Employment Law Guide

A short guide to employment law for employers and managers
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Introduction

The law has given employees – and in some cases other workers who might not count as employees – rights and entitlements in relation to their employment, including how they are disciplined and dismissed or made redundant, how their grievances are handled, wages, absence from work and sickness, holidays, work breaks and working hours, time off for family emergencies, maternity and paternity leave, and the right to apply for flexible working.

All workers have the right not to be discriminated against in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

What follows is a basic guide to important areas of employment law.

What is employment?

For there to be an employment there must be a contract of service. The nature of a contract of service is that the employer controls how, when and where the work is done. Usually the work is done on the employer’s premises using the employer’s tools and materials.

It is a relationship “of service” as opposed to someone agreeing to provide services as in a self-employed contractor role. The employer must exercise sufficient control over the employee and how he works. Lawyers still refer to the concept of “master and servant” when distinguishing a contract of employment from other contractual relationships.

There must be a mutuality of obligations between employer and employee. This is the case where the employee is obliged to work and the employer is obliged to provide him with work and to pay him for it.

It is essential to a relationship of employment that the obligation is a personal one, and the employee is personally obliged to do the work himself, as opposed to getting someone else to do it.

The contract of employment

A contract of employment can arise when one party agrees with another that he or she will personally undertake work for the other, which they will be paid to do by the other. It can be made verbally, or in writing, by exchange of letters, by a formal written agreement or it can be implied by the actions of the parties. It can contain express terms and implied terms. The essential characteristics of “employment” must be present. Even if there is nothing in writing there will be a contract where someone is employed by someone else.
Employers do not have to make written contracts, but the law is that employers must normally give employees a written statement of the main terms and conditions of employment within two months of their starting work. It has to include, among other things, details of pay, hours, holidays, notice period and, disciplinary and grievance procedures.

**Workers v self-employed**

People who personally do work for other people can broadly be categorised as one of the above. If someone is not an employee they will either be genuinely “self-employed” which means they run a business or profession offering their services to different clients or customers or they will be a worker. A “worker” is defined to include employees and others who “personally undertake to do work for another under a contract, whether written, oral, implied, or express, but not where the work is part of a profession or business undertaking carried on by the worker”. Many rights like the Working Time Regulations and entitlement to the National Minimum Wage apply to all workers but the right to be protected from unfair dismissal and be paid redundancy pay only apply to employees.

**Employment agencies**

A business can be an employment agency or an employment business or both. An employment agency or recruitment consultancy introduces work-seekers to employers and they become an employee of the company to whom they were introduced.

An employment business arranges temporary work and the temporary worker is paid by the agency rather than by the company to which they are supplied.

The conduct of the private recruitment industry is governed by The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003, which set minimum standards for employment agencies and employment businesses operating in Great Britain.

The Agency Workers Regulations 2010 implemented the EU Temporary Workers Directive, and they mean that the agency worker must enjoy the same terms and conditions they would have if employed directly by the hirer and both the agency and the hirer have liability to the worker for breaches of the Regulations.

**Flexible working**

Employees who qualify by having 26 weeks’ continuous employment with their employer have a right to apply to vary their contract of employment to allow flexible working. Their employer must consider that application and may only refuse it where the employer considers that specified grounds apply.
A qualifying employee may apply to his employer for a change in his or her contract of employment so long as the change relates to the hours he or she is required to work or the times when he or she is required to work or where he or she is required to work (as between his or her home and his or her employer’s place of business). Only one application may be made in 12 months and it must be in writing.

After an application is made the employer has a duty to deal with it in a reasonable manner and inform the applicant of the decision within three months.

An employer may only refuse an application if certain specified grounds apply.

An employee whose application is refused may appeal to his employer. If the employer has failed to deal with the application or the employee considers that the employer has decided the application on incorrect facts then the employee can complain to an Employment Tribunal who may order the employer to reconsider the application or award compensation up to eight weeks’ pay (limited to the same statutory amount as a week’s pay for redundancy and unfair dismissal compensation).

Part time workers

A part time worker is someone who is “paid wholly or in part by reference to the time he (or she) works and, having regard to the custom and practice of the employer in relation to workers employed by the worker’s employer under the same type of contract, is not identifiable as a full-time worker.”

The Part Time Workers (Prevention of Less Favourable Treatment) Regulations go on to specify that employees or workers employed under different types of contract including: a contract that is neither for a fixed term nor a contract of apprenticeship; a contract for a fixed term that is not a contract of apprenticeship; a contract of apprenticeship; workers who are neither employees nor employed under a contract for a fixed term; workers who are not employees but are employed under a contract for a fixed term; and any other description of worker that it is reasonable for the employer to treat differently from other workers on the ground that workers of that description have a different type of contract as included in the meaning of “part time worker”.

Under the Regulations, a part time worker has the right not to be treated by his or her employer less favourably than the employer treats a comparable full time worker as regards the terms of his or her contract; or by being subjected to any other detriment by any act, or deliberate failure to act, of his or her employer.

The right only applies if the treatment is on the grounds that the worker is a part time worker, and the treatment is not justified on objective grounds.
Part time workers can request a statement from their employer explaining the reason for specified treatment that they believe is contrary to the Regulations and have the right to make a complaint to an Employment Tribunal.

In so far as rates of pay and benefits are concerned the pro rata principle applies as between a full time worker and a part timer.

**Fixed-term employees**

Fixed-term employees are those on contracts that last for a specified period of time or will end when a specified task has been completed or a specified event does or does not happen.

Fixed-term employees should not be treated less favourably than comparable permanent employees on the grounds they are fixed-term employees, unless this is objectively justified.

Either each of the fixed-term employee’s terms and conditions of employment should not be less favourable than the equivalent treatment given to their comparator or the fixed-term employee’s overall package of conditions should not be less favourable. In both instances any less favourable treatment would need to be justified on objective grounds.

There is no limit on the duration of the first fixed-term contract, although if a contract of four years or more is renewed, it will be treated from then as permanent unless the use of a fixed-term contract is objectively justified.

A fixed-term employee can compare their treatment to the treatment of a comparable permanent employee. A comparable permanent employee is someone who works for the same employer in the same establishment, doing the same or broadly similar work, and the comparator’s skills and qualifications must be taken into account where they are relevant to the job.

**Wages**

The law defines wages to include any fee, bonus, commission, holiday pay or other emolument of employment; it also includes Statutory Sick Pay; Statutory Maternity Pay; a guarantee payment; any sum payable for reinstatement or re-engagement; and non-contractual bonus payments.

An employer may not make deductions from an employee’s wages or receive any payment from an employee UNLESS the deduction is required or permitted by law OR the employee has given his prior written consent to the deduction.

However certain deductions are permitted including the recovery of overpaid wages or expenses and certain statutory deductions.
Also a written agreement – in the contract of employment for example – may authorise other deductions to be made.

Cash shortages

Special rules apply in relation to staff employed to carry out retail transactions with the general public. Deductions in relation to cash or stock deficiencies may only be made to the extent that they do not exceed 10% of the gross amount of the wage payment to the employee from whom they are deducted and if they are made within 12 months of the discovery of the shortage.

Itemised pay statements

Employees must receive a written itemised pay statement at or before the time that payment of wages or salary is made to the employee. It must contain the gross amount of wages or salary; the amounts of any variable or fixed deductions from that gross amount and the purpose for which they are made; the net amount payable; where the net amount is paid in different ways, the amount and method of payment of each part payment.

However, a standing statement of fixed deductions may be given to the employee, and if so the statement given with each payment need only give the aggregate amount of fixed deductions.

Sunday working and shop-workers

Shop workers in England and Wales have protection against having to work on Sundays by being able to opt out of doing so without fear of dismissal or detriment as a result. This does not apply if they are specifically employed only to work on Sundays.

The National Minimum Wage

All workers aged over the compulsory school leaving age (16 years old) must be paid the National Minimum Wage (NMW).

There are different rates for different aged workers. Complex rules govern how the NMW is calculated, particularly for piece workers who are paid according to what they produce rather than by the hour.

The apprenticeship rate applies to a worker who is employed under a contract of apprenticeship or apprenticeship agreement (within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009), or is treated as employed under a contract of apprenticeship, and who is within the first 12 months after the commencement of that employment or under 19 years of age.
Working time regulations


- a limit on average weekly working time to 48 hours (individuals can opt to work longer but must not be made to do so);
- a limit on night workers’ average normal daily working time to 8 hours;
- a requirement to offer health assessments to night workers;
- minimum daily and weekly rest periods of 11 hours rest a day and a right to a day off a week;
- rest breaks at work of at least 20 minutes if the working day is longer than six hours;
- 5.6 weeks of paid annual leave capped at 28 days.

The Working Time Regulations apply to most workers, but there are certain exceptions.

Individual workers can choose to agree to work more than the 48-hour average weekly limit, but the agreement has to be in writing and it must allow the worker to end it. An agreement can have a notice period of up to three months, but if no notice period is specified, only seven days’ written notice will be required. The agreement may be included in the written contract of employment or form a separate written agreement.

Dismissal

Unless an employee is contracted to work for only a specific fixed period or his contract provides for circumstances that automatically end it, his employment can usually only be terminated by either him or his employer giving a period of notice. If the employer ends the contract this is a dismissal. However, a dismissal will also occur if an employer simply fails to renew a contract for a fixed period when that period comes to an end.

There can also be a constructive dismissal if an employee resigns in circumstances where he is entitled to treat the contract as brought to an end by a fundamental breach of contract on the part of the employer. A common example of this kind of dismissal is where the trust and confidence between employer and employee is destroyed. Abusive or discriminatory behaviour by an employer towards an employee, a serious unilateral variation of contractual terms by the employer or conduct intended to provoke the employee’s resignation may well cause a constructive dismissal.
Unfair dismissal

Generally an employee who has completed more than two continuous year’s employment is protected from unfair dismissal.

In order for a dismissal to be fair the reason for the dismissal must be one of these potentially fair reasons:

- Reasons related to the capability or qualifications of the employee.
- Reasons related to the conduct of the employee.
- Redundancy.
- Where his continued employment would involve him or the employer contravening a duty or restriction imposed by law.
- Some other substantial reason.

In all cases the employer’s decision to dismiss must satisfy a test of fairness. If the employer has not followed a fair procedure in making the decision to dismiss an employee the dismissal will usually be ruled to be unfair.

A Tribunal will look at all the circumstances of a dismissal in order to decide whether the decision to dismiss was a reasonable response to the circumstances and the facts known to the employer at the time.

If the claimant is found to be unfairly dismissed the Tribunal will award compensation made up of two components. The basic award is calculated in the same way as a statutory redundancy payment multiplying a week’s pay by the number of years worked adjusted according to the claimant’s age. Over and above the basic award the Tribunal may award compensation to meet the claimant’s financial losses caused by the dismissal. The maximum award of compensation is fixed by law. From 2013 a cap was imposed to limit compensation awards to a year’s pay or the statutory limit, whichever is the lower.

As well as awarding compensation a Tribunal may also order the employer to give the employee his job back or re-engage him in a similar job. The number of such orders made is very small.

Tribunals have the power to adjust awards. An employer who fails to comply with a reinstatement or re-engagement order may be ordered to pay additional compensation. An employee who is found to have contributed to his dismissal may have his compensation reduced.

Tribunals also have powers to order one party or the other to pay the other’s costs.

Automatic unfair dismissal

Some dismissals are classed as automatically unfair. These are generally where the dismissal is for asserting a statutory right; for a reason which is to do with pregnancy
or maternity leave or the other family-friendly rights, pay and working hours, including the National Minimum Wage, trade union membership, whistle blowing, being a part-time or fixed-term employee, or for a health and safety-related reason.

Most automatically unfair reasons for dismissal do not require a qualifying period to make a claim for unfair dismissal so they count from day one of employment. Some, such as a dismissal related to a TUPE transfer or because of a spent criminal conviction, do require the employee to have completed two years of continuous employment to make an employment tribunal claim.

The effect of a reason being an automatic unfair dismissal is that if the employee establishes to the Tribunal that they were dismissed for such a reason the employer cannot then establish that the dismissal was fair.

Wrongful dismissal

This is an entirely different concept to unfair dismissal. Every employee is entitled to reasonable notice of the termination of their employment unless employed on a fixed term contract. This is a common law concept independent of the statutory rights not to be unfairly dismissed. Most contracts of employment specify the notice either party must give the other. In the absence of such agreement the Employment Rights Act 1996 provides that where an employee has been employed for more than a month, the employer must give him at least the statutory minimum period of notice which is one week. After two completed years of continuous employment, the notice entitlement rises to one week for every completed year of employment up to a maximum of 12 weeks’ notice.

An employee only has to give his employer a week’s notice, after a month of employment, irrespective of how long he is employed.

An employee dismissed without notice may be able to sue his former employer for wrongful dismissal and claim damages equivalent to what he has lost as a result. However, an employer may dismiss without notice where the employee is guilty of gross misconduct, although what exactly constitutes ‘gross misconduct’ is not clearly defined, so it is a good idea for employers to seek legal advice in such situations.

Retirement dismissals

Retirement cannot be a potentially fair reason for dismissal unless it can be objectively justified.

Disciplinary procedure

In order to fairly dismiss an employee for a breach of discipline the employer should have in place a disciplinary procedure that complies with the ACAS guidelines in its Code of Practice on Disciplinary and Grievance Procedures and the employer and employees must apply the procedures otherwise the dismissal will almost certainly be judged unfair by an Employment Tribunal.
Employers are statutorily required in the written statement of terms and conditions of employment to specify any disciplinary rules applicable to them and indicate the person to whom they should apply if they are dissatisfied with any disciplinary decision. The statement should explain any further steps that exist in any procedure for dealing with disciplinary decisions. The employer may satisfy certain of these requirements by referring the employees to a reasonably accessible document which provides the necessary information.

**Grievance procedure**

Workers may have problems or concerns about their work, working environment or working relationships that they wish to raise and have addressed. A grievance procedure provides a mechanism for these to be dealt with fairly and speedily, before they develop into major problems and potentially collective disputes. Employers are statutorily required in the written statement of terms and conditions of employment to specify, by description or otherwise, a person to whom the employee can apply if they have a grievance and they are also required by statute to allow a worker to be accompanied at certain grievance hearings.

Employers should have procedures which comply with the ACAS Code of Practice on disciplinary and grievance procedures.

**The right to be accompanied**

Workers have a statutory right to be accompanied by a fellow worker or trade union official where they are required or invited by their employer to attend certain disciplinary or grievance hearings and when they make a reasonable request to be so accompanied. This right is additional to any contractual rights. The statutory right to be accompanied applies to all workers, not just employees working under a contract of employment.

The statutory right applies where a worker is required or invited to attend a disciplinary or grievance hearing, and reasonably requests to be accompanied at the hearing.

The statutory right to be accompanied applies specifically to hearings that could result in the administration of a formal warning to a worker by his employer (i.e., a warning, whether about conduct or capability, that will be placed on the worker’s record); the taking of some other action in respect of a worker by his employer (e.g., suspension without pay, demotion or dismissal); or the confirmation of a warning issued or some other action taken.

A worker has a statutory right to be accompanied at a disciplinary or grievance hearing by a single companion who is either a fellow worker, i.e., another of the employer’s workers; or a full-time official employed by a trade union; or a lay trade union official, so long as they have been reasonably certified in writing by their union
as having experience of, or as having received training in, acting as a worker’s companion at disciplinary or grievance hearings. Such certification may take the form of a card or letter.

A worker who has been requested to accompany a colleague employed by the same employer and has agreed to do so is entitled to take a reasonable amount of paid time off to fulfil this responsibility. The time off should not only cover the hearing but should also allow a reasonable amount of time off for the accompanying person to familiarise themselves with the case and confer with the worker before and after the hearing.

The law states that an employer must permit the companion to address the hearing in order to put the worker’s case, sum up that case, and respond on the worker’s behalf to any view expressed at the hearing. The worker and companion must be allowed to confer during the hearing. However, the companion is not allowed to answer questions on the worker’s behalf. If the worker indicates that he does not want the companion to address the hearing the employer is not obliged to permit him to do so. Furthermore, the companion must not use the powers conferred upon him in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.

**Redundancy**

A redundancy occurs only when an employee is dismissed and the reason for his dismissal is that his job is no longer available at the place where he works (because the factory that employs him was closed, for example) or where his employer no longer requires the same number of employees to do what he does (because of a fall in demand for the product he makes, or changes in technology, for example). An employee’s job is redundant if the business that employs him closes down or closes down at the location where he works, or if he becomes surplus to the requirements of the business.

**TUPE**

The Transfer of Undertaking (Protection of Employment) Regulations 1981 (TUPE), apply when there is a transfer of a trade or business undertaking or part of an undertaking, to a new owner. Employees who are employed by the undertaking at the time of the transfer automatically become the employees of the new owner, effectively as if their contract of employment was made originally with the new employer. If either the old or new employers dismiss an employee because of the transfer of undertakings, the dismissal may be considered unfair.

**Trade union recognition**

A Trade Union may make a request for recognition to an employer who employs 21 or more workers. The employer can respond within 10 working days but if he fails to do so this will have the same effect as refusal to recognise the Union, and the Union
can make a formal application for compulsory recognition to a Government body
called the Central Arbitration Committee.

The Union must have 10% membership in the bargaining unit it wants to represent
and must show that the majority of workers would be likely to favour recognition.
The procedure for dealing with an application is complex.

Consultation with employees

The EU Directive on National Information and Consultation applies in the UK to
workplaces where there are more than 50 employees, and it was brought into UK
law by The Information and Consultation of Employees Regulations 2004.

The Directive requires that employees shall have the opportunity to be informed and
consulted on management decisions affecting their future, such as decisions relating
to changes in work organisation or contractual relations, including redundancies and
transfers of the undertaking.

Where an employer already has in place arrangements for employees to be given
information about the business that employs them, it will need 40% of the workforce
to agree to change them. Otherwise, if 10% of the workforce wants them to do so,
employers must appoint information and consultation representatives from their
workforce.

Consultation about health and safety

All employers are obliged to consult with employees about health and safety.
Safety Representatives are appointed by a trade union where the employer
recognises the union. They will have been employed by the employer for two years
or have two years’ experience in similar employment. They represent their fellow
employees in consultations about health and safety arrangements. The employer
must consult with them and provide them with assistance to perform their
functions.

Non-union employees must be consulted directly or may elect employee
representatives to consult with the employer on their behalf.

Industrial action

Official industrial action called by a Trade Union in accordance with a properly
conducted ballot will be ‘protected’. An employee who takes part in industrial action
(e.g. an overtime ban or a strike) that is ‘protected’ and is then dismissed will not
only have a claim of unfair dismissal but will be found to have been automatically
unfairly dismissed. The protection extends to the first 8 weeks of industrial action if
during that time the employer takes such procedural steps as are reasonable for the
purposes of resolving the dispute. If he does not then the remainder of the action is
protected too.
Employment tribunals

Employment Tribunals (which were originally known as Industrial Tribunals) are a system of courts that have authority to deal with a number of different types of claims and disputes on matters arising between an employer and his workforce. They can award compensation for unfair dismissal up to a statutory limit, set by the Government, and in some cases, including all discrimination claims, there is no limit on how much compensation they can award.

In July 2013 a fees system was introduced, with an unfair dismissal or discrimination claim, for example, costing a total of £1,200 to go to a hearing. The UNISON union challenged the legality of the fees through the courts and on July 26th 2017 the Supreme Court ruled that they were unlawful and discriminatory and should be scrapped. In light of the ruling HM Courts and Tribunals Service immediately stopped charging fees for ET claims.

The ACAS early conciliation scheme was introduced with effect from May 6th 2014. Potential claimants have to provide information to ACAS before presenting a claim allowing an opportunity for conciliation, and a certificate from ACAS must be obtained before presenting a claim to the ET.

Health and safety

The common law has established that an employer has a general duty to take reasonable care to avoid injury, disease or death occurring to their employees at work.

In particular employers must:

- provide a safe place of work with safe means of access and egress;
- provide and maintain safe appliances and equipment and plant for doing the work;
- provide and maintain a safe system of work;
- provide competent people to undertake the work.

If an employer fails in his common law duty the injured employee has a civil law right of action to sue his employer for compensation as long as he can show that there has been negligence.

However, employers also face a raft of statutory duties imposed by Parliament. The Health and Safety at Work Act 1974 provides that every employer has a duty to ensure the health and safety and well being of all his employees. His statutory duty (under Section 2(2) of the 1974 Act) is to provide:

- Safe plant and systems;
- Safe methods of handling, storage and transport of articles of goods;
• Provide employees with information, instruction and training;
• Ensure the place of work is safe with means of access and egress;
• Provide a safe working environment.

The effect of the 1974 Act and the Management of Health and Safety at Work Regulations 1999 and other regulations is that all employers of more than five people must prepare (and as appropriate revise) a written policy statement setting out their general health and safety policy, and the organisation and arrangements for carrying out this policy. The employer must also bring the statement and revisions of it to the attention of employees.

Every employer must carry out a suitable and sufficient assessment of risks to health and safety of his employees (and persons not in his employ but who would otherwise be at risk). Employers of more than five people must record the significant findings of his risk assessments and any group of his employees identified as being especially at risk.

Every employer must make and give effect to arrangements for effective planning, organisation, control, monitoring and review of preventative and protective measures, which if there is more than five employees, must be recorded in writing.

There must be written procedures for serious and imminent danger and dangerous areas setting out emergency procedures.

Employees must be provided with comprehensive and relevant information on risks to their health.

An employer has an absolute duty to take into account human capabilities of his employees when entrusting them with tasks.

There is a duty to ensure that there is adequate health and safety training when employees are recruited and repeated in the future when risks to them are increased by new responsibilities, new work or equipment, new techniques or new systems.

All employees to be given information about Health and Safety as prescribed in the Act, and for posters to be put up in places of work. An alternative to display of a poster is to hand each individual employee an approved leaflet.

The poster must be displayed in a readable condition at a place that is reasonably accessible to employees at work and positioned so that it is easily seen and read. An employer must clearly and indelibly insert in the appropriate space on the poster the name and address of the enforcing authority for the premises and the address of the employment medical advisory service for the area where the premises are situated.

An employer carrying on business in Great Britain (i.e. in England, Wales and Scotland) to insure with an authorised insurer against liability for bodily injury or
disease sustained by his employees arising out of and in the course of their employment in Great Britain in that business.

Accidents must be reported.

An employer must so far as is reasonably practicable avoid the need for employees to undertake any manual handling operations involving a risk of injury.

An employer must provide such equipment and facilities as are adequate for enabling first aid to be rendered to his employees if they are either injured at work or become ill at work. He must also tell his employees what arrangements have been made for first aid including the location of equipment, facilities and personnel.

All employers have duties under the Control of Substances Hazardous to Health Regulations 2002.

There are many other specific regulations applying to workplaces and specific industries and hazards.

Whistle-blowers

The Public Interest Disclosure Act 1998 protects workers (not just employees) from being victimised or dismissed for making disclosure (often in breach of contractual terms against breach of confidentiality) in certain circumstances. Only information about criminal activity, other illegality, danger to individual health and safety, environmental damage or concealment of information about these matters is protected.

The worker must believe reasonably that his disclosure is protected and that it is true and made in the public interest. Disclosure to the employer, a legal adviser, a Minister of the Crown, a Regulator, or someone to whom the employer has a legal responsibility is protected provided that the employee believes that his employer will punish him, evidence will be destroyed or that other workers have made previous disclosure without effect. Other criteria apply.

Equality

It is unlawful to discriminate against anyone at work because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, or membership (or non-membership) of a trade union.

The Equality Act 2010 introduced the concept of people having “protected characteristics” and of there being “prohibited conduct” by employers.

The protected characteristics are:
• age,
• disability,
• race,
• sex,
• sexual orientation,
• gender reassignment,
• marriage and civil partnership,
• pregnancy and maternity,
• religion or belief.

Prohibited conduct is:

• discrimination, and
• failure to make adjustments for disabled people.

Although the law generally assigns the same protection to each of the protected characteristics, there are certain exceptions that can apply in different areas of employment.

Someone who believes they are the victim of discrimination at work can make a claim to an Employment Tribunal and could be awarded compensation for any damage or loss suffered including injury to feelings.

Equal pay

The Equality Act 2010 gives a right to equal pay for men and women doing equal work. This covers people in the same employment and includes equality in pay and other contractual terms.

A woman doing equal work with a man in the same employment is entitled to equality in pay and other contractual terms, unless the employer can show that there is a material reason for the difference which does not discriminate on the basis of her sex.

Where there is equal work, the Act implies a sex equality clause automatically into the woman’s contract of employment, modifying it where necessary to ensure her pay and all other contractual terms are no less favourable than the man’s.

Where a woman doing equal work shows that she is receiving less pay or other less favourable terms in her contract, or identifies a contract term from which her comparator (a comparator is “a man or men in the same employment”) benefits and she does not (for example he is entitled to a company car and she is not), the employer will have to show why this is. If the employer is unable to show that the difference is due to a material factor which has nothing to do with her sex, then the equality clause takes effect.
These equal pay provisions apply to all contractual terms including wages and salaries, non-discretionary bonuses, holiday pay, sick pay, overtime, shift payments, and occupational pension benefits, and to non-monetary terms such as leave entitlements or access to sports and social benefits.

Other sex discrimination provisions apply to non-contractual pay and benefits such as purely discretionary bonuses, promotions, transfers and training and offers of employment or appointments to office.

Where an equality clause cannot operate, if the woman cannot identify an actual male comparator for an equal pay claim, for example, but she has evidence of direct sex discrimination, she can bring a discrimination claim.

Human rights

The Human Rights Act 1998 came into force on 2 October 2000. It means the UK Courts (and the Employment Tribunals and EAT) will have to interpret UK domestic law in accordance with the European Convention on Human Rights.

The Human Rights Act regulates how the state and its laws are to affect the lives of its citizens. It does not directly create rights that are enforceable by one person against another. But because disputes between employers and their employees will involve recourse to the law and rulings by the courts about the extent to which one or the other is regulated by the law, and the interpretation of the law, human rights issues are relevant and will continue to arise in the decisions courts have to make which effect the relationship of employers and employees.

Absence from work

The fundamental concept of employment is that an employee works for their employer at the times and places agreed in their contract of employment.

An employee’s absence from work is often the basis for disputes between employers and their staff.

The Working Time Regulations and other industry specific regulation, like those that regulate driver’s hours, control the number of hours that an employee can work before having to have a break and also time off work. In addition, every worker now has to have at least 5.6 weeks of paid annual leave. How and when an employee takes his holiday will be regulated by his contract of employment. For example, many employers have periods of annual shutdown when the workplace is closed, and staff are obliged to take their holidays.

Apart from holidays the law also provides that employees have a right to take leave from work for different reasons. These include:

- maternity leave, paternity leave, parental leave, and adoption leave;
• time off for family and dependents;
• time off for ante natal care in pregnancy;
• time off to deal with duties as a trade union official;
• time off to deal with duties as a trade union learning representative;
• time off to deal with duties as a member or candidate for membership of a European works council;
• time off to take part in trade union activities;
• time off for 16/17 year olds to study for certain educational qualifications;
• time off during notice of redundancy to seek new work;
• time off to perform duties as a pension fund trustee;
• time off to perform duties as a health and safety representative;
• time off to perform duties as an employee representative;
• time off to accompany another worker to a disciplinary or grievance hearing where the right to be accompanies applies;
• time off to perform certain ‘public duties’ - including service as a Justice of the Peace or a member of a local authority or statutory tribunal;
• time off while suspended.

Although there is no law that specifies that an employee is allowed to have leave from work for jury service the effect is the same because subject to certain exclusions most employees are liable to serve as jurors and failure to do so is contempt of court. Dismissal for taking time off for jury service would be unfair dismissal.

Absence due to sickness

Apart from holidays or other statutory leave the most common reason for an employee being absent from work is time off because the employee is sick. An employee who takes time off claiming to be sick when they are not sick will be guilty of misconduct and subject to discipline and even dismissal.

Most employers have terms in their contracts or procedures that specify the way in which an employee must report sickness. The contract of employment should provide whether an employee would be paid when off sick. If it does not provide any period of paid sickness then the only obligation is to pay Statutory Sick Pay.

Long-term sickness may prevent an employee’s capability to do their job and entitle their employer to terminate the employment. To avoid such a dismissal being unfair the employer should follow a fair procedure and obtain evidence about the employee’s capability either from the employee’s own doctors or by arranging an examination by an occupational health specialist. Only when there has been consultation with the employee and consideration of alternative employment can a decision that the employment is brought to an end be made. Where the sickness is likely to last for 12 months or more, or otherwise amounts to a disability as defined by the Equality Act, then the employer must avoid discriminating against the employee, and consider all the reasonable adjustments that can be made to enable the employee to continue working or return to the workplace in the future.
Compassionate leave of absence

In the event of a member of an employee’s family who lives with them, being taken suddenly ill, then leave to make arrangements to care for them may be taken under the right for time off to care for dependents. However, this is not applicable to non-dependent members of the family or for non-emergencies. An employer who dismissed someone simply because they took time off to care for a relative taken ill or because of the death of a relative would be acting unfairly but equally there is no right to take leave on bereavement unless it falls within the right to take time off to care for dependents. There is no right to be paid for such leave either. Undoubtedly taking time off to arrange a funeral and to attend it falls within the right to leave where the deceased is the employee’s spouse, partner, child, parent or other family member who lives in their household.

Enforced absence due to arrest or a custodial sentence

If someone is arrested and held in custody or receives a custodial sentence they will obviously not be able to attend their work. An employer may find such an event entitles him to dismiss the employee either for gross misconduct or for some other substantial reason. Alternatively, it will automatically bring the contract to an end because it is frustrated by the impossibility of the employee performing his part of the contract. This will almost certainly be the case if the employee is sent to prison for a substantial period.

Working parents’ rights

Maternity leave and pay

All pregnant employees are entitled to reasonable time off for antenatal care. From the first day of employment there is an entitlement to 26 weeks’ ordinary maternity leave and 26 weeks’ additional maternity leave.

If the employee has worked continuously for the same employer for 26 weeks by the 15th week before the child is due she is entitled to Statutory Maternity Pay (SMP), if her average weekly earnings are at least equal to the lower earnings limit for National Insurance contributions, for the first 39 weeks.

The rate of SMP is 90% of average weekly wages for the first 6 weeks and then the statutory rate for SMP for the remaining 33 weeks (unless 90% is less than the statutory rate in which case she receives that amount instead).

At the end of ordinary maternity leave an employee is entitled to return to the job in which she was employed before absence.

At the end of additional maternity leave an employee may return to the job in which she was employed before absence unless it is not reasonably practicable for the employer to permit her to return to that job, in which case she is entitled to return
to another job which is suitable for and appropriate for her to return to in the circumstances.

**Paternity leave and pay**

Employees must have or expect to have responsibility for the child’s upbringing, be the biological father of the child or the mother’s husband or partner, and have worked continuously for their employer for 26 weeks leading into the 15th week before the baby is due to qualify for paternity leave.

Eligible employees are entitled to choose to take either one week or two consecutive weeks’ paternity leave. They can choose to start their leave after the date of the child’s birth (whether this is earlier or later than expected), or from a chosen date. Leave can start on any day of the week on or following the child’s birth but must be completed within 56 days of the actual date of birth of the child, or if the child is born early, within the period from the actual date of birth up to 56 days after the expected week of birth.

Only one period of leave will be available to employees irrespective of whether more than one child is born as the result of the same pregnancy.

During their paternity leave, employees who earn over the NI lower earnings limit are entitled to Statutory Paternity Pay (SPP) from their employers, paid at the lesser of the statutory rate or 90% of average weekly wages.

Employees are required to inform their employers of their intention to take paternity leave by the fifteenth week before the baby is expected, unless this is not reasonably practicable. They will need to tell their employers the week the baby is due and whether they wish to take one or two weeks’ leave, and when they want their leave to start.

Employees are entitled to the benefit of their normal terms and conditions of employment, apart from wages or salary, throughout their paternity leave. Most employees will be entitled to SPP for this period. Employees are entitled to return to the same job following paternity leave.

Additional paternity leave and pay was also available to new fathers before April 5th 2015, but after that date has been replaced by shared parental leave and pay.

**Shared parental leave and pay**

From April 2015, qualifying new parents have had the opportunity to share the balance of the mother’s 52 weeks of statutory leave and 39 weeks of statutory pay as shared parental leave and shared parental pay, after the mother opts to end her maternity leave and pay early.

Shared parental leave and pay came into effect for babies due, or placed for adoption, on or after April 5th 2015.
Shared parental leave can be taken at any time in the first year following the child’s birth or placement for adoption.

The pattern of leave must be agreed between the employer and employee, with eight weeks’ notice required.

Shared parental leave can be taken in one go, or in up to three separate blocks of leave. If their employer agrees, the employee can split a block of leave into shorter periods of at least a week.

Statutory Shared Parental Pay (SSPP) is paid at the statutory rate or 90% of an employee’s average weekly earnings, whichever is lower.

Unpaid parental leave

Working parents with one year’s service with their employer are entitled to unpaid parental leave to care for a child. The right applies to parents and to a person who has obtained formal parental responsibility.

The entitlement is 18 weeks’ parental leave for each child and the employee’s right to take the leave last until the child’s 18th birthday.

The employee will remain employed while on parental leave. Where the leave taken is for a period of 4 weeks or less, the employee will be entitled to go back to the same job. If the leave is for more than 4 weeks an employee is guaranteed the right to return to the same job as before, or, if that is not practicable, a similar job which has the same or better status, terms and conditions as the old job.

Time off for family and dependants

All employees have the right to take a reasonable period of time off work to deal with an emergency involving a dependant, and not to be dismissed or victimised for doing so. The right enables employees to deal with an unexpected or sudden problem and make any necessary longer-term arrangements.

Unpaid time off to accompany partner to ante-natal appointments

Fathers and partners have the right to take unpaid time off work to accompany expectant mothers to up to two ante-natal appointments.

The father of a baby or the partner (including same sex) of a pregnant woman is entitled to take unpaid time off work to accompany the woman to up to two of her ante-natal appointments. The time off is capped at six and a half hours for each appointment.

An employer is entitled to ask the employee for a declaration stating the date and time of the appointment, that the employee qualifies for the unpaid time off
through his or her relationship with the mother or child, and that the time off is for
the purpose of attending an antenatal appointment with the expectant mother that
has been made on the advice of a registered medical practitioner, nurse or midwife.

Adoption leave and pay

An employee who adopts a child has similar rights to a mother who gives birth to a
child. Adoption leave and pay will be available to individuals who adopt and one
member of a couple where a couple adopt jointly (the couple may choose which
partner takes adoption leave).

To qualify for adoption leave, an employee must be newly matched with a child for
adoption by an approved adoption agency, and to be eligible for statutory adoption
pay they have worked continuously for their employer for 26 weeks leading into the
week in which they are notified of being matched with a child for adoption. Adopters
will be entitled to up to 26 weeks’ ordinary adoption leave followed immediately by
up to 26 weeks’ additional adoption leave - a total of up to 52 weeks’ leave.

Statutory Adoption Pay (SAP) can be paid for up 39 weeks. With effect from April 6th
2015, the rate of SAP is 90% of average weekly wages for the first 6 weeks and then
the statutory rate for the remaining 33 weeks (unless 90% is less than the statutory
rate in which case the adopter receives that amount instead).

Adopters have a right to a certain amount of time off work for adoption
appointments before a child is placed with them for adoption.

Children and young persons

The employment of children and young persons is covered by a number of pieces of
legislation. In legal terms a ‘child’ is someone not over the compulsory school age of
16. A ‘young person’ is someone who has ceased to be a child but is under the age of
18. In law ‘a minor’ is a person under the age of 18 years.

No child may be employed whether paid or not if he or she is under the age of 14
years, or for any work other than light work.

There are restrictions on the number of hours children can work, particularly on
school days, and before children and young persons start work their employers are
obliged to assess the risks to their health and safety, taking special account of factors
such as their inexperience and immaturity, and the extent of training provided.

The Working Time Regulations 1998 also apply different restrictions to the working
hours and entitlement to work breaks of young workers compared with adult
workers.
Pensions

The introduction of workplace pensions implementing a framework set out in the Pensions Act 2008, which places a duty on all employers to automatically enrol their qualifying workers in a workplace pension scheme and make payments on their behalf, began in 2012.

Every employer must automatically enrol workers into a workplace pension scheme if they:

- are aged between 22 and state pension age;
- earn more than £10,000 a year;
- work in the UK.

All new employers have to enrol eligible employees into a workplace pension from day one of employment.

Data Protection (GDPR)

The General Data Protection Regulation (GDPR) was approved by the EU Parliament on 14 April 2016, with an enforcement date of 25 May 2018.

The GDPR reinforces data protection law in the EU which was originally introduced with the Data Protection Directive in 1995, which resulted in the Data Protection Act 1998 in the UK.

Under GDPR, organizations in breach of GDPR can be fined up to 4 per cent of their annual global turnover or 20 Million euros (whichever is greater). This is the maximum fine that can be imposed for the most serious infringements.

The conditions for consent have been strengthened, and the request for consent must be given in an intelligible and easily accessible form, with the purpose for data processing attached to that consent. Consent must be clear and distinguishable from other matters and provided in an intelligible and easily accessible form, using clear and plain language. It must be as easy to withdraw consent as it is to give it.

Part of the expanded rights of data subjects outlined by the GDPR is the right for data subjects to obtain from the data controller confirmation as to whether or not personal data concerning them is being processed, where and for what purpose. Further, the controller shall provide a copy of the personal data, free of charge, in an electronic format. This change is a dramatic shift to data transparency and empowerment of data subjects.

The GDPR introduces the right to be forgotten which entitles the data subject to have the data controller erase his/her personal data, cease further dissemination of the data, and potentially have third parties halt processing of the data. The
conditions for erasure, as outlined in article 17, include the data no longer being relevant to original purposes for processing, or a data subject withdrawing consent.

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