

Guide from

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Complying with basic employment law

Employment law is a complex area that is 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.

You should be aware of the main elements of employment law likely to affect you. Whenever necessary, take professional advice.

1. Recruitment

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

- Discrimination 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.

A contract of employment exists as soon as a candidate accepts your offer of a job

- This applies whether the offer 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.

You must provide a written statement of terms and conditions

- You must do this within the first two months of employment.
- It 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.

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

You must comply with statutory requirements on working hours and leave

- Most employees are entitled to work no more than a maximum 48-hour average working week. Each employee can voluntarily agree to disapply the rules. Any agreement must be in writing and signed by the worker.
- 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.
- Time spent travelling to the first and last client of the day now counts as working time for workers with no fixed place of work.
- There are detailed regulations on minimum rest periods.
- Employees are entitled to a minimum of 5.6 weeks' paid leave a year.
- Employees can be entitled to maternity, paternity, shared parental or adoption leave, and unpaid parental leave or leave for family reasons. See 'Working parents'.
- Employees with at least 26-weeks' service have the right to make a request for flexible working.
- Part-time workers have the right to be treated no less favourably than full-timers. For example, part-timers are entitled to holiday on a pro rata basis.

Employees have the right to a minimum wage

- Employees aged over 25 must be paid the National Living Wage of £7.50 an hour (from April 2017).
- The National Minimum Wage stands at £7.05 an hour for staff aged 21 to 25, £5.60 for those aged 18 to 20, and £4.05 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 £3.50 per hour.
- Service charges, tips, gratuities and cover charges paid to a worker through payroll do not count towards NMW.
- The Government has pledged to increase the NLW to £9.00 per hour by 2020.

You must operate PAYE for tax and National Insurance (NI) contributions

- Deduct employees' tax and NI contributions from their wages.
- You also need to account for employer's NI contributions.
- Details need to be reported to HM Revenue & Customs, and you must pay them any tax and NI contributions you owe.

You must give every employee a wage slip

- This must show total gross pay, deductions and net pay.
- Deductions (eg tax, NI, pension contributions and union subscriptions) must be itemised.
- Apart from tax and NI, deductions can only be made with the employee's agreement or to correct previous overpayments.

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.

You must not undermine the relationship of 'trust and confidence' with employees

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

You must provide a secure, safe and healthy working environment

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

- Unions must be recognised by businesses with 21 or more employees if there is enough support from the workforce for recognition.
- Trade unions and their members have extra rights (eg time off for union duties).

Employees are entitled to a reasonable degree of privacy

- In particular, the circumstances under which employers may monitor phone calls, emails or internet use are regulated.

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 for any losses incurred. There is no monetary limit.

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.

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

- When a business is transferred to a new owner, all employee rights usually remain.
- In most cases, sackings would constitute unfair dismissal.

4. Discrimination

You must not discriminate unlawfully

You must not treat someone less favourably because of their:

- race, colour, nationality or ethnic origin;
- sex;
- sexual orientation;
- gender reassignment;
- age;
- disability;
- religion or philosophical belief;

- marital or civil partnership status;
- pregnancy, maternity or parental responsibility.

You must avoid indirect discrimination

- Indirect discrimination occurs if you impose a 'provision, criterion or practice' which places people belonging to certain groups at a disadvantage, and which cannot be objectively justified.
- For example, introducing irregular shiftworking patterns that might make it difficult for carers and those with parental responsibilities.

Do not victimise staff involved in a discrimination claim

- If you treat someone less favourably because of their actions (or potential actions) in connection with discrimination proceedings against your business, it could count as victimisation.
- For example, failing to promote someone who has brought a sex-discrimination case against you.

Make 'reasonable adjustments' to enable people with disabilities to work for you

- These aim to remove physical and non-physical barriers.
- In some circumstances, you may be justified in refusing to make adjustments. For example, where you can prove it would be ineffective, not practicable, or in breach of health and safety regulations.

You can no longer compulsorily retire employees on the basis of age

You are legally responsible for discrimination by your staff

- Be prepared to investigate complaints thoroughly and impartially. If the complaint is justified, be ready to offer redress and change your policies.
- Employment tribunals can award unlimited compensation to victims of discrimination.

5. Sickness

You must pay statutory sick pay (SSP) to qualifying workers

- This includes full-time, part-time, agency and casual workers. Length of service is irrelevant.
- SSP is set at £89.35 per week (2017/18), for up to 28 weeks.
- Workers qualify from the fourth day of sickness onwards.
- They must earn more than the lower earnings limit of £113 a week (2017/18).
- You can withhold SSP under certain circumstances.

Many employers pay higher levels

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

The 'fit note' has replaced the 'sick note'

- The fit note indicates whether an individual is not fit for any work, or may be fit for certain types of work.
- A 'may be fit for some work' statement is given if the doctor believes your worker's health condition may allow them to work, if you give them appropriate support.

- Employees in England and Wales who are off work for four weeks or more can be referred to the ['Fit for Work'](#) scheme. It offers free, occupational-health advice to help them return to work.

6. Disciplinary and grievance issues

Make sure you have disciplinary and grievance procedures in place

- Your procedures should include who the employee with a discipline or grievance issue should contact, how to go about it and what further steps will follow as part of the process.
- You must follow 'fair and reasonable' procedures when dealing with discipline and grievance issues. Your procedures should follow the Acas Code of Practice.
- 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.
- Make sure the disciplinary procedure clearly states the grounds for which employees can be dismissed. These include gross misconduct, being convicted of a criminal offence, unauthorised absence and, in certain circumstances, regular or protracted absence for ill health.

Make sure you have a good reason if you dismiss someone

Good cause might include:

- Persistent or gross misconduct, incompetence, lack of qualifications or a legal bar on that employee doing that job.
- Inability to do the job because of frequent or prolonged absences due to sickness or injury.

Redundancy might also be grounds for dismissal

- The reason must be genuine. In general, the job must have disappeared.
- Employees must be selected for redundancy on a fair and objective basis, after reasonable consultation, with adequate notice and a fair appeals procedure.

Beware of unlawful and unfair dismissal

- 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. But in some circumstances, length of service is immaterial.
- If you breach a fundamental term of the employment contract or make it impossible for employees to do their job, they can sue for 'constructive' (unfair) dismissal. They must raise a grievance first.
- It is unlawful to dismiss anyone for discriminatory reasons. There is no statutory upper limit on the amount of compensation that can be awarded in such cases.
- The basic award for unfair dismissal can be up to £14,670. But a tribunal also has powers to award compensation for financial loss up to a maximum of £80,541.

7. Working parents

Allow mothers-to-be paid time off for ante-natal care

- This is a legal right you must grant to all pregnant employees, regardless of length of service.
- Fathers, partners and intended parents (in surrogacy arrangements) are entitled to take unpaid time off work to attend up to two ante-natal appointments.

Give statutory maternity leave to new mothers

- Every new mother is entitled to 26 weeks' ordinary maternity leave and 26 weeks of additional maternity leave, during which all her contractual rights (except remuneration) continue.
- You must inform her of the date when she is due to return to work. She can come back earlier, but must give you 28 days' notice.
- 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.
- Every mother has the right to return to work up to one year after having the baby. Special exemptions apply if you have five employees or fewer and it is not reasonably practicable to offer suitable re-employment.
- A mother has 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 written reasons without having to be asked.

New mothers may qualify for statutory maternity pay (SMP)

- A mother who has completed 26 weeks' service by the end of the 15th week before the expected week of childbirth (EWC) will usually qualify.
- Statutory maternity pay is paid at 90% of average weekly earnings for the first six weeks. It then goes down to a fixed rate of £140.98 per week (2017/18) or 90% of average earnings if lower for up to 33 more weeks.

New fathers may qualify for up to two weeks' paid paternity leave

- Eligibility criteria and the amount of statutory paternity pay are the same as for SMP.
- Leave must end within 56 days of the birth.

A mother can share her statutory maternity leave and pay with her partner

- If she returns to work early, the remainder of her entitlement can be shared with her partner as shared parental leave (and shared parental pay). Each partner can take up to three blocks of leave.
- To qualify, an employee must have 26 weeks' service and remain with their employer until the end of their leave.
- The employee must also share responsibility for the child with their spouse, civil partner, partner (if they live with the child) or the child's other parent.

Equivalent leave and pay entitlements apply for adoptions

Parents can request unpaid leave to look after their children

- An employee with at least one year's service is entitled to up to a total of 18 weeks' per child. The maximum in any one year is 4 weeks (unless you agree to more).
- They retain all their employment rights during their time off (other than remuneration).

Consider flexible working requests

- You must consider requests to work flexibly from any employee with at least 26 weeks' service.
- Requests must be made in writing. Each employee can only make one request in any 12-month period.
- Flexible working includes provisions such as annualised hours, flexitime, job-sharing, shift-working, term-time working and homeworking.

Signpost

- Learn more about [PAYE and statutory pay and leave](#) from HM Revenue & Customs.
- Find [health and safety](#) guidance for particular topics or industries from the Health & Safety Executive.
- Find guidance on [employee rights](#) and [discipline and grievances](#) from Acas.
- Find out more about [monitoring employees](#) and the Data Protection Act from the Information Commissioner's Office.
- Find advice for employers on [avoiding discrimination](#) from the Equality and Human Rights Commission.
- Read about employee protection in [business transfers and takeovers](#) under the TUPE regulations on GOV.UK.
- Find guidance or refer an employee to [Fit for Work](#).

Note

Employment law is complex and is changing rapidly. This factsheet 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.

ACCA LEGAL NOTICE

This is a basic guide prepared by ACCA UK's Technical Advisory Service for members and their clients. It should not be used as a definitive guide, since individual circumstances may vary. Specific advice should be obtained, where necessary.

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