



Employing staff in **United Kingdom**

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This country guide is intended to be a summary of the major areas of employment law & HR practice and does not constitute legal or HR advice. The guidance was correct at the time of publishing and professional advice should always be sought as specific needs arise.

1.0 INTRODUCTION

The main statutory employment rights in the UK are found in the Employment Rights Act 1996. Anti-discrimination legislation is also relatively well-developed in the UK, with the main statutory provisions now found in the Equality Act 2010, as amended. Besides domestic legislation, the other two principal sources of employment law in the UK are the common law, and European law, arising from the UK's membership of the European Union (but this remains uncertain at the moment due to the Brexit situation)

2.0 EMPLOYMENT OF FOREIGNERS

It is a criminal offence for an employer to employ a person who is not entitled to work in the UK. Employers are required to undertake the Right to Work checks at the point of recruitment and obtain suitable documentation from successful candidates

2.1 EEA and Swiss Nationals

European Economic Area (EEA) citizens (which includes the European Union) do not need work permits to take up employment in the UK. However, this may change once the Brexit negotiations are completed.

2.2 Other Foreign Nationals

The UK Visas and Immigration administers a points-based system that is composed of five "tiers" to regulate immigration from outside the EEA.

Generally non-EEA nationals who are subject to immigration control must obtain work permits (with certain exceptions including business visitors, Gibraltarians, Commonwealth citizens with the right of abode and those with at least one grandparent born in the UK, and persons wishing to engage in certain specified occupations). Work permits are only issued to certain categories of workers (namely highly qualified or skilled workers,

established entertainers, sportsmen and women, people coming for a limited period of training or work experience or other persons if their employment is considered to be in the national interest). In addition, the employer may need to satisfy various other conditions depending on the type of visa to apply for.

3.0 EMPLOYMENT CONTRACT

3.1 Form of Employment Contract

The form of an employment contract can be oral, written or a combination of both. There is no statutory requirement to have a written contract. However, the employer must provide written details of the main terms and conditions of employment to employees.

It is common practice for the terms and conditions specific to each employee to be set out in a written contract of employment, with further terms of general application to the workforce to be set out in a staff handbook, which may also include non-contractual policies and procedures.

3.2 Written Particulars

The employer must provide employees with written particulars of certain terms of the contract within two calendar months of the beginning of the employment. As of April 2020, amendments to the Employment Rights Act mean that all employees, including workers have a right to written particulars from day one of employment.

These written particulars must include the following:

- > Names of the parties;
- > Date when employment began;
- > Date when continuous employment began;
- > Job title or brief description of main characteristics of work;

- > Length of notice to be given by employee and employer;
- > Expected duration or expiry date (if not permanent);
- > Place(s) of work and employer's address;
- > Terms and conditions relating to days and hours of work (if it is varied, fixed etc);
- > Rate of remuneration or method of calculating remuneration;
- > Intervals of pay;
- > Details of probationary period, including any conditions imposed and its duration
- > Terms relating to any other paid leave, e.g. maternity, adoption, paternity, shared parental and bereavement leave
- > Any benefits provided, e.g. bonuses, private medical cover, gym membership or company car
- > Terms and conditions relating to:
 - Annual leave (including public holidays), annual leave pay and sufficient information to allow precise calculation of entitlement (including on termination);
 - Incapacity for work due to sickness or injury, including provisions for sick pay (if any);
 - Training requirements for the role.
 - Pension provisions including whether or not a contracting-out certificate is in force;
- > Any disciplinary and grievance rules applicable (or reference to where it can be found);
- > Any relevant collective agreements;
- > Certain further particulars if employee is to work outside the UK for more than one month.

Any changes to the written particulars must be given in writing within one month of the change (or

the time of leaving the UK if that is the cause of the change)

3.3 Fixed-term Contract

Fixed term contracts made for a specific term or which terminate on the completion of a task or the occurrence/non-occurrence of a specified event are permissible in the UK. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed-term employees specific rights including not to be treated less favourably than a comparable permanent employee with regard to terms and conditions of employment amongst others. Under this legislation, successive fixed term contracts lasting more than four years may be considered permanent.

3.4 Variations

Contractual terms can be varied by any of the following means:

- > Virtue of a contractual right (for example where there is an express flexibility/variation clause);
- > Mutual agreement (either express or implied); or
- > The employer unilaterally imposing a change - carries the highest risk of legal liability (breach of contract).

If the effectively varied contractual terms relates to any of the written particulars that the employer is obliged to provide, the employer must, within 1 month of the change, issue a new statement of particulars giving details of the change.

4.0 PROBATION

Probationary periods are a common provision in the employment contract and must be agreed in writing. There is no maximum permissible probationary period under UK law, although six months is commonly used as the standard. During the probationary period it is common to apply the

statutory minimum notice period on termination of employment (1 week).

The employer is obliged, by an implied term, to take reasonable steps to appraise the employee during the probationary period in order to ensure that the required level of competence is achieved. The probationary period can be extended if the employer has expressly reserved the right to do so and has exercised this right in time.

5.0 REMUNERATION

5.1 Basic Pay

There is a statutory right to minimum wage in the UK and the hourly rate depends on the age of the employee. Minimum wage is reviewed by the UK government and changes each April of every year.

Levels and intervals of pay will also normally be covered by express contractual terms. Most employers pay employees monthly in arrears.

It is a mandatory requirement to provide employees with an itemised payslip at or before the time when any payment of wages is made, which includes details of gross and net pay, any additional payments, details of social security contributions (both employee's and employer's) and any other deductions. As of April 2019, employers must also include the total number of hours worked where the pay varies according to the hours worked.

5.2 Other Elements of Remuneration

Other elements of remuneration, such as bonus and incentive schemes, commission payment, and employee share schemes, may also be offered as a reward for performance and/or loyalty. The employer needs to ensure that where such schemes are in operation, the terms are fair and non-discriminatory.

6.0 WORKING HOURS AND TIME OFF

6.1 Standard Working Hours

The Working Time Regulations 1998 (as amended) stipulate a 48-hour limit on average weekly working time (calculated with reference to a 17-week period). Workers are entitled to a 20-minute rest break if the working day is longer than six hours and 11 consecutive hours' rest in any 24-hour period.

It is, however, possible for employees to expressly opt out of the 48-hour limit subject to a number of requirements (the main requirement being that the employee can withdraw their opt-out permission by providing the employer with up to 3 months' notice).

Workers are excluded from all the regulations save those regarding annual leave if they have unmeasured working time, such as directors who have complete control over their working hours, or sales representatives whose working time is not monitored or pre-determined by the employer due to the specific characteristics of their work activities).

6.2 Overtime

In the absence of an express or implied contractual term that provides for overtime (paid or unpaid) there is no obligation to work overtime nor general implied right to be paid for the extra hours worked.

However current case law has implied that all overtime payments, voluntary, guaranteed or non-guaranteed are to be included in the calculation of annual leave payments. From 6 April 2020, the reference period for determining an average week's pay will increase from 12 weeks to 52 weeks, affecting annual leave payments.

7.0 LEAVE

7.1 Annual Leave and Public Holidays

Annual Leave

Employees who work 5 days per week on a full-time basis have a statutory entitlement to 28 days paid leave per year, which is inclusive of public holidays. It is however common for employers to provide enhanced annual leave days especially for senior level employees or those who attain a certain level of service.

As a general rule, the statutory entitlement cannot be replaced in the leave year by a payment in lieu except where the employment relationship is terminated. Untaken leave is lost at the end of the annual leave year. With regard to any unused contractual entitlement over and above the statutory entitlement, it will be up to the terms of the contract or employer discretion whether they can be carried over to the next leave year.

It is standard practice to allow workers to choose when they take their leave but employers can set certain conditions.

There are procedural notification requirements for requesting leave unless provided otherwise by the employment contract. An employer requesting a worker to take leave at specified times, must give notice to his worker of at least twice the period of leave to be taken. Similarly, a worker requesting to take leave at specified times must give the same prior notice to his employer. Where employers cannot grant their workers the leave requested, they must notify the workers within a period equivalent to the period of leave.

Public holidays

There are 8 public (bank) holidays in the UK. There is no statutory entitlement or general implied right to public holidays with or without pay. Paid leave on public holidays can be acquired either by an express term or by an implied term due to the

custom and practice of the industry/employer and will count toward the annual statutory entitlement.

7.2 Sick Leave and Pay

Employees who are unable to work due to sickness, illness or injury are generally entitled to statutory sick pay (SSP) paid by the employer. Payment of SSP is from the 4th qualifying day of absence up to a maximum of 28 weeks. SSP is payable at a fixed weekly rate set by the UK authorities; this rate changes each April.

7.3 Family Leave

Maternity

All pregnant employees are entitled to maternity leave and there are two types of maternity leave:

- > Ordinary maternity leave (OML) - 26 weeks, among which two weeks (or 4 weeks if the woman works in a factory) immediately after giving birth is compulsory
- > Additional Maternity Leave (AML) - a further period of 26 weeks from the end of the OML.

Mothers who qualify are essentially entitled to up to 39 weeks' Statutory Maternity Pay (SMP). The first 6 weeks of SMP is paid at 90% of average weekly earnings (AWE) and the remainder at the statutory rate 90% of their AWE (whichever is lower). The statutory rate is normally increased in April each year.

Women who do not qualify for SMP might qualify for Maternity Allowance.

Paternity

The right applies to partnerships of the same sex.

Eligible employees (e.g. with 26 weeks of service, etc.) are entitled to the standard paternity leave of either one or two whole weeks, paid at the rate of Statutory Paternity Pay (SPP).

Adoption Leave

A qualified employee who adopts a child under the age of 18 is entitled to:

- > Six months' ordinary adoption leave and six months' additional adoption leave by one parent;
- > Two weeks' paid paternity leave by the other parent.

Adoption leave is a day one right.

Eligible employees may be entitled to Statutory Adoption Pay (SAP) for a period of 39 weeks. This is paid at 90% of the employee's average weekly earnings (AWE) for the first 6 weeks and the current statutory rate or 90% of the employee's AWE (whichever is lower) for the next 33 weeks.

Shared Parental Leave (SPL)

Eligible mothers, fathers, partners and adopters are entitled to take Shared Parental Leave.

All of the 52 weeks of maternity or adoption leave, except the two-week period of compulsory maternity leave after birth, or the first two weeks of adoption leave, are available for sharing between the two parents as SPL, less the weeks spent by the child's mother or adopter on maternity or adoption leave (or the weeks in which the mother or adopter has been in receipt of SMP, MA or SAP if they are not entitled to maternity or adoption leave).

This entitlement enables parents to share a pot of leave. Parents can decide to be off work at the same time and/or taking it in turns to have periods of leave to look after the child.

Parental Leave

An employee with one year's continuous employment who is the parent of a child under eighteen has the right to take a total of 18 weeks' unpaid leave. The leave should be taken in blocks of one week or more (except for parents of disabled children who can take a day's leave at a

time) and is subject to a limit of four weeks a year unless the employer agrees otherwise.

Right to request flexible working

Employees with 26 weeks of continuous service have the right to request a flexible working pattern (i.e. a change to working hours / working time or request to work from home). Previously this right applies to only employees with caring responsibilities.

Employers must consider all requests made in a reasonable manner and make a decision within 3 months. Employers can either agree to the request or reject it, providing clear and justified business grounds.

Time off for family and dependants

There is a statutory right to unpaid time off to make arrangements to care for dependants in certain emergencies such as if the employee's child is injured. The employer must allow the employee a reasonable amount of time off so that he/she can take whatever actions are necessary.

On 6 April 2020, the Parental Bereavement (Leave and Pay) Act 2018 will be coming into force. This will entitle employees who lose a child under the age of 18 or suffer a stillbirth from the 24th week of pregnancy, the right to two weeks' leave from the first day of employment. The leave can be taken as one block or as two one week blocks and will be paid at the relevant statutory rate.

7.4 Other leave

Jury service is obligatory for individuals between 18 and 70, unless they fall within limited exemptions. Employees called for jury service are entitled to protection if they take time off work to serve as a juror.

There is no obligation to pay an employee who is absent for jury service, but if the employee loses pay he may recover all or part of his lost earnings

from HM Court Service by submitting a certificate of lost earnings or other written evidence.

8.0 SOCIAL SECURITY COVERAGE

8.1 Introduction

The UK has a comprehensive health and welfare system, funded by contributions from both employees and employers (referred to as NIC) and managed by the Department of Work and Pensions (DWP).

Employees pay NICs if they earn more than £166 per week (2019/20). Someone earning less than this amount will pay no National Insurance contributions.

Employees pay a lower rate of NICs on earnings above £962 a week (2019/20).

Employers are required to pay NICs on earnings above £166 a week. There is no upper limit on employer's payments.

Contribution rates are as follows:

Employer: 13.8% of salary

Employee: 12 % of salary between £166 and £962 per week, 2% of salary above this earnings figure

8.2 State Pension

The UK State pension was simplified in 2016. Previously it was comprised of two parts – a flat rate Basic State Pension and an additional earnings related element (generally referred to as S2P). The current State Pension age is 65 for men and women; this was increased in November 2018 and is gradually going to increase and will reach 67 by 2028.

The full new universal State pension is currently £168.60 per week. However, receipt of this full amount depends upon an individual's National Insurance Contribution (NIC) record. It will also be affected by State Pension entitlement accrued

prior to the 2016 change and whether the individual had previously opted out of the State second pension at any time. This pension might also be increased if someone deferred taking it until some time after State Pension Age (SPA). SPA is the date from which a person can claim their State Pension.

SPA depends upon when you were born. The State Pension ages have been undergoing radical changes since April 2010 in order to firstly bring the SPA of men and women into line with each other and with further increases to ensure the State pension system remains affordable. The changes have seen SPA rise to 65 for women between 2010 and 2018, and then gradually to 66, 67 and 68 for both men and women together. There are plans to change State Pension ages further.

The link below takes you to a Government webpage which allows individual State retirement dates to be calculated: <https://www.gov.uk/state-pension-age>.

8.3 Basic Health Coverage

If an employee is absent from work due to sickness, he or she may claim Statutory Sick Pay after a waiting period of four days; this is a weekly payment of £94.25 (2019).

The National Health Service hospitals are run and managed by NHS trusts. Aside from emergency care, most medical treatments are initially arranged through a local General Practitioner (GP). Most in and out patient treatments through the NHS are free at the point of delivery for UK residents.

The NHS also has a number of other services under its umbrella, including dentistry, pharmacies and opticians. Free NHS optical and dental care is limited to children under the age of 18, pregnant women and vulnerable adults. Similarly, access to prescribed drugs will also incur a charge in some instances.

8.4 Unemployment Insurance

There are a range of benefits in place to support individuals who are out of work. The amount payable will depend upon age, income and savings. They will also in some cases be determined by how much an employee has paid in National Insurance Contributions:

- > Job-seekers Allowance – Maximum of £73.10 per week (over age 25)
- > Employment and Support Allowance - for individuals unable to work due to illness or incapacity when Statutory Sick Pay (SSP) entitlement is exhausted. Once assessment has been completed, a claimant would be allocated to one of two groups, the amount payable depends upon the group to which a claimant is allocated. It is up to £73.10 a week (2019/20) in the work-related activity group OR up to £111.65 a week (2019/20) in the support group.

9.0 WORKERS' COMPENSATION INSURANCE

9.1 Employer's Liability Insurance

It is a mandatory requirement of all UK employers to secure Employer Liability insurance. The minimum level requirement is £5M for employer liability, although in practice, most companies secure cover of £10M. Public liability insurance is generally voluntary, however, it is common for many companies to secure this cover as part of an insurance policy combined with employer liability

10.0 MANDATORY ALLOWANCES

10.1 Eye Care

Under current Health & Safety (DSE) Regulations, employers are obliged to provide and pay for eye and eyesight tests for employees using VDU within the normal course of their duties. Furthermore, if an optometrist recommends specific spectacles to

be used by an employee in order to use a VDU, the employer has an obligation to fund the basic costs of these.

In ensuring compliance with these regulations, most employers will adopt an eye care policy, outlining what the company will and will not provide funding for.

It is not only the larger employers that offer eye care support that exceeds the DSE Regulation minimum; many companies see this as a route to enhancing their employee benefits package whilst simultaneously demonstrating that they care about their employee welfare.

11.0 SUPPLEMENTAL BENEFITS

11.1 Health Insurance

Private medical insurance is widespread. The purpose behind it is to avoid the long waiting times for treatment under the NHS and to give choice as to when and where treatment takes place. From an employer's perspective it helps ensure that the work impact of a medical condition is minimised.

Costs for private health insurance can vary from insurer to insurer Rates will typically depend upon the range of treatments covered, the health status of the individuals concerned and/or whether medical history is in fact disregarded. Cost will also depend upon whether the individual elects to cover their dependants. Where this benefit is offered, it is usual for the employer to pay 100% of the premium required to cover the employee but some cost sharing for dependents cover is common for all arrangements except for benefit packages positioned at the top quartile.

An insurance premium tax of 12% standard rate is applicable to private medical insurance plans.

Any provision of health insurance would be treated as a benefit in kind for tax purposes; such amounts will be reported via the annual P11D declaration to HMRC.

11.2 Occupational Sick Pay (OSP)

It is common for larger employers to provide an occupational sick pay scheme instead of only SSP (Statutory Sick Pay). This would typically provide full pay on absences for a certain period of time, reducing to a percentage of full pay for longer periods followed by SSP alone thereafter (if occupational sick pay covers a period less than 28 weeks). It is also typical for employers to provide a number of days full sick pay for sick leave in a rolling 12-month period, commonly between 10 and 20 days.

If no OSP scheme is in place, the employer must ensure that this is stated either in the contract or written particulars. A failure to do so may result in an implied right to any existing scheme.

11.3 Occupational Pension

It is now a requirement for all UK employers to enrol all eligible employees into a workplace pension and to pay a minimum level of contributions into it. An Employer must pay minimum contributions of at least 3% of base salary, although this depends upon the compliance method chosen.

An employer must notify an employee that they have been automatically enrolled into the pension scheme within 30 days of their hiring date. The notification must provide details of the pension provider, the date of which the employee will be enrolled, how much the employer and employee will contribute, what is required should the employee choose to opt out.

An employee can only opt out within a limited 30-day time window and only after they have first been enrolled.

A retirement pension is still seen as the cornerstone of a rounded benefit package in the UK but in order to make their proposition attractive, employers need to offer more than the statutory minimum.

Most new pension schemes in the UK are now established on a Defined Contribution basis, underpinned by contract rather than Trust.

Higher quartile offerings might see contributions from an employer of around 10% of base salary.

A matching contribution structure within upper and lower limits is common; this structure is seen as a means of encouraging staff to actively engage with their retirement planning. A 1:1 match is the most common ratio, although 1.5:1 or 2:1 is sometimes offered.

Sometimes distinction is made between different job grades senior, although arguably this is becoming less common.

It is usual for a pension scheme established in the UK to be registered with HMRC. This affords tax advantages to both employer and employee. Employer contributions are treated as a management expense for Corporation Tax purposes. Employee contributions attract Income Tax relief up to a certain limit and investments grow in a tax-favoured environment.

11.4 Death & Disability Insurance

Life Insurance

Lump sum death in service cover is very common. In order for it to remain relevant as an employee progresses, linking the amount provided to some multiple of salary is normal. The average employer will provide a benefit equivalent to 2- 3x salary, with an upper quartile offering perhaps being 4x salary. 4 x salary used to be the maximum permissible under Inland Revenue rules, but this is no longer the case, so some employers will offer more.

Schemes are ordinarily registered with the Tax authorities and established under Trust. Premiums paid by the employer would therefore not be treated as a Benefit in Kind for tax purposes. Because of the discretion afforded to trustees of such

schemes, payments made in the event of a claim, are ordinarily also paid free from tax.

Income Protection Insurance

This benefit is designed to provide a continuing income stream to employees who are absent from work due to long term sickness. It can allow employers to keep valued employees on their payroll for significantly longer than otherwise might be affordable.

The incidence of this benefit depends upon business sector and job role. That being said it is not uncommon, although its per capita cost tends to be significantly higher than life cover premiums.

Typically, this insurance will provide between 66% and 75% of Base Salary after an employee has been absent for set period of time known as a deferral period. 26 weeks is the most common, although so too is 13 weeks, although premiums tend to be higher the shorter the deferred period selected.

Claims would ordinarily be paid until the sooner of a return to work or a claimant reaching State Pension Age, although there is a growing trend towards limiting the maximum term of any claims, particularly in knowledge-based industries.

No insurance premium tax is applicable.

11.5 Group Plans

A group plan would normally result in much lower premiums than would be available for individual policy holders and the resulting scheme would be operated on a simplified administration basis which would include granting a certain minimum level of cover without the need for individual medical underwriting to be undertaken.

Due to the increase in popularity, some Medical insurance providers now offer group terms for just 1 employee.

For risk insurance plans (Life, Income Protection, Critical Illness) group plans will typically not be available for less than 3 employees.

If individual terms apply, the scheme will be in the employee's name and there will be a requirement to be fully medically underwritten.

11.6 Company Car

Car allowances are common for sales-related employees and executives within small companies, since managing a car fleet can be onerous for a small population. Such allowances are deemed to provide financial support to an employee for the purchase and running of a car to be used for both business and private use. Reimbursement of business fuel is treated separately and in addition to the car allowance; a specific rate is recommended for use by HMRC for this purpose.

11.7 Others

Employee Assistance Program (EAP)

As part of an increased emphasis being placed on employee 'Wellness' employers may now commonly offer an Employee Assistance Program to which provides employees with access to a counselling service. Professionally trained consultants are available to help with a multitude of issues that may be affecting an employee's personal or work life. The EAP is free, confidential, and available 24 policy, a day, 7 days a week, 365 days a year.

EAP might sometimes be available without charge as a service embedded within another policy, such as Group Income Protection or Private Medical Insurance

Perks & Rewards (Voluntary Benefits)

Employers may now offer perks and rewards to their employees with more than a third of employees have confirmed perks and rewards are

amongst their top considerations when in employment.

These offers can vary from travel, food and shopping discounts to money towards hotels and accommodation or extra days holiday for a birthday or seasonal holidays.

Such programs are usually delivered via an online platform and are often employee funded through deduction from salary.

Gym Membership

There are initiatives in place to encourage employee gym membership. This benefit promotes a healthy attitude to fitness from a corporate level and has proven to be extremely popular in recent years. Furthermore, some private medical insurers provide incentives with their products, which are intrinsically linked to gym membership and healthy living, thereby reducing year-on-year annual premium increase and promoting a healthy workforce.

Travel Loans

Employers may offer employees loans to purchase travel tickets (typically annually) and the employee can benefit from the discounted price offered by travel companies for an annual advance purchase but repay the employer over 12 months. The employee can also benefit from no interest, assuming the loan is within the HMRC limit (£5,000 or less). Loans in excess of this limit could incur tax on the notional interest benefit of the loan. This benefit needs to be managed by the employer.

Car Parking Loans

Employers may offer a car parking salary sacrifice scheme which enables employees to agree to 'sacrifice' an amount from their gross salary in exchange for a car parking season ticket. The advantage of this method is that the employee does not pay tax and both employee and employer

can save National Insurance contributions on this amount.

Cycle to Work

To promote healthier journeys to work and to reduce environmental pollution, there is an initiative which provides an annual tax exemption, which allows employers to loan cycles and cyclists' safety equipment to employees as a tax-free benefit provided that the cycle is to be used for travel to/from work..

12.0 TERMINATION OF EMPLOYMENT

12.1 Means of Termination

There are three main ways by which an employment relationship can come to an end:

- > Termination by the employer,
- > Termination by the employee, and
- > Termination by mutual agreement.

Termination by the employer

All employees enjoy statutory protection on dismissal. Employees may bring claims of automatic unfair dismissal for discrimination and certain other inadmissible reasons, without the need to have any qualifying length of employment. Once employees satisfy the requirements of continuous employment, then they qualify for protection against unfair dismissal under the general scheme. To mitigate the risk of claims from a qualifying employee, employers must ensure that they have a potentially fair reason for dismissal and that they have acted reasonably in all the circumstances and followed a fair procedure.

There are five potentially fair reasons for dismissal:

- > Incapacity or capability,
- > Misconduct,
- > Redundancy,

- > Contravention of a duty or restriction, and
- > Some other substantial reason (e.g. the end of a fixed term contract).

12.2 Notice of Termination

Employees and employers wishing to terminate the contract of employment are required to provide written notice of termination.

The statutory minimum notice period to be given by an employee with at least one month's continuous service is one week.

The statutory minimum notice period to be given by the employer increases with the length of service as follows: -

Length of continuous service	Employee's notice entitlement
1 month up to 2 years	1 week
2 years to 12 years	1 week for every year employed
12 years or more	12 weeks

Where the contractual notice period to be served by either party is longer than the statutory notice period, then the contractual notice period will apply.

Payment in lieu of notice is possible if the employer has reserved the right to do so within the employment contract.

During the notice period, the employer may inform the employee not to attend work or carry out his/her job duties while on pay (garden leave), if this has been expressly provided for in the contract or otherwise expressly agreed.

Notice is not required where either party has material grounds to terminate the contract on summary notice. This is usually due to a fundamental breach of contract that renders the continued employment relationship unreasonable.

12.3 Redundancy

Where a dismissal is by reason of economic grounds (i.e. redundancy), employers must follow a fair procedure that includes identifying the employees at risk of redundancy, conducting a fair selection of the employees to be made redundant, conducting individual consultation, considering alternatives to dismissal, and providing notice of dismissal. Where an employer is proposing a large-scale redundancy programme involving 20 or more employees within a 90-day period, there are further requirements for collective consultation and to for notification to the Redundancy Payments Service (RPS).

An employee dismissed by reason of redundancy will be entitled to a statutory redundancy payment if he/she has completed at least 2 years' continuous employment. The statutory redundancy payment is calculated by reference to age, length of service, and salary.

12.4 Settlement Agreements

Employment disputes can be resolved by way of a settlement agreement. A settlement agreement that satisfies the various statutory requirements (one being the requirement for the employee to receive advice from a relevant independent advisor, usually a qualified lawyer or an authorised member of a trade union) will provide for an employee's waiver of rights to make a claim covered by the agreement to an employment tribunal or court. Any offers or discussions about settlement agreements cannot be used as evidence in an unfair dismissal claim unless either of the parties has engaged in some improper behaviour.

12.5 Post-Employment Restrictions

An employee's implied duty not to compete with his employer's business or solicit his customers does not apply post-employment with the exception of disclosures of trade secrets.

Therefore, employers may wish to restrict an ex-employee's activities (particularly in the case of a senior or technical employee) by including restrictive covenants in the contracts of employment. The interests capable of protection are:

- > Trade secrets or other confidential information,
- > Customer connection, and
- > Stability of the workforce.

Covenants will only be enforceable if they are considered reasonable. Reasonableness will include such factors as: nature of employee's work and what information he had access to; whether 'clients' and 'employees' are restricted to those with whom the former employee had dealings; the size of an area restriction and its duration.

12.6 Providing References

There is generally no obligation on an employer or ex-employer to provide a reference (except by a regulatory body or by the terms of a settlement agreement with the employee) but the giving of references is common practice.

Case law has resulted in a cautious approach from people giving references. The employer must take care not to breach the legal duties that he owes both to the recipient of the reference (the new employer) and to the subject (the employee or ex-employee). As a guide, references should be in substance true, accurate and fair, and must not give a misleading overall impression of the employee.

13.0 DISCRIMINATION

Discrimination on the grounds of "protected characteristics" is prohibited. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race including colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation.

The forms of discrimination are:

- > Direct discrimination;
- > Indirect discrimination;
- > In the case of disability, failure to make reasonable adjustments;
- > Victimisation;
- > Harassment;
- > Associative discrimination (treating a person less favourably because of his association with someone with a protected characteristic, for example the carer of a disabled person); and
- > Perceptive discrimination (treating a person less favourably because he is perceived to have a protected characteristic, even if he does not in fact possess that characteristic).

Unlike most other tribunal claims, there is no cap on the amount that may be awarded to a successful discrimination claim.

14.0 INDUSTRIAL RELATIONS

Employees have the right to choose to join or not to join a union. An employee is protected against an employer who, on the grounds of his union involvement or lack of involvement:

- > Refuses employment to him;
- > Subjects him to a detriment short of dismissal; or
- > Dismisses him (or selects him for redundancy).

Where a trade union is independent and recognised, the employer must give reasonable time off to union members, representatives and union learning representatives (ULRs) in order to enable them to participate in union activities. Representatives and ULRs also have an entitlement to be paid for any time taken off to perform their duties or for their training.

Recognised unions provide support to their members and represent them during individual employment disputes.

15.0 DATA PROTECTION

The Data Protection Act was revised in 2018 to include the European General Data Protection Regulations (GDPR). When obtaining, handling or using workers' personal information or when monitoring their acts/communications, employers have an obligation to protect that information from being improperly used and adhere to the principles of the DPA.

The seven data protection principles are:

- > Lawfulness, fairness and transparency
- > Purpose limitation
- > Data Minimisation
- > Accuracy

- > Storage limitation
- > Integrity and Confidentiality
- > Accountability

Sensitive data is subject to enhanced protection under DPA and includes race, ethnic background, political opinions, religious beliefs, trade union membership, genetics, biometrics (where used for identification), health, sex life or orientation.

Under DPA 2018, individuals also have enhanced rights with regard to their personal information.

A privacy notice containing mandatory information complying with the individual's rights under DPA/GDPR must be supplied at the time the data is obtained if obtained directly from the employee (data subject). If the data is not obtained directly from the employee, the privacy notice must be provided within a reasonable period of having obtained the data, which mean within one month.



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