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EMPLOYMENT RIGHTS AND OBLIGATIONS

Whether you are an employer or an employee, no matter what the size of business you work in, you will need to understand the responsibilities and obligations an employer has to his employees.

It is an old but frequently used adage that “staff are the most important resource”. The success of a business may depend on having the right staff to produce the quality of product or service that distinguishes the business from others. Due attention to employment issues really does matter.

This leaflet looks at the legal obligations placed on employers and employees, particularly those contained in the Employment Rights Act 1996 (as amended) and later legislation; the steps to be taken; the records to be kept and the returns to be submitted. It does not however look at the other areas of best practice, such as staff training or appraisal, which are not enshrined in law.

However, even by keeping up to date with changes in legislation, regulations and Codes of Practice, there will be occasions when you may need to seek our professional advice.

EMPLOYING PEOPLE

The Recruitment Process

Recruitment of staff is, of course, where it all begins. The first steps for an employer are identifying a vacancy and producing a job description. Once this process is underway, it must be ensured that any offer made is properly constructed. Before that, employers need to take care that they don’t unfairly discriminate between applicants.

The legislation contained in the Sex Discrimination Acts of 1975 and 1986, the Race Relations Act 1976, and the regulations made under them and other acts dealing with equality issues provides a framework to ensure employers don’t discriminate on grounds of sex, marital status, sexuality, religion, belief or race. Direct discrimination such as an advertisement saying, “women only should apply”, or indirect discrimination such as asking prejudiced questions at interview are forbidden, although in certain but very restricted areas the law recognises that discrimination is necessary and is therefore allowed (for example acting).

Candidates who feel that they have been discriminated against, can take their case to an employment tribunal that could order employers to pay compensation and amend their recruitment and selection procedures.

Under the Disability Discrimination Act 1995 employers with 15 or more employees must not discriminate against current and prospective employees who have, or have had, a disability. Discrimination occurs when, for a reason related to the person's disability, an employer treats someone less favourably than they would treat other people, and cannot justify this treatment. It cannot be justified if, by making a 'reasonable adjustment', the employer could remove the reason for the treatment.

Legislation also governs the employment of children (the minimum age is 13 years), the employment of young persons between 16 and 18 years, persons with a criminal record, and work permit regulations and employment opportunities for EU nationals, Commonwealth citizens, and other foreign nationals. We will be pleased to provide you with advice and assistance in these areas.

Job Offers

Making a job offer should not be regarded as a chore, but as an integral part of the whole process, which when handled well could enhance the possibility of the person joining the business.

Employers are required to provide employees with written particulars of their main terms and conditions of employment within 2 months of their arrival. It should include, amongst other things, details of pay, hours, holidays, notice period and an additional note on disciplinary and grievance procedures.
An offer letter may therefore avoid much of the detail and instead concentrate on key headings and any special provisions of the proposed employment. It should ideally contain:-

- The job title
- Initial holiday and notice periods
- Place and hours of work
- Details of proposed contract
- Any conditions attaching to the offer (references, medicals, examinations, etc)
- Preferred start date, acceptance procedure and how long the offer is to remain open.

Sometimes the terms of an offer may be amended, perhaps because of negotiations, before final acceptance. If this is the case, you should also ensure these amendments are properly confirmed in writing.

THE CONTRACT OF EMPLOYMENT

Why have a contract?

Generally, all employees are entitled to written particulars of their terms and conditions of employment. This must be provided within 2 months of their joining, although your staff’s rights are still protected prior to the document’s issue. If the offer letter contains complete information about terms and conditions then, in practice, this will usually suffice.

If there are no written terms to refer to, then potential for disagreement and conflict between employer and employee is immense. From disputes over entitlement to overtime or payment for sickness, through to termination arrangements, the list is too long to complete and the consequences too disastrous to contemplate. It may even

lead to an employment tribunal deciding for you on what the terms of employment actually are!

The legal requirement is for the statement to be provided - it does not have to be signed, it is not of itself a contract. However, employers should at least obtain the employee's signature to show that the document has been received. If you wish, it is still possible to formalise arrangements and issue a contract of employment that is signed by both parties.

It is important to remember that even if a written contract of employment is not issued, a verbal contract will still exist.

What sort of contract?

Although most employees will receive a contract for an unspecified time, businesses may have need for more specialised contracts such as those listed below, and we shall be pleased to provide assistance in drafting them

Service agreements (usually for directors or other senior officials)
Fixed-term contracts
Short-term contracts (used where the demand for staff cannot be predicted with certainty).

What to include.

The drafting of a contract of employment is by no means a matter of pulling a standard form from a word processor and typing in a name. If it is to be workable then each employee's contract must be tailored to suit specific requirements. There are, however, certain minimum details that must be included as laid down by the Employment Rights Act 1996 and these we have summarised below. There is, however, substantial detail that is impossible to include in this leaflet, and you should seek our advice before proceeding.

Contract details:

Identify parties to the contract
Date employment commenced and when "continuous service" commenced
Job title
Remuneration details
Hours of work and therefore overtime provisions
Holiday entitlement and absence from work
Notice periods
Disciplinary and grievance procedures

Of course, many other areas can and should be covered; such as a restraint clause following termination, and the treatment of confidential information.

Employees have the right to assume that their employment will not require them to do anything that is unlawful and for your part you can assume that your employees will exercise due care in the performance of their employment.

Implied terms, which are not committed to writing, also form part of the contract.

It may also be the case that some additional requirements or benefits become annexed to the job over a period of time (for example where a traveling time

allowance has been granted). These areas require great care, as there are no clear-cut rules as to when they become part of a contract. It is best to ensure that they are confirmed in writing at the earliest opportunity.

Altering a contract.

Contracts of employment are not once-and-for-all transactions like, say, contracts for the purchase of goods. Employment relationships are often very long term, and must necessarily develop and evolve over the years as surrounding circumstances dictate. No one should realistically demand that an employment contract ought to continue forever on the terms on which it began, but equally it is not possible to provide a contract that is likely to anticipate all possible changes demanded by the undertaking. Accordingly, the present view is that a minor unilateral change in a contract of employment brought about by the employer, if it has been brought about for sound, good business reasons, may not be fatal. But it is a question of degree as to how far the breach is due to business necessity, how fundamental it is and how far the employee's position becomes intolerable.

Of course, it is always open to employers and employees to consent to such variation by mutual agreement but we would stress that if such proposals are contemplated, professional advice should be sought.

TERMINATION OF EMPLOYMENT

Essentially, there are two ways that employment may be brought to an end; by the employee giving notice to the employer or vice versa. It is when the employer wishes to terminate the employment there are pitfalls that can arise if the process is handled badly.

Giving notice to an employee – the current law.

Under current legislation there are five reasons that permit you do to this "fairly".

- a reason related to the employee's conduct;
- a reason related to the employee's capability or qualifications for the job;
- because the employee was redundant;
- because a statutory duty or restriction prohibited the employment being continued (eg if an employee who is required to drive loses his licence);
- some other substantial reason of a kind which justifies the dismissal (such as potential breach of confidentiality).

Most employers wish to be fair when problems of the above nature arise and wherever possible employees ought to have the chance to rectify the particular shortfall, in an agreed timescale, before termination becomes the only option.

Indeed, the business's own disciplinary code must provide a framework for this to operate (such as oral warning, written warning, final warning and then dismissal). There are minimum statutory requirements for disciplinary and general procedures.

Notwithstanding your statutory right to dismiss, if employers are seen to be unfair in the eyes of the other employees additional staff problems could well develop.

To give notice of dismissal an employer should do so, in writing, in accordance with the contract of employment. Except in a case of gross misconduct, the notice period must be under full pay, even if the employee returns to work following notice being

served. Both the employer and employee are normally entitled to a minimum period of notice of termination of employment. After one month's employment, an employee must give at least one week's notice; this minimum is unaffected by longer service. An employer must give an employee at least one week's notice after one month's employment, two weeks after two years, three weeks after three years and so on up to 12 weeks after 12 years or more. However, the employer or the employee will be entitled to a longer period of notice than the statutory minimum if this is provided for in the contract of employment.

The new law.

The amended statutory disciplinary and grievance procedure comes into force in October 2009 which amended the main legislation brought in in 2004. This provides a minimum procedure to be used when dealing with disciplinary hearings or grievances. If an employer fails to follow the correct procedure, any subsequent dismissal will be considered automatically unfair and compensation may be increased by up to 50%.

Written reasons for dismissal

Employee who are dismissed and have completed at least one year's continuous employment are entitled to receive, on request (orally or in writing), a written statement of reasons for dismissal within 14 days. An employee dismissed during:

- her pregnancy or her ordinary or additional maternity leave
- his or her ordinary or additional adoption leave

is entitled to a written statement of the reasons regardless of his or her length of service and regardless of whether or not he or she has requested it.

Disciplinary and grievance hearings

Workers are entitled to be accompanied at certain disciplinary and grievance hearings by a fellow worker or a trade union official of their choice, provided they make a reasonable request to be accompanied. They also have the right to a reasonable postponement of the hearing, within specified limits, if their chosen companion is unavailable at the time the employer proposes.
Workers have the right to take paid time off during working hours to accompany fellow workers employed by the same employer.
These rights apply to workers including agency workers and home workers, though not to those who are in business solely on their own account.

Unfair dismissal

Employees have the right not to be unfairly dismissed. In most circumstances, they must have at least one year's continuous service before they have this right. However, there is no length of service requirement in relation to a number of 'automatically unfair grounds' (see below). Also, the requirement is reduced to one month for employees claiming to have been dismissed on medical grounds as a consequence of certain health and safety requirements that should have led to suspension with pay rather than to dismissal.
A complaint of unfair dismissal must usually be received by an employment tribunal within three months of the effective date of termination of the employment (usually the date of leaving the job).
When hearing the complaint, a tribunal will first need to establish that a dismissal has taken place. Once dismissal is established, it is normally for the employer to show that it was for a legitimate reason. Having established the reason for dismissal, the

tribunal must then in most cases decide whether in the circumstances the employer acted reasonably in treating that reason as a sufficient one for dismissal. These considerations do not apply if the tribunal finds that the dismissal was on one of the grounds below which are classed as automatically unfair:

- pregnancy or any reason connected with maternity;
- taking, or seeking to take, parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants;
- failure to return from maternity or adoption leave
- matters connected to/making a request under the flexible working provisions
- taking certain specified types of health and safety action;
- refusing or proposing to refuse to do shop or betting work on a Sunday;
- grounds related to rights under the Working Time Regulations 1998;
- performing or proposing to perform any duties relevant to an employee's role as an occupational pension scheme trustee or director of a trustee company;
- grounds related to acting as a representative for consultation about redundancy or business transfer;
- making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998;
- asserting a statutory employment right;
- grounds related to the national minimum wage;
- qualifying for working tax credit or seeking to enforce a right to it
- trade union membership or activities, or non-membership of a trade union;
- taking lawfully organised official industrial action lasting eight weeks or less;
- performing or proposing to perform any duties relating to an employee's role as a workforce representative or for taking, proposing to take or failing to take certain actions in connection with these regulations;
- grounds related to trade union recognition procedures;
- exercising or seeking to exercise the right to be accompanied at a disciplinary or grievance hearing, or to accompany a fellow worker;
- grounds related to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
- grounds related to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

EMPLOYMENT TRIBUNALS

When dismissal arises, employers often fear the consequences of an employment tribunal.

Complaints to an employment tribunal must normally be made within 3 months of the date of the infringement of the right.

If the tribunal decides that the employee has been unfairly dismissed, the remedy will be either re-instatement, re-engagement or monetary compensation, depending on the circumstances. A compensatory award will be reduced, however, if the tribunal finds the employee partly to blame for the dismissal or because the employee did not mitigate his or her loss - for example, by making reasonable efforts to obtain another job.

The use or non-use of an internal appeals procedure, where available, may also be taken into account in calculating the award, up to a maximum of two weeks' pay.
If the tribunal finds someone has been discriminated against on grounds of race, sex or disability, it may make one or more of the following:-

- a declaration of the rights of those involved,
- a recommendation that the employer take action to remedy the discrimination or
- an award of compensation. There is no statutory maximum on awards for sex, race, or disability discrimination; and such awards may also include an amount for injury to feelings.

A tribunal has the power to award up to £10,000 costs against a party where it finds that the case was misconceived and had no reasonable prospect of success; or where a party, or party's representative, has behaved vexatiously, abusively, disruptively or otherwise unreasonably in conducting the proceedings

Breach of contract claim

Employees who suffer a measurable financial loss because their employer has departed from the agreed terms of their contract of employment (or of any other contract connected with employment) can seek damages by making a breach of contract claim. Normally this must be made to a county court or other civil court but if the employment has ended, it may be made to an employment tribunal.

Employer's counter-claim

Employers who suffer a measurable financial loss because an employee has departed from the agreed terms of the contract of employment (or of any other contract connected with employment) can seek damages by making a breach of contract claim - or, if the employee has already claimed breach of contract to the tribunal, a counter-claim. Again, such a claim must normally be made to a county court or other civil court but where the employment has ended, it may be made to an employment tribunal

Redundancy pay

Employers have to make a lump-sum 'redundancy payment' to employees dismissed because of redundancy. The amount is related to the employee's age, length of continuous service with the employer, and weekly pay, up to a statutory maximum. The employer must also provide a written statement showing how the payment has been calculated, at or before the time it is paid.
Service under the age of 18 does not count. Employees who have not completed two years' continuous employment are not entitled to a redundancy payment. Entitlement is reduced from age 64 and ceases at the age of 65, or at the normal retirement age for the job if that is below 65. The maximum number of complete years' service used in calculating redundancy payments is 20.

Where an employee gives notice.

You will see from the above that when an employer gives an employee notice there are many potential pitfalls. The same is not true if an employee resigns,

Providing that the notice is in accordance with the terms and conditions of employment, there is little else to be done – the employer has to accept such notice even if they want the employee to stay. It is best practice to have the resignation in writing. The correct notice period must be given and there is a possible recourse to constructive dismissal if the employer tries to get the employee to leave earlier, without pay.

An employee will technically be in breach of contract if the proper notice period is not given. In practical terms, however, there is very little that an employer can do. Unless the employer can prove a material loss, there is probably no compensation they could pursue unless, perhaps, the employee has gone to work for a competitor.

EMPLOYEES' STATUTORY RIGHTS

As you would expect, employees have certain rights that are protected by statute.

Working time

The Working Time Regulations 1998 provide rights to:-

- A limit of an average 48 hours a week on the period a worker can be required to work, although individuals may choose to work longer;
- 5.6 weeks' paid leave a year;
- 11 consecutive hours' rest in any 24-hour period;
- An in-work rest break if the working day is longer than six hours;
- One day off each week;
- A limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

The regulations apply not only to employees but also to workers, which includes the majority of agency workers and freelancers. It does not apply to certain sectors (air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea – mainly the offshore oil and gas industry and doctors in training).

At present, "young workers" (those over the minimum school leaving age but under 18) are entitled to: -

- Working time to be limited to eight hours a day and 40 hours a week
- Prohibition of night-work between 10pm and 6am or between 11pm and 7am
- Derogations from the working time limit and night-work prohibition permitted in specific circumstances, and in the case of the night-work prohibition, specific sectors
- 12 consecutive hours rest between each working day
- two days' weekly rest
- a 30-minute in-work rest break when working longer than four and a half hours
- 5.6 weeks paid annual leave

Workers may complain to an employment tribunal if they are being denied rest periods, breaks or the paid annual leave entitlements. Working time and night work limits are enforced by the Health and Safety Executive and Local Authorities. Employees may complain to an employment tribunal of unfair dismissal, regardless of their length of service, if they are dismissed for exercising rights under these regulations; and workers who are not employees may complain that they have suffered a detriment if their contracts are terminated for this reason. Both employees and workers who are not employees are also protected from other detrimental action or deliberate inaction by their employer

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

The Regulations aim to ensure that part-time workers are not treated less favourably than comparable full-timers, unless the less favourable treatment can be justified on objective grounds.

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 say that 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. Any such less favourable treatment must be actually necessary to achieve a legitimate objective and must also be an appropriate way to achieve it.

Time off for antenatal care

All pregnant employees are entitled to time off with pay to keep appointments for antenatal care made on the advice of a registered medical practitioner, midwife or health visitor. Except for the first appointment, the employee must show the employer, if requested, some document showing that an appointment has been made.

Maternity Leave

An employee is entitled to a period of 26 weeks' ordinary maternity leave, regardless of her length of service. To qualify, she must tell her employer no later than the end of the 15th week before the expected week of childbirth: -

- that she is pregnant;
- the expected week of childbirth, by means of a medical certificate if requested;
- the date she intends to start maternity leave; this can normally be any date which is no earlier than the beginning of the 11th week before the expected week of childbirth up to the birth.

Her employer should in turn notify her of the date on which her leave will end within 28 days of receiving her notification. If the employer fails to do this, the employee may have protection against detriment or dismissal if she does not return to work on time.

During the 26 weeks, she is entitled to benefit from all her normal terms and conditions of employment, except for remuneration (monetary wages or salary); and at the end of it, she has the right to return to her original job.
A woman who qualifies for ordinary maternity leave and who wishes to return to work before the date it is due to end must give at least 28 days' notice.

Additional maternity leave

Employees with at least 26 weeks' continuous service by the beginning of the 14th week before the expected week of childbirth are entitled to 26 weeks' additional maternity leave. Their contract of employment continues but with limited terms and conditions.

The additional maternity leave period begins at the end of ordinary maternity leave. This means a woman is entitled to be away from her job for 52 weeks in total. When

the employer notifies her of the end date of her leave, they will base their calculation on the assumption that, if she is entitled to additional maternity leave, she will be taking it, and if she wishes to return at the end of ordinary maternity leave she must give at least 28 days notice

At the end of additional maternity leave a woman is entitled to return to her original job or, if this is not reasonably practicable, to a suitable alternative job.

Statutory Maternity Pay

A woman is entitled to Statutory Maternity Pay (SMP) if she has been employed by her employer for a continuous period of at least 26 weeks ending with the 15th week before the expected week of childbirth, and has average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SMP can be paid for up to 26 weeks. SMP is paid by the employer but is partly (or, for small firms wholly) reimbursed by the state.

Maternity Allowance

Women who do not qualify for SMP may be entitled to Maternity Allowance (MA). MA may also be paid to the self-employed and women who have recently left their jobs. MA can be paid for up to 26 weeks. MA is paid by the social security or Jobcentre Plus office. To qualify, they must have been employed or self-employed for 26 weeks out of the 66 weeks before the expected week of childbirth and have average weekly earnings of at least £30

Maternity suspension

Employers must take account of health and safety risks to new and expectant mothers when assessing risks in work activity. If the risk cannot be avoided, the employer must take steps to remove the risk or offer suitable alternative work (with no less favourable terms and conditions); if no suitable alternative work is available, the employer must suspend the mother on full pay for as long as necessary to protect her health and safety or that of her baby.

Parental leave

Employees who have completed one year's service with their employer are entitled to up to a maximum of 13 weeks' unpaid parental leave for each child born or adopted. The leave can start once the child is born or placed for adoption with the employee or as soon as the employee has completed a year's service, whichever is later. It may be taken at any time up to the child's fifth birthday (or until five years after placement in the case of adoption). Parents of disabled children can take 18 weeks up to the child's 18th birthday.

Employees remain employed while on parental leave, and some terms of their contract, such as contractual notice and redundancy terms, still apply. At the end of parental leave they have 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.

Wherever possible, employers and employees should make their own agreement about how parental leave will work in a particular workplace. Such agreements can improve upon the key elements set out above but they may not offer less.

Paternity leave

Employees who have worked continuously for their employer for 26 weeks leading into the 15th week before the baby is due and also up to the birth of the child are entitled to take one or two consecutive weeks' paternity leave. To qualify, an employee must be the biological father of the child or the mother's husband or partner and must have or expect to have responsibility for the child's upbringing. Leave must normally be completed within 56 days from the birth of the child and must be taken to care for the child or support the mother.

The partner of an individual who adopts, or the member of a couple adopting jointly who is not taking adoption leave may be entitled to paternity leave. The qualifying conditions are similar to those given above, except that he or she must have worked for their employer for 26 weeks leading into the week in which the adopter is notified of being matched with a child, and must continue to be employed up to the date of placement of the child for adoption. Leave must be completed within 56 days of the child's placement.

During paternity leave, employees are entitled to benefit from all their normal terms and conditions of employment except for remuneration (monetary wages or salary) and are entitled to return to the same job at the end of their leave.

Statutory Paternity Pay

During paternity leave, employees may be entitled to one or two weeks' Statutory Paternity Pay (SPP). The qualifying conditions for SPP are the same as those for paternity leave. In addition, employees must have average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SPP is payable by the employer but partly (or, for small firms wholly) reimbursed by the State. There are special rules to allow fathers who are entitled to unpaid paternity leave, but not to SPP to claim Income Support.

Adoption leave

Where a child is placed for adoption, employees who have worked continuously for their employer for 26 weeks ending with the week in which they are notified of being matched with a child for adoption will be eligible for up to 26 weeks' ordinary adoption leave followed immediately by up to 26 weeks' additional adoption leave.

The employee is required to inform their employers of their intention to take adoption leave within seven days of being notified by their adoption agency that they have been matched with a child for adoption, unless this is not reasonably practicable.

Employers must respond to the notice within 28 days notifying them of the date on which they expect them to return to work if the full entitlement to adoption leave is taken. They can choose to start leave from the date of the child's placement or from a fixed date which can be up to 14 days before the expected date of placement.

During ordinary adoption leave employees are entitled to benefit from all their normal terms and conditions of employment except for remuneration (monetary wages or salary) and are entitled to return to the same job at the end of their leave.

During additional adoption leave the employment contract continues and some contractual benefits and obligations remain (for example, compensation in the event of redundancy and notice periods). At the end of additional adoption leave

employees are entitled to return to their original job or, if this is not reasonably practicable, to a suitable alternative job.

Employees who want to return to work before the end of their adoption leave period must give their employers 28 days' notice of the date they intend to return.

Statutory Adoption Pay

A person who is adopting a child is entitled to Statutory Adoption Pay (SAP) if he or she has been employed by their employer for a continuous period of at least 26 weeks ending with the week in which they are notified by the adoption agency that they have been matched with a child for adoption, and they have an average weekly earnings at least equal to the lower earnings limit for National Insurance contributions.

Statutory Sick Pay

When employees are absent due to sickness they will be entitled to receive Statutory Sick Pay (SSP) provided very detailed criteria have been achieved. You will need proper sickness records for each employee. SSP is paid on the normal pay date and although paid before the deduction of Income Tax it is treated as earnings and is therefore subject to National Insurance (NI) for both employer and employee. SSP is reclaimed by deducting the amounts from monthly NI payments to the Inland Revenue.

The right to apply to work flexibly

Employees who are parents of children under six or disabled children under 18 have the legal right to request flexible working patterns and their employers will have a duty to seriously consider their requests. In order to qualify for this right an individual must:

- make the request no later than two weeks before the child's appropriate birthday
- be making the application to enable them to care for the child
- have worked for their employer continuously for 26 weeks at the date the application is made
- not be an agency worker or a member of the armed forces
- have not made another application to work flexibly under the right during the past 12 months

Applications must be in writing. There are time limits for making the application. The regulations specify the information that must be provided. The employer must follow a defined procedure to consider the request. In the first instance, they must ensure that they arrange to meet with the employee to discuss the request within 28 days of receiving the application.

If the request is agreed, the new working pattern forms a permanent change to the employee's terms and conditions. Since 2007 the right has been extended to cover requests for flexible working by employees with responsibilities for caring for spouses or partners and certain adult relatives.

Employers can reject an application where they have a clear business reason to do so. Acceptable business grounds are specified in law, and an employer must provide a written explanation setting out why the ground applies in the circumstances.

Employees whose applications are turned down can appeal against their employer's decision, and in specific circumstances can take their case to ACAS Arbitration or an employment tribunal.

Time off for dependants

All employees are entitled to reasonable time off work without pay to deal with an emergency involving a dependant; for example, if a dependant falls ill or is injured, if care arrangements break down, or to arrange or attend a dependant's funeral.

Time off work for public duties

Under certain circumstances, employers must give employees who hold certain public positions reasonable time off to perform the duties associated with them. This provision covers such offices, among others, as justice of the peace, prison visitor, and member of a local authority, a police authority, a statutory tribunal, and certain health and education authorities. Employers do not have to pay employees for the time off taken for public duties.

Time off work for trade union duties and activities

An employee who is an official of an independent trade union that is recognised by the employer must be allowed reasonable time off with pay during working hours to:-

- carry out those duties as an official
- consult with the employer, or receive information from the employer, about mass redundancies or business transfers; or
- undergo training relevant to those duties

An employee who is a member of an independent trade union which is recognised by the employer is entitled to reasonable time off for certain trade union activities. The employer is not obliged to pay the employee for time off for these activities.

Time off for study or training

Employees aged 16 or 17 who have not achieved a certain standard in their education or training have the right to reasonable time off with pay to study or train for a qualification which will help them towards that standard. Certain employees aged 18 have the right to complete study or training already begun.
There is no qualifying period of employment for the employee.

Time off for job hunting or to arrange training when facing redundancy

An employee who is being made redundant, and who has been continuously employed by the same employer for at least two years, is entitled, whilst under notice, to take reasonable time off with pay within working hours to look for another job, or to make arrangements for training for future employment.

Equal pay

Employers must give men and women equal treatment in terms and conditions if they are employed on 'like work', work rated as equivalent under a job evaluation study, or work found to be of equal value. Equal pay is, therefore, not restricted to remuneration alone, but includes most terms in an employment contract. Terms

covering special treatment because of pregnancy or childbirth, or reflecting statutory restrictions on the employment of women are not covered.
Individuals may complain to an employment tribunal under the Equal Pay Act 1970 up to six months after leaving the employment to which their claim relates. They may claim arrears of remuneration or damages.

A woman is employed on 'like work' with a man if her work is of the same or a broadly similar nature, and any difference between the things they do is not of practical importance in relation to their terms and conditions of employment. It is for the employer to show that any difference is of practical importance.

These then are the main rights of employees but in the space of this booklet it has not been possible to refer to them all.

PAYING AND PAYE

National Minimum Wage

Workers are entitled to be paid at least the level of the statutory National Minimum Wage (NMW) for every hour they work for an employer.

- the main NMW rate is for those aged over 21 years;
- the development rate for those aged 18-21 years old inclusive, and also for older people receiving accredited training for up to six months after starting a new job with a new employer.

The following do not qualify for the NMW: the genuinely self-employed, anyone under 18, genuine volunteers, apprentices under 19, apprentices under 26 who are still within the first 12 months of their apprenticeship, students doing work as part of their undergraduate or post-graduate course, workers on certain training schemes, residents of certain religious communities, prisoners, the armed forces and share fishermen.

However, there are no exemptions according to size of business or by sector, job or region. All workers including pieceworkers, homeworkers, agency workers, commission workers, part-time workers and casual workers must receive at least the NMW.

Itemised pay statement

All employees are entitled to an individual written pay statement, at or before the time they are paid. The statement must show gross pay and take-home pay, with amounts and reasons for all variable deductions. Fixed deductions must also be shown, with detailed amounts and reasons. Alternatively, fixed deductions can be shown as a total sum, provided a written statement of these items is given to each employee in advance - or at the time - of issue of the first pay statement showing the total sum, and after that at least once a year.

Unlawful deductions from wages

The law protects individuals from having unauthorised deductions made from their wages, including complete non-payment. This protection applies both to employees and to some workers.

One of three conditions has to be met for an employer lawfully to make deductions from wages or receive payments from a worker. The deduction or payment must be:-

- required or authorised by legislation; or
- authorised by the worker's contract - provided the worker has been given a written copy of the relevant terms; or
- consented to by the worker in writing before it is made.

Protections for individuals in retail work make it illegal for an employer to deduct more than 10 per cent from the gross amount of any payment of wages (except the final payment on termination of employment) if the deduction is made because of cash shortages or stock deficiencies.

It is up to employers how they pay wages, whether by cash, cheque or credit transfer into a bank account. The place to set out the position is the contract of employment.

PAYE

Finally, employers are obliged to operate the PAYE system and keep the necessary records. This is an onerous responsibility requiring care and attention at all times. Periodic PAYE inspections are made of all employers and if the Inland Revenue has reason to believe that things are not all they should be, they can embark on an in-depth investigation. Penalties for non-compliance or late submission of returns or payments can be severe.

TRADE UNIONS

Employees have the right to join or not join a trade union of their choice. Their employer may not dismiss them, select them for redundancy or make them suffer detriment for being or proposing to become a union member, nor for taking part in the union's activities at an appropriate time. They are similarly protected if they choose not to belong to a union or refuse to join one.

From an employer’s standpoint, the purpose of recognising a Trade Union is to promote collective bargaining, however recognition is voluntary even if a majority of workers are members of a union. Once recognised, an agreement will need to be drawn up to govern areas such as negotiation procedures and acceptance of shop stewards. There are certain rights accruing under law once recognition has been granted, including disclosure of information on matters such as proposed redundancies

Following a pre-strike ballot, (which unions are entitled to hold on company premises), if a simple majority vote for action then the union may order it. Employers do have to pay striking employees. Strike action must be taken directly against the employers, as must peaceful picketing which has to be at or near the place of work.

Going on a strike is a fundamental breach of contract entitling the employer to dismiss, without notice, all (but it must be all) striking employees. For this action to be “fair” dismissal must be during the strike and no re-employment of any of the workers may take place within three months of the initial dismissal. Obviously, this action is taken as a last resort.

HEALTH AND SAFETY AT WORK

All employers are under an obligation to ensure safe and healthy working conditions

for their employees. This is imposed by the Health and Safety at Work Act 1974 (as amended). In fact, the act imposes not only a duty on employers to their employees but also to the public, whilst requiring to exercise a duty of care and co-operate with employers in this important area.

RESPONSIBILITIES ARE TO PROVIDE:

A safe place of work
Safe access to the workplace
Safe equipment
Safe usage, handling, storage and transport of materials and substances
Necessary training, supervision and other forms of instruction and information.

It is up to individual employers to establish the necessary policies and procedures although some requirements are mandatory such as in relation to first aid.

Furthermore, there are additional statutes imposing obligations in relation to hazardous substances and disease. You should contact us if in doubt, as failure to comply in any of these areas is a serious and potentially dangerous matter, Health and safety inspectors have far-reaching powers of entry and enforcement and breaches of the acts can lead to prosecution.

Statutory Grievance Procedure.

A Statutory Grievance Procedure ("SGP") was introduced in 2004 and extended by legislation brought into force in 2009 it must be used by employees when presenting grievances to employers. It is important that employees present grievances correctly, otherwise they may be prevented from taking that grievance to an Employment Tribunal.

If employees miss the three-month deadline for issuing a tribunal claim because of an ongoing SGP, the employee will get an extension of 3 months.

BULLYING AND HARASSMENT AT WORK.

Everyone should be treated with dignity and respect at work. Bullying and harassment of any kind are in no-one's interest and should not be tolerated in the workplace, but if you are being bullied or harassed it can be difficult to know what to do about it.

Harassment, in general terms is:

Unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

Harassment can also have a specific meaning under certain laws (for instance if harassment is related to sex, race, religion, belief, sexual orientation or disability, it may be unlawful discrimination).

Bullying may be characterised as:

Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual.

Bullying and harassment are not necessarily face-to-face. They may also occur in written communications, electronic email, phone, and automatic supervision methods such as computer recording of downtime from work or the number of calls handled if these are not applied to all workers.

The legal position

Employers are responsible for preventing bullying and harassing behaviour. It is in their interests to make it clear to everyone that such behaviour will not be tolerated — the costs to the business may include poor employee relations, low morale, inefficiency and potentially the loss of staff. An organisational statement to all staff about the standards of behaviour expected can make it easier for all individuals to be fully aware of their responsibilities to others.

Remedies

It is not possible to make a direct complaint to an employment tribunal about bullying. However, employees might be able to bring complaints under laws covering discrimination and harassment.

For example:

• **sex:** the Sex Discrimination Act gives protection against discrimination and victimisation on the grounds of sex, marriage or because someone intends to undergo, is undergoing or has undergone gender reassignment

• **race:** the Race Relations Act 1976 gives protection against discrimination and victimisation on the grounds of colour or nationality. The regulations that amended the Act (Race Regulations 2003) also give a stand alone right to protection from harassment on the grounds of race and ethnic or national origin

• **disability:** the Disability Discrimination Act 1995 gives protection against discrimination and victimisation

• **sexual orientation:** the Employment Equality (Sexual Orientation) Regulations 2003 give protection against discrimination and harassment on the grounds of sexual orientation

• **religion or belief:** the Employment Equality (Religion or Belief) Regulations 2003 give protection against discrimination and harassment on the grounds of religion or belief.

What can you do?

Bullying and harassment are often clear cut but sometimes people are unsure whether or not the way they are being treated is acceptable.
If you are sure you are being bullied or harassed, then there are a number of options to consider. You should take any action you decide upon as quickly as possible.

Let your union or staff representative know of the problem, or seek advice elsewhere, perhaps from an ACAS enquiry point or one of the bullying helplines that are now available by phone and on the Internet. Try to talk to colleagues to find out if anyone else is suffering, or if anyone has witnessed what has happened to you - avoid being alone with the bully.

If you have access to a union representative or other adviser, ask them to help you state your grievance clearly, as this can help in its resolution and reduce the stress of the process. Most employers have a grievance procedure that will be used to handle your complaint, and some organisations have special procedures for dealing with bullying or harassment. After investigating your complaint, your employer may decide to offer counselling or take disciplinary action against the bully/harasser in accordance with the organisation's disciplinary procedure.

Disciplinary procedures may also be used for disciplinary action against someone who makes an unfounded allegation of bullying or harassment.

As mentioned above, from 1st October 2004 employees will have to use the Statutory Grievance Procedure when making any kind of complaint to their employer. The SGP will require employers and employees to follow a minimum 'three-step' procedure - involving a statement (setting out in writing the grounds for action or grievance), a meeting between the parties and the right to appeal.

What about taking legal action?

If despite all your efforts, nothing is done to prevent the mistreatment; you should come to us for advice on your legal rights. If you leave and make a claim to an employment tribunal, the tribunal will expect you to have tried to resolve the problem with the organisation, and any records you have kept will be considered when it hears your claim. This is also the case in claims alleging discrimination, where you might still be employed by the organisation. Resignation may be the last resort but make sure you have tried all other ways to resolve the situation.

HOW CAN WE HELP?

Having read this leaflet, we think you will agree that the area of employment rights is a complex one. We have included in the main statutory provisions but it has not been possible in this confined space to deal with everything in this area. You should seek our professional help on how best your business can respond to these requirements.

As independent professional advisers, we are committed to practicing in the best interests of our clients, and we have wide-ranging experience in providing advice on employment matters.

This fact sheet is one in a series of publications designed to provide practical guidance on matters of interest to clients. Copies of all our fact sheets may be obtained free of charge on request from any of our Partners or Staff.

We believe the information contained herein to be correct as at October 2009. Whilst all possible care is taken in the compilation and presentation of this fact sheet, no responsibility for loss, occasioned by any person acting or refraining from acting as a result of the material in this fact sheet, can be accepted by the firm or the author.

The information in this Fact Sheet is not designed to be a definitive text on this issue. On the contrary, it is designed to merely serve as a guide to supplement what we can advise you on directly. If you have any particular queries, especially where the circumstances of a matter make it unusual, you should seek further advice.