. There are no opt-out agreements with staff. You have no written policies in place.

**Verdict:** You need Lawrite HR! Minimum standards apply and it is important to comply because employees can complain to Employment Tribunals if they believe they are not receiving the minimum wage or annual leave entitlement or if their working hours are too long or they do not get the breaks they are entitled to. You should make certain that you comply with the law and have clear policies in place so that workers are aware of their entitlements. We can supply the information, advice and documents you need to do this as part of the Lawrite Employment Law Service.



**RED LIGHT:** Some or all of this applies to you: You pay the minimum wages you can get away with. You've never bothered to check that men and women workers doing comparable work get paid the same, and the same applies to part-timers. You've decided that if people don't turn up for work they don't get paid, so sick pay doesn't apply, and as for annual leave, some employees get holiday pay if they deserve it but it's a bonus. Working hours are not monitored, no set work breaks and no opt-out agreements with staff. There are no written policies issues to staff.

**Verdict:** By ignoring the minimum wage, equal pay regulations sick pay or paid annual leave entitlement you risk criminal prosecutions or Employment Tribunal claims for compensation by employees. You are not only a bad employer but you are putting the future of your business at risk! By not checking whether working hours and breaks comply with the law you are leaving yourself open to Employment Tribunal claims for compensation by employees.

## Part 4: Fixed-term and part-time employees

Employers must not treat part-time or fixed-term workers differently from comparable full-time workers in key areas including pay rates.

You must not treat part-time workers less favourably than comparable full-time workers. For example, they should get the same hourly rates of pay, the same leave entitlements in proportion to the number of days they work each week, the same entitlement to parental leave, and the same access to promotion opportunities. Any treatment that puts part-time workers at a

disadvantage could risk a complaint to an Employment Tribunal, or it could lead to a claim of indirect sex discrimination as the majority of part-time employees are women.

Fixed term workers must receive the same pay and conditions, the same or equivalent benefits package and pension scheme, and the same opportunities to apply for vacancies for permanent posts as permanent employees.

### Your assessment – which one matches your business?



**GREEN LIGHT:** Part-time workers get the same hourly rates of pay, the same leave entitlements proportionate to the number of days they work each week, the same entitlement to parental leave, and the same access to promotion opportunities. Fixed term workers receive the same pay and conditions, the same or equivalent benefits package and pension scheme, and the same opportunities to apply for vacancies for permanent posts as permanent employees. All part-time and fixed-term workers are aware of their entitlements in clear written policies contained in your staff handbook. Even if you don't currently employ part-timers, or any with comparable full-time posts, or fixed term workers, or any with comparable posts, you are fully aware of the issues.

**Verdict:** You appear to be complying with the law and following best practice recommendations, but why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal advice whenever you need it? You'll get an efficient service and probably save a good deal of money compared to what you have paid your present provider.



**AMBER LIGHT:** Some or all of this applies to you: You don't have any part-time workers, or you have part-timers but you don't think there are any comparable full time workers so you do not monitor pay and conditions. The same applies to fixed term workers. You have no detailed knowledge of the issues or written policies in place.

**Verdict:** You need Lawrite HR! It is important to comply with the laws that protect part-time and fixed term employees because the employees can complain to Employment Tribunals if they believe they are not receiving their entitlements. You should make certain that you comply with the law and have clear policies in place so that workers are aware of their entitlements. We can supply the information, advice and documents you need to do this as part of the Lawrite Employment Law Service.



**RED LIGHT:** Some or all of this applies to you: You have part-time and fixed-term workers from time to time but you are not aware of the issues involved and have made no attempt to monitor your working practices to see if you comply. There are no written policies issues to staff.

**Verdict:** By not checking whether the working practices relating to part-time and fixed term workers comply with the law you are leaving yourself open to Employment Tribunal claims for compensation by employees.

## Part 5: Dismissals, disciplinary, grievance and performance review procedures, and redundancy

All employees with more than 12 months' service are protected by law from unfair dismissal and will have the right to make a claim to an Employment Tribunal for reinstatement or compensation if they believe they have been unfairly dismissed. There are also dismissals which will be legally regarded as automatically unfair with no qualifying period. Total compensation awards made by Tribunals can be more than £76,000 in most unfair dismissal cases, with potentially unlimited compensation in certain circumstances.

There is an ACAS Code of Practice which all employers should follow when taking disciplinary action against their employees, or when dealing with grievances raised

by employees. Workers have a right to be accompanied to disciplinary meetings. Sensible employers will also have a performance review procedure to use when dealing with employees when issues are caused by poor performance at work which is not necessarily a disciplinary issue.

Redundancy is also a dismissal and a dismissal can only be a true redundancy in certain specific circumstances, when some staff will qualify for redundancy payments. When going through a redundancy process it is important to take certain issues into account to avoid unfair dismissal claims.

### Your assessment – which one matches your business?



**GREEN LIGHT:** You and your managers are fully aware of the unfair dismissal laws, and you have written disciplinary and grievance procedures which are issued to employees and followed when dealing with situations that arise. You have access to advice from qualified employment lawyers or HR specialists about disciplinary issues and dismissals or resolving grievances. You have a written performance review procedure which is used by managers where appropriate. You have a written redundancy policy and procedure.

**Verdict:** You appear to be aware of the law and following best practice recommendations, but why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal advice whenever you need it?

We will be able to advise about the best way to protect your business from potential Employment Tribunal claims. You'll get an efficient service and probably save a good deal of money compared to what you have paid your present provider.



**AMBER LIGHT:** Some or all of this applies to you: You don't have written disciplinary and grievance, redundancy or performance review procedures, although you are aware of the issues and do follow a basic procedure when disciplining or dismissing staff. You don't have a performance review procedure.

**Verdict:** You need Lawrite HR! We recommend using clear written procedures which are given to all employees and used by proprietors and managers to deal with disciplinary and grievance complaints. We also recommend having a performance review procedure. We can supply the information and template documents you need to put all this in place as part of the Lawrite Employment Law Service. You can also get advice from our team of employment lawyers before dismissing staff. Our Managed HR service clients can get help with carrying out the disciplinary, grievance and performance review procedures.



**RED LIGHT:** You have no written disciplinary, grievance, redundancy or performance review procedures, and believe you can dismiss employees whose conduct or performance is not up to scratch, regardless of how long they have worked for you.

**Verdict:** If you dismiss staff who qualify for unfair dismissal without following procedures, in most cases the dismissal is automatically unfair. To protect your business you should urgently seek the help of Lawrite HR so we can help you gain awareness of the issues and put the necessary written procedures in place.

## Part 6: Discrimination, harassment, bullying at work

Employers must not treat any workers less favourably in employment because of their race, nationality, ethnic grouping, sex or sexual orientation or marital status, disability, age, religion or philosophical belief, or membership (or non-membership) of a trade union.

Employers can be held responsible for the actions of their employees towards other employees. Employers must by law make “reasonable adjustments” to accommodate people with disabilities in employment.

### Your assessment – which one matches your business?



**GREEN LIGHT:** You are fully aware of discrimination issues and have full written equal opportunities and anti-discrimination policies which are distributed to your employees. You are fully aware of the implications of age discrimination and issued revised policies and procedures and, where appropriate, amended contracts of employment in October 2006 when the legislation was introduced.

**Verdict:** You appear to be aware of the law and following best practice recommendations, but why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal advice whenever you need it? You'll get an efficient service and probably save a good deal of money compared to what you have paid your present provider. Compensation awards made by Employment Tribunals in discrimination cases can be unlimited so we recommend joining our Employment Tribunal indemnity scheme to protect your business.



**AMBER LIGHT:** You are aware of the issues but don't have full written policies in place or communicate them to your staff. You have no detailed knowledge of the requirement to make adjustments for disabled employees or potential employees. You have not updated your employment contracts or policies or procedures since age discrimination became unlawful in October 2006.

**Verdict:** You need Lawrite HR! We can supply the information and template documents you need to put equal opportunities and anti-discrimination policies and practices in place as part of the Lawrite Employment Law Service. You can also get advice from our team of employment lawyers when issues arise. Compensation awards made by Employment Tribunals in discrimination cases can be unlimited so we recommend joining our Employment Tribunal indemnity scheme to protect your business.



**RED LIGHT:** You have no written equal opportunities or anti-discrimination policies in place, and no detailed knowledge of the issues or a qualified legal advisor or HR specialist you can turn to for advice. You don't think age discrimination applies to your business because there are no employees approaching retirement age, and you think the sort of work you do is not suitable for people with disabilities so the Disability Discrimination Act doesn't apply to you.

**Verdict:** Modern employers cannot ignore anti-discrimination legislation. Employment Tribunal cases involving allegations of discrimination, bullying or harassment in the workplace are increasing and in these cases the compensation awards employers can be ordered to pay can be unlimited. To protect your business you should urgently seek the help of Lawrite HR so we can help you gain awareness of the issues and put the necessary written procedures in place.

## Part 7: Time off work other than annual leave

Employers must give employees time off work, other than annual leave, in certain circumstances. Whether it is paid or unpaid depends on the circumstances.

These include ante natal appointments, trade union duties, accompanying another worker to a disciplinary

or grievance hearing, time off for “public duties”.

There is a specific right to time off work relating to an emergency involving a dependant.

### Your assessment – which one matches your business?



**GREEN LIGHT:** You are fully aware of the right to time off for family and dependants and have a clear written policy in place. you are also fully aware of other circumstances in which employees have a right to take leave from work including ante natal appointments, trade union duties, accompanying another worker to a disciplinary or grievance hearing, time off for “public duties”.

**Verdict:** You appear to be aware of the law and following best practice recommendations, but why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal advice whenever you need it? You’ll get an efficient service and probably save a good deal of money compared to what you have paid your present provider.



**AMBER LIGHT:** You are aware of the some issues involving time off work but don’t have a written policy in place.

**Verdict:** You need Lawrite HR! We can supply the information and template documents you need to put a time off for dependants policy in place as part of the Lawrite Employment Law Service. You can also get advice from our team of employment lawyers when issues arise.



**RED LIGHT:** You don’t know what the law says about time off for dependants, or other time off work and you don’t have a policy, written or otherwise, in place.

**Verdict:** Employees who are deprived of the right to time off for dependants or dismissed or victimised because of it are entitled to make a complaint to an Employment Tribunal and claim compensation from you. To protect your business you should urgently seek the help of Lawrite HR so we can help you gain awareness of the issues and put the necessary written policy in place.

## Part 8: Working parents and carers of adults

All pregnant employees and mothers of babies, regardless of length of service or the hours they work, are entitled to paid time off for ante-natal care and 52 weeks' maternity leave – made up of 26 weeks' Ordinary Maternity Leave and 26 weeks' Additional Maternity Leave. A woman on Ordinary Maternity Leave retains all her normal terms and conditions except wages and salary and a right to return to the same job. After Additional Maternity Leave, an employee is entitled to return to the same job unless this is not reasonably practicable.

Fathers who have 26 weeks' service by the 15th week before the expected week of childbirth are entitled to two weeks' paid paternity leave at or around the date the child is born. Where a child is adopted, one member of a couple is entitled to receive Statutory Adoption Leave and the other Statutory Paternity Leave if they

have 26 weeks' service by the time the adopter is told they have been matched with a child for adoption. Qualifying employees are entitled to 39 weeks of Statutory Maternity or Adoption Pay and two weeks of Statutory Paternity Pay.

Employees who have completed one year's service with you are also entitled to up to 13 weeks' unpaid Parental Leave for each child born or adopted. They can take leave until the child's 5th birthday, or until five years after adoption.

Employers have to seriously consider requests to work flexibly from parents of children under 17 or of disabled children under 18, or staff who have responsibility for caring for adults. To make a request, employees must have worked continuously for you for at least 26 weeks and have to make a request in writing.

### Your assessment – which one matches your business?



**GREEN LIGHT:** You are fully aware of the rights and entitlements of working parents and carers of adults and have clear written policies which are distributed to your staff.

**Verdict:** You appear to be aware of the law and following best practice recommendations, but why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal advice whenever you need it? You'll get an efficient service and probably save a good deal of money compared to what you have paid your present provider.



**AMBER LIGHT:** You are aware of some the issues but don't have written policies in place and would need advice about how to deal with applications by employees for adoption leave or flexible working.

**Verdict:** You need Lawrite HR! We can supply the information and template documents you need to put a time off for dependants policy in place as part of the Lawrite Employment Law Service. You can also get advice from our team of employment lawyers when issues arise.



**RED LIGHT:** You don't know what the law say about rights and entitlements for working parents and carers of adults and you don't have any policies, written or otherwise, in place.

**Verdict:** Employees who are new parents who are deprived or their rights or dismissed or victimised because of them are entitled to make a complaint to an Employment Tribunal and claim compensation from you. To protect your business you should urgently seek the help of Lawrite HR so we can help you gain awareness of the issues and put the necessary written policies in place.

## Part 9: Health and safety

Employers must ensure their workplace meets certain health and safety standards. Your responsibilities will include carrying out risk assessments, making sure your premises meet the required fire safety standards; the reporting of accidents or dangerous incidents in the

workplace, and providing clean toilets and sanitation facilities. You should also have a health and safety policy, which should be in writing if you have five employees or more.

### Your assessment – which one matches your business?



**GREEN LIGHT:** You are fully aware of the relevant health and safety standards, you have a health and safety policy (in writing if you have more than five employees) which is accessible to your employees and you have carried out risk assessments which you update when appropriate.

**Verdict:** You appear to be aware of the law and following best practice recommendations, but why not consider using Lawrite HR in the future to stay up to date and to get unlimited legal and health and safety advice whenever you need it. You'll get an efficient service and probably save a good deal of money compared to what you have paid your present provider.



**AMBER LIGHT:** You are aware of some the issues but don't have a written health and safety policy in place and would need advice about carrying out risk assessments.

**Verdict:** You need Lawrite HR! We can supply the information and template documents you need to put a written health and safety policy in place and carry out risk assessments as part of the Lawrite Employment Law Service. You can also get advice from our team of health and safety experts when issues arise.



**RED LIGHT:** You don't know much about health and safety law, don't have a health and safety policy and don't know anything about risk assessments or how to do them.

**Verdict:** You could be running the risk of having your business closed down and, in some cases, of facing a criminal prosecution or even a prison sentence. You need Lawrite HR! We can supply the information and template documents you need to put a written health and safety policy in place and carry out risk assessments as part of the Lawrite Employment Law Service. You can also get advice from our team of health and safety experts when issues arise.

### HOW DID YOU DO?

If you got a green light in each section, congratulations! You have most likely sought advice and support from another provider of legal and HR advice to be in this enviable position. The chances are you could be receiving an equal or better service by using Lawrite HR and probably saving a good deal of money. Why not get a quote from Lawrite HR to find out?

If you got any amber or red lights then you are strongly advised to take action to get the information, advice and documents you need to protect your business from Employment Tribunal claims.

Call Lawrite HR on 0207 917 2742 to find out how we can help.

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