



Employing People

The No-Nonsense Guide to the Government rules and regulations which apply when you employ people

[Incorporating the Employing People Checklist]

Introduction



This guide provides an overview of the main rules and regulations that apply when a business employs people. It sets out the key legal obligations of employers as a checklist of easy to understand statements arranged thematically. Each statement is indexed to supporting “no-nonsense” guidance and careful signposting to additional sources of help and information.

For readers with internet access, the recommended first source of further help is www.businesslink.gov.uk/employment. This website brings together the advice that is available from different parts of government making it easy to access and use. It provides practical guides on specific aspects of employing people, and access to a range of self-help, interactive tools, including an **on-line version of this checklist**, which can help with compliance and save employers time and money. References to these self-help tools are made at the appropriate point in this text.

This guide covers the main employment regulations that a typical small business will have to comply with in the ordinary course of business. It does not purport to be comprehensive, nor does it cover all the special circumstances where there are exceptions or variations to the general rules. It should also be noted that figures for rights such as the national minimum wage and parental leave pay are updated periodically and should be checked on at least a yearly basis.

“Workers” and “employees”

One further point to note before reading the guide is the distinction in employment law between “employees” and “workers”. Some basic rights such as the right to the national minimum wage and rest breaks apply to all workers. Other rights apply only to employees – some only after a qualifying period of employment. An employee is someone who works under the terms of a contract of employment. Except where the text says that a right applies to workers, it applies only to employees.

If you are uncertain about the status of your staff it is worth referring to the *Employment Status* guide on www.businesslink.gov.uk/employment.

The employing people checklist



Recruitment 5

1. Your recruitment decisions must be taken in a fair and non-discriminatory way.
2. You must check the eligibility of new staff to live and work in the UK.
3. You must give your employees a written statement of employment particulars within two months of their starting work for you.

Pay, tax and pensions 9

4. Your employees' tax and NI contributions must be deducted from wages and paid to HM Revenue & Customs.
5. Your pay rates must comply with the National Minimum Wage regulations.
6. Your employees must be provided with itemised pay statements.
7. You must not make unauthorised deductions from your workers' wages.
8. You must pay Statutory Sick Pay to all your qualifying employees from the fourth day of incapacity onwards.
9. If you have five or more employees, you should establish whether you have an obligation to offer employees access to a stakeholder pension scheme.

Working hours and time off 13

10. You must give your workers a minimum of four weeks' paid annual leave a year – reduced pro rata for those working part-time. (This is due to increase by four days from October 2007; and by a further four days from April 2009).
11. You must not ask your workers to work an average of more than 48 hours a week unless they have given their voluntary consent in writing. You must provide correct daily and weekly rest periods.
12. You must give your employees time off work in specified circumstances other than annual leave (e.g. to deal with an emergency involving a dependant, or for antenatal appointments).
13. You must give serious consideration to requests from certain employees (e.g. parents of children under 6 and carers of adults) to work flexibly.

Maternity, paternity and adoption rights 19

14. You must ensure that entitlements to maternity, paternity and adoption leave and pay (including unpaid leave) are correctly calculated and given.

The employing people checklist



Contractual changes 24

15. You must ensure that changes to employment contracts are discussed and agreed with your employees or, where there is a collective agreement, with their representatives.

Equal treatment 25

16. Your part-time workers must be treated no less favourably than their full-time equivalents, and your fixed-term workers must be treated no less favourably than permanent workers.

17. You must ensure that work of equal value gets paid at equal rates.

18. You must not treat any of your workers less favourably because of their race, nationality, ethnic grouping, sex (e.g. in connection with maternity), disability, age, sexual orientation, religion or philosophical belief, membership or non-membership of a trade union or their marital status. You must meet this requirement at every stage of employment including recruitment, promotion and dismissal.

19. You must be prepared to make reasonable adjustments to enable people with disabilities to work.



Health, safety and working environment 31

20. You must provide your workers with a secure, safe and healthy working environment. A health and safety policy must be in place, and be in written form if you employ five or more people.

21. You must ensure that valid employer liability insurance cover is in force at all times.

Grievances, discipline, dismissal 33

22. You must ensure that disciplinary and grievance procedures that comply with minimum statutory requirements are implemented, and are specified in the statement of employment particulars.

23. You must ensure that any dismissals are not unlawful or unfair.

24. You must ensure that employees who are dismissed are given the correct notice period. Where redundancy applies, you must give your employees the correct level of redundancy pay.

Recruitment



1. Your recruitment decisions must be made in a fair and non-discriminatory way

You must not discriminate against a candidate on grounds of race, sex (which includes marital status, same-sex civil partnership and gender reassignment), sexual orientation, disability, religion or belief, pregnancy or age at any stage of the recruitment process – from job advertisements and application forms through to interview questions and the contractual terms you offer.



There are a few limited exceptions to the anti-discrimination rules – for example, some restaurants that serve food in a particularly authentic setting may be allowed to recruit from particular racial groups. Also, with care work, it may be necessary to appoint someone of a particular sex for reasons of privacy and decency.

It is best to get advice if you intend to apply an exception.

While asking about a candidate's experience outside the workplace can be helpful if it relates directly to the job, it can be unlawful to stray into areas concerning a person's personal circumstances, such as their marital status.

Be careful what you write in interview notes. Under data protection laws, candidates may have the right to see any notes made during the interview.

When obtaining references, don't ask for information unrelated to the person's ability to do the job or conjecture about the applicant.

Next steps

- Read the *Recruitment and getting started guide* on www.businesslink.gov.uk/employment
- Access a checklist of things you need to do when you take on a new employee at www.businesslink.gov.uk/takingonstaff
- For advice on equal opportunities legislation contact Equality Direct on 0845 600 3444; for advice on disabled people's rights contact the Disability Rights Commission on 08457 622 633; and for advice on avoiding age discrimination contact Age Positive on 0114 267 7228

Recruitment

2. You must check the eligibility of new staff to live and work in the UK

It is a criminal offence to employ someone not entitled to be in the UK or to do the work you are offering. There are a number of documents you can ask for as proof of eligibility to work.

Proofs of eligibility to work

Certain documents are sufficient on their own to prove a new recruit's eligibility to work in the United Kingdom. These include:

- a passport showing that the holder is a British citizen or has a right of abode in the UK
- a national passport or national identity card showing that the holder is a national of the European Economic Area (EEA) country or Switzerland. The EEA consists of the European Union (EU) countries plus Iceland, Liechtenstein and Norway
- a residence permit issued to a national from a EEA country or Switzerland
- a passport or other document issued by the Home Office which has an endorsement stating that the holder has a current right of residence in the UK as a family member of a national from a EEA country or Switzerland who is resident in the UK.

A number of other documents are also sufficient on their own to prove eligibility to work in the UK. For more information, consult the websites or the helpline referred to below.

If you are recruiting nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia or Slovakia you must also – unless they are exempt – check that they have registered with the Home Office's Workers Registration Scheme within one month of starting work for you by asking to see their Accession State Worker Registration card.

Bulgaria and Romania are also members of the EU. Their nationals are able to move and reside freely in any EU Member State. However, unless exempt, Bulgarian and Romanian nationals wanting to work in the UK are required to obtain authorisation to work before starting any employment. This authorisation will normally take the form of an Accession Worker Card.

Other proofs of eligibility to work

A document stating the candidate's name and permanent National Insurance number – such as a National Insurance card, letter from a government agency, P45 or P60 can also count as proof of eligibility to work but only if presented together with one of the following:

- a full birth certificate issued in the UK, or a birth certificate issued in the Channel Islands, Isle of Man or Ireland
- a certificate of registration or naturalisation stating that the holder is a British citizen
- a letter or Immigration Status document with an endorsement, issued by the Home Office to the holder, which indicates that the person named in it can stay indefinitely in the UK or has no time limit on their stay

Recruitment



- a letter or Immigration Status Document with an endorsement, issued by the Home Office to the holder indicating that the person named in it can stay in the UK, and this allows them to do the type of work you are offering.

A work permit issued by Work Permits UK is proof of eligibility if presented with:



- a passport or other travel document with a valid endorsement to show that the holder is able to stay in the United Kingdom and can take the work permit employment in question
- a document issued by the Home Office to the holder confirming that the person named in it is able to stay in the United Kingdom and can take the work permit employment in question.

You must take reasonable steps to ensure that documents relate to the person in question, and you should keep copies of them as proof you haven't employed someone illegally.

Next steps

- Read the *Ensuring Your Workers are Eligible to Work in the UK* guide on www.businesslink.gov.uk/employment
- Use the checklist for employing migrant workers on the Home Office-approved www.employingmigrantworkers.org.uk website
- For telephone advice, contact the Border and Immigration Agency's Employers' Helpline on 0845 010 6677

3. You must give your employees a written statement of employment particulars within two months of their starting work for you

An employment contract exists as soon as a job offer is accepted, even if it isn't written. The contract can be conditional – perhaps depending on references or a medical examination.

The terms of the contract itself can be written, spoken or implied by the nature of the job being offered – or a combination of all three. But if you employ someone for one month or more, you must give them a written statement which sets out the main terms and conditions of their employment within two months of their starting work.

A written contract between you and your employee, or a letter of engagement, satisfies this requirement as long as it covers the necessary information. There is no need to prepare two documents. Keep a copy of the written statement for your own records – while it is not a contract in itself, it can provide evidence of the terms of the contract if a dispute arises.

The written statement must include:

- your business' name and the name of the employee
- the date their employment with you began
- the date on which the employee's period of continuous employment began. This is usually the date they started with you. But if, for example, you bought your business from their previous employer, continuous employment runs from when they started with that employer

Recruitment



- how much the employee is paid, and at what intervals (weekly or monthly, for example)
- the employee's working hours and holiday entitlement
- a job title or a brief job description
- the place of work. If the employee is required or allowed to work in more than one place, the statement should indicate this and give the employer's address
- the length of notice you and the employee must give to end the employment
- how long the job is expected to last if it is not permanent; the date it will end if it is a fixed term
- details of any collective agreements made between you and the employee's representatives, such as a trade union, which directly affect their terms and conditions.
- details of sick leave and sick pay entitlements
- any pension entitlement
- disciplinary rules and disciplinary or dismissal procedures, including what further steps – if any – will follow if an employee applies under your disciplinary, dismissal or grievance procedures.

Some terms of a contract are implied, and don't need to be written into the contract. For example, you must provide a secure, safe and healthy working environment, while your employee must serve you honestly and faithfully.

Your business's custom and practice – the way staff are normally treated – may also form part of the contract. For example, if your redundancy payments are usually above those set by law, all employees may come to expect the same treatment. Some terms – such as the right to receive a minimum wage – are automatically imposed by law.

Some additional information is needed if your employee normally works in the UK but will have to work abroad for a period of more than one month.

The statement must also contain a note giving details of your disciplinary and grievance procedures, including who your employees should contact if they are unhappy with disciplinary or dismissal decisions or want to seek redress for a grievance. It must also state whether a pensions contracting-out certificate is in force.


Some details can be set out either in the written statement or in separate documents (such as a job offer letter or a company handbook) which the statement refers to and which the employee can get hold of easily. These include:

Next steps


- See the *Employment Contract* guide on www.businesslink.gov.uk/employment
- Use the interactive tool on www.businesslink.gov.uk/writtenstatement to create a written statement of employment particulars for your staff which can save you time and money
- Acas provides an advisory booklet on *Contracts of Employment* (ACAS/S02) which is available from www.acas.org.uk or by contacting 08702 42 90 90

Pay, tax and pensions

4. Your employees' tax and NI contributions must be deducted from wages and paid to HM Revenue & Customs



When you take on your first employee you must inform HM Revenue & Customs' New Employers Helpline on 0845 60 70 143 or via www.hmrc.gov.uk/newemployers/index. They will arrange to set up a PAYE (Pay As You Earn) scheme, which will be used to deduct income tax and National Insurance contributions (NICs) directly from your new employee's gross pay and collect your employer's National Insurance contributions. They will also arrange for a New Employer's Starter Pack to be sent you, including the Employer CD-ROM which explains everything you need to do as well as paper copies of all the initial forms you might need.



You will need to get your new employee's P45 form issued by their previous employer (or use a P46 form if this isn't immediately available or if they haven't come to you straight from another job – for example, if they were previously a student).

Depending on the circumstances of your first employee or employees, you may need to make repayments of Student Loans when administering their pay – but HM Revenue & Customs will advise you exactly what needs to be done. You may also be notified of other deductions to make from employees' pay, for example for child support or to recover debts due under a court order. If in doubt, contact the Department issuing the relevant notice for further advice.


Administering a PAYE scheme can be complicated, but many employers find that using a computer can make the task much simpler – either by using one of the standard payroll software packages available on the market, or by using the Employer CD-ROM issued by HM Revenue & Customs. Alternatively you can ask an accountant or professional bookkeeper or payroll bureau to run your payroll for a modest fee.

Next steps


- Read the basic guides about *PAYE* and *National Insurance* on www.businesslink.gov.uk/employment
- Call the New Employers Helpline on 0845 60 70 143, and ask for a New Employer's Starter Pack
- Existing employers with technical queries about PAYE, NICs, tax credits and student loan repayments should phone a different helpline on 08457 143 143
- For a full list of information leaflets and booklets relating to tax, PAYE and National Insurance issues, go to www.hmrc.gov.uk/leaflets/index.htm

Pay, tax and pensions

5. Your pay rates must comply with the National Minimum Wage regulations



Nearly everyone who works for you is entitled by law to be paid at least the national minimum wage (NMW) for every hour worked. This includes casual workers as well as employees who have a contract of employment.



Agency workers are also covered, although responsibility for ensuring that these workers receive the NMW rests with the person with whom they have their contract.

There are some exceptions. For example, trainees on certain Government-funded training programmes are excluded. There are also special rules for apprentices. A detailed guide can be found at www.berr.gov.uk/employment/pay/national-minimum-wage.

The current rates (with the rates that will apply from October 1, 2007 in brackets) are:

- £5.35 (£5.52) for those aged 22 and over
- £4.45 (£4.60) an hour for people aged 18 to 21
- £3.30 (£3.40) an hour for workers aged 16 and 17, who are above the age of compulsory schooling.

When calculating whether you're paying the minimum wage, you can take into account any incentive or performance-related payments, bonuses and tips paid through the payroll. But extra money above basic pay – such as allowances, overtime or shift-work premiums – doesn't count.

No benefits other than money can be included, apart from a small amount for accommodation. This amount is known as the accommodation offset and is limited to £27.30 per week or £3.90 per day (£30.10 per week or £4.30 per day from October 1 2007). An employer can charge more than the offset but this will not count towards minimum wage pay.

Output workers – including homeworkers – who are paid for each piece produced or task performed must either be paid the minimum wage for every hour they work or a “fair” piece rate for each piece produced or task performed. There are special rules for working out a fair piece rate.

You will need to keep time and pay records to prove you are complying. Workers can ask to see them if they think they are being underpaid.

Next steps

- Read the *Understanding National Minimum Wage Law* guide on www.businesslink.gov.uk/employment
- For telephone advice, contact the National Minimum Wage Helpline on 0845 6000 678

Pay, tax and pensions



6. Your employees must be provided with itemised pay statements

Your employees must be given itemised pay statements (usually known as payslips or wage slips) – whether you pay them weekly or monthly – showing all deductions made.

The itemised pay statement – which must be provided at or before the time the wages or salary are paid – must show:

- the gross amount of the wages or salary before deductions
- the amounts of – and reasons for – any fixed deductions that you make every pay period and any variable deductions that are not the same every pay period
- the net amount of wages or salary payable after deductions
- a breakdown of each part-payment – such as part by cheque, part in cash.

The pay statement does not have to include the amount and purpose of every separate fixed deduction every time, but if you don't issue a payslip that does this, you must give the employee a standing statement of fixed deductions at least every 12 months.

If there is any change to an employee's fixed deductions, you must give them either:

- notification in writing of the details of the change; or
- an amended standing statement of fixed deductions, which is then valid for up to 12 months.



7. You must not make unauthorised deductions from your workers' wages

Deductions from a workers wages are generally considered unauthorised and unlawful, unless they meet one of the following three conditions:

- they are required or authorised by legislation (e.g. income tax or national insurance deductions)
- they are authorised by the employee's contract – provided the worker has been given a written copy of the relevant terms or a written explanation of them before it is made
- they have been agreed to in writing by the worker before the deductions are made.

Next steps

- For more information on authorised deductions, read the guide *Manage student loans, payroll and other deductions* on www.businesslink.gov.uk/employment

Pay, tax and pensions



8. You must pay Statutory Sick Pay to all your qualifying employees from the fourth day of incapacity onwards

You must pay Statutory Sick Pay (SSP) to employees who can't work for four or more days in a row because of physical or mental illness or disablement, if they satisfy the qualifying conditions. The rate in the tax year 2007-08 is £72.55 a week.



All full and part-time employees and agency workers who are employees for Class 1 National Insurance purposes (or would be but for their age or level of earnings) qualify for Statutory Sick Pay provided they earn more than the National Insurance lower-earnings limit, which is £87 a week (2007-08 tax year).

However, you can withhold Statutory Sick Pay if the employee has recently drawn Incapacity Benefit or Severe Disablement Allowance, fails to notify you of their sickness within seven calendar days of the first day of sickness, or is in legal custody.

If your own sick pay arrangements are more generous than the Sick Pay scheme you can opt out. However, you must still keep detailed records for three tax years following the end of the tax year to which they relate.

Statutory Sick Pay is subject to income tax and employees Class 1 National Insurance contributions. It is payable for up to 28 weeks for any one period of sickness or series of linked periods of sickness.

You may be able to recover some SSP by deducting this money from the National Insurance contributions you pay to HM

Revenue & Customs (and from income tax if necessary) if you qualify under the Percentage Threshold Scheme (PTS). Details of what you can recover are contained in the HM Revenue & Customs Helpbook, *What to do if your employee is sick* referred to below. Any sick pay you pay and recover has to be recorded on forms P14 and P35 at the end of the tax year.

You must keep full records of sick pay for at least three years after the end of the tax year to which they relate. A form for this purpose (SSP2) can be obtained from HMRC's Orderline or Employer CD-ROM. It's also a good idea to record sick pay paid to an employee in the relevant column on your P11 form.

Next steps

- Read the *Understand Statutory Sick Pay* guide on www.businesslink.gov.uk/employment
- Read HM Revenue & Customs Helpbook *What To Do If Your Employee Is Sick* (ref: E14) guide downloadable from www.hmrc.gov.uk. This guide includes an explanation of how you may be able to recover payment of Statutory Sick Pay
- Advice is also available by calling the HMRC Employer Helpline on 0845 60 70 143 (new employers) or 08457 143 143 (existing employers)

Working hours and time off

9. If you have five or more employees, you should establish whether you have an obligation to offer employees access to a stakeholder pension scheme

If you have five employees or more, you may need to offer them access to a stakeholder pension scheme. The business is not required to make contributions to an employee's scheme – but you must deduct an employee's contributions from their pay if they ask you to.

Even if you employ five or more people, you are exempt from having to offer a stakeholder pension scheme if:

- they all earn less than the National Insurance lower earnings limit
- you offer access to an occupational pension scheme which all employees can join within a year of starting work
- you offer to pay a contribution of at least 3 per cent of employees' basic pay to a personal pension scheme and to deduct their contributions if requested. The scheme shouldn't penalise members who stop contributing.

If you aren't exempt, you must choose a stakeholder scheme which is registered with the Pensions Regulator. You should consult employees about your choice and then write to the scheme provider to say you have formally chosen their scheme. Keep a copy of the letter.

Give employees details of your chosen provider and a contact name. You can give information about the scheme to employees, but you mustn't advise them about its financial benefits.

Employees aren't obliged to sign up to the scheme. Tell staff you can take their contributions from pay through PAYE but that they can pay directly into the scheme if they prefer.

You must deduct employees' contributions from pay if asked to do so and forward them to the scheme provider. Keep records of the payments. Employers don't have to make contributions.

Next steps

- Read the *Know your legal obligations on pensions* guide on www.businesslink.gov.uk/employment
- Read *Stakeholder Pensions – A Guide For Employers* (PME1) available from the Pension Service at www.thepensionsservice.gov.uk or by contacting 0845 60 60 265
- Use the 'decision tree' on www.thepensionsregulator.gov.uk to help you decide whether you have to offer a stakeholder pension to your staff

Working hours and time off



10. You must give your workers a minimum of four weeks' paid annual leave a year – reduced pro rata for those working part-time

People who work for you must get a minimum of four weeks' paid annual leave a year – though this can include bank holidays. (This legal minimum is due to increase by four days from October 2007; and by a further four days from April 2009.)



Most people who work for you, including your employees, freelancers and agency workers, are entitled to a minimum of four weeks' paid annual leave, with part-time workers enjoying leave proportionate to the number of days they work each week. For example, a full-time worker who works five days a week is entitled to 20 days' annual leave, while a part-timer who works two days a week is entitled to eight days. You are of course free to specify a longer period in your employees' contracts if you wish.

The leave entitlement starts building up from a worker's first day at work. With your staff's agreement, during their first year of work you can use a system in which they get one twelfth of their annual leave entitlement for each month they work, rounded to the nearest half day.

Holiday pay must be based on the worker's average pay. If, for example, their normal pay includes additional money for working unsocial hours, so must the holiday pay.

You should agree with staff how much notice of leave they should give. If you don't have an agreement, the notice period should be twice the length of the leave requested.

If someone stops working for you, they're entitled to be paid for any leave they haven't taken.

If a worker requests payment in place of taking the time off, you should explain that, in most cases, this is unlawful. All employees need to have rest away from work for health and safety reasons. Payments in lieu are normally only allowed when the employment comes to an end.

Next steps

- Read the *Know how much holiday to give your staff* guide on www.businesslink.gov.uk/employment
- For an Acas booklet on *Holidays and Holiday Pay* visit www.acas.org.uk or call 08702 42 90 90

Working hours and time off



11. You must not ask your workers to work an average of more than 48 hours a week unless they have given their voluntary consent in writing. You must provide correct daily and weekly rest periods

Hours

Rules on working time fix the maximum average working week for most workers at 48 hours. Some workers can agree voluntarily to forego this limit – but you mustn't put pressure on them to do so. You must ask those who do opt out to sign a written agreement.

Drivers and employees travelling with them are also restricted to an average of 48 hours a week, and to 60 hours in any single week. They cannot opt out of this.

For calculation purposes, hours are averaged over a 17-week period, though this can be extended by agreement up to 52 weeks. This reference period must not include time spent on holiday or sick leave. For instance, if two days are lost due to sickness the minimum reference period is 17 weeks and two working days.

Work-related training counts as part of the working week, as do travel as part of a worker's duties and working lunches. But lunch breaks and journeys to and from work don't.

The limits don't apply to those with the freedom to choose their own hours of work – typically senior managers – nor to self-employed contractors. But freelance or agency staff paid a regular wage or salary do qualify.

For young workers under 18, the maximum working week is 40 hours and they must not

work more than eight hours a day. These hours may not be averaged out and there is no opt-out available. Exceptionally, however, if there is no adult available to do the work and the young worker's training needs aren't affected, they may work longer hours if it is necessary to maintain continuity of service or production or respond to a surge in customer demand.

You mustn't force staff to work more than six days in every seven, or 12 days in every 14. Young workers should get two days off a week.

You need to keep records to show you're complying with the 48-hour limit – but you can do this using records you already keep for pay (a payslip quoting hours worked, for example). You have to keep an up-to-date record of workers who have waived the 48-hour limit.

Workers can cancel the opt-out agreement whenever they want, although they must give you at least seven days' notice.

Rest periods

Workers also have a right to minimum rest breaks during and between shifts, and a set number of days off each week. There are special rules protecting young workers.

Most people who work for you – employees, freelancers, casual or agency workers – are entitled to minimum rest breaks. Workers must have a minimum 20-minute rest break in each shift lasting more than six hours. Young members of staff (under 18) are entitled to at least 30 minutes' break for each four and a half hours they work.

Workers have a right to 11 hours' rest between each working day; young workers get 12 hours.



Working hours and time off



In certain specified circumstances, rest breaks, rests between shifts and days off can be accumulated and used later. For example, this may happen during busy peak periods, when an emergency crops up or where someone works a long way from home and wants to work longer hours over fewer days to complete a task more quickly.



A young worker's entitlement to breaks can only be changed or not taken in exceptional circumstances.

If you have a worker who requires extra rest breaks, for example to take medication privately, you may be discriminating by unreasonably refusing.

People working at night

There are special regulations governing night workers' hours and they must also be offered a free health assessment to check they are fit to work at night.

Night time is defined as a period of at least seven hours between 10pm and 7am. Unless you agree otherwise with your staff, it is defined as the period between 11pm and 6am.

Night time is defined as a period of at least 7 hours, which includes the period between midnight and 5am. The night time period can be agreed by contract or, if no agreement exists, a default period of 11pm-6am will be applied.

Nearly everyone who works for you, including employees, freelancers and agency workers, is covered by these rules.

Night workers – people who regularly work at least three hours during night time – shouldn't average more than eight hours' work in each

24-hour period. This is normally calculated over 17 weeks, though it can be extended by agreement.

If a night worker's job involves special hazards or physical or mental strain, there is no averaging – they mustn't work more than eight hours in any one 24-hour period.

In general, young workers (under 18) are not permitted to work at night – though there are exceptions for a number of business sectors.

You must offer workers a free health assessment before they start working at night and repeat it regularly (typically once a year) after that. This will generally be in the form of a questionnaire, with a medical examination following if you have any doubts about the employee's fitness for night work.

You must keep records of these assessments for two years.

Next steps

- Read the *Hours, rest breaks and the working week* guide available on www.businesslink.gov.uk/employment
- Read the *Sunday working and night working* guide on www.businesslink.gov.uk/employment
- There are special rules protecting employees in shops and the betting industry who do not want to work on Sundays. Read *Sunday Shop and Betting Work – Employee's Rights* (URN 06/560). Available online at www.berr.gov.uk/publications
- For more information on the special rules on hours worked by drivers and their passengers, go to www.vosa.gov.uk

Working hours and time off



12. You must give your employees time off work in specified circumstances other than annual leave (e.g. to deal with an emergency involving a dependant, or for antenatal appointments)

There are a number of circumstances in which employees will be eligible for paid or unpaid time off.



If an employee is pregnant, she is entitled to paid time off for any antenatal appointments made on the advice of a registered medical practitioner, midwife or health visitor.

You must also give 'reasonable' paid time off to employees who are:

- carrying out duties or receiving training as a safety representative
- carrying out industrial relations duties or being trained as an official of a recognised trade union
- carrying out duties as an Information and Consultation negotiating representative or employee representative
- carrying out duties as a pension scheme trustee
- looking for another job or arranging training for future employment when being made redundant
- carrying out duties or receiving training as an employee representative for consultation over collective redundancies or business transfers
- young people studying or in training leading to a relevant qualification.

In the following instances you have to give employees time off but you're not obliged to pay them if you don't want to:

- taking action to deal with an emergency involving a dependant – a child, husband or wife, civil partner, parent or someone living with the employee (other than a tenant, boarder or employee of the household) or someone who reasonably relies on the employee to arrange care. Valid reasons for taking time off include helping a dependant who falls ill, is injured or assaulted, arranging a dependant's funeral, a dependant giving birth, dealing with an unexpected breakdown in care arrangements for a dependant or dealing with an incident at a school attended by a child of the employee
- taking part in certain trade union activities
- performing a range of public duties, including acting as a magistrate, being a member of a local authority, school governing body, police or health authority, or NHS trust. If you don't release an employee for jury service, you could be prosecuted for contempt of court.

If you have a worker who requires time off for reasons related to disability (e.g. for treatment or rehabilitation), you may be discriminating by unreasonably refusing.

Next steps

- Read the *Allowing time off work* guide on www.businesslink.gov.uk/employment. This includes practical advice on responding to the different situations where employees may ask for time off

Working hours and time off

13. You must give serious consideration to requests from certain employees (e.g. parents of children under six and carers of adults) to work flexibly

You have to give serious consideration to requests to work flexibly from parents of children under six or of disabled children under 18, or staff who have responsibility for caring for adults. A carer of an adult is usually a close relative or a person who lives at the same address as the adult needing care.

To make a request, employees must have worked continuously for you for at least 26 weeks.

Flexible working includes working patterns such as annualised hours, flexitime, job-sharing, shift-working and term-time working. Or it might simply be starting half-an-hour later and making up the time later in the day.

Employees have to make a written application to work flexibly. You are required to meet them within 28 days to discuss their request. You then have 14 days to write to the employee with your decision. If you are refusing the request, you must explain the grounds for your decision. Your employee has a further 14 days to appeal if they disagree with it.

You are entitled to refuse a request if you consider that one or more of the following grounds applies:

- the change would involve additional costs
- the business would be unable to recruit additional staff or re-organise work among existing staff
- the change would have a detrimental impact on quality or performance or ability to meet customer demand
- there would be insufficient work during the periods the employee wants to work
- the change would not be compatible with planned structural changes.

In addition, if a disabled person needs to work different hours for a reason related to their disability, for example to avoid travelling on public transport during rush hour or because their disability means that they work better later in the day, you may be discriminating if you refuse this.

Next steps

- Read the *Benefits of flexible working* guide on www.businesslink.gov.uk/employment. This includes advice on the business benefits of flexible working alongside information about the legal obligations. An interactive tool is also available to help you decide what type of flexible working schemes could best fit your business's circumstances
- Read the guide *Flexible Working – the right to request* (URN06/545) available online at www.berr.gov.uk/publications

Maternity, paternity and adoption rights

14. You must ensure that entitlements to maternity, paternity and adoption leave and pay (including unpaid leave) are correctly calculated and given

Maternity leave

Regardless of the size of your business or the hours she works, a pregnant employee is entitled to a minimum standard of treatment – though you can be more generous if you wish.

Unfair treatment of a woman for reasons connected with her pregnancy, childbirth or maternity leave is sex discrimination. You cannot dismiss a pregnant employee, select her for redundancy or treat her unfairly for any of these reasons.

Before the birth, you must give pregnant women paid time off to attend antenatal care appointments which may include relaxation and parentcraft classes attended on the advice of a registered medical practitioner, midwife or health visitor. If there is a health or safety risk to a new or expectant mother or her baby, you must remove it or make alternative arrangements. If you cannot make other arrangements, you must suspend her on full pay.

All pregnant employees are entitled to 52 weeks' maternity leave made up of 26 weeks' ordinary maternity leave followed by 26 weeks' additional maternity leave, regardless of how long they have been working for you. Ordinary maternity leave can start any time from the 11th week before the week the baby is due to be born. It is illegal for new mothers to work within two weeks of giving birth (four weeks for factory workers).

A woman expecting a baby must notify you by the end of the 15th week before the expected week of childbirth:

- that she is pregnant
- when the expected week of childbirth is, confirmed with a maternity certificate (MATB1) if you request one
- when she intends her maternity leave to start.

You will have to write to her within 28 days of receiving her notification stating when you expect her to return to work if she takes her full maternity leave entitlement (i.e. the full 52 weeks).

A woman wishing to return before the end of her full maternity leave entitlement, or wishing to change a previously notified date must give you eight weeks' notice (or 28 days, if the expected date of childbirth was on or before 31 March 2007).

A pregnant woman keeps all of her normal terms and conditions except wages or salary while she is on ordinary maternity leave (the first 26 weeks' maternity leave). Only some terms and conditions of employment remain during the additional maternity leave period (the second 26 weeks) – relating to compensation in the event of redundancy, notice periods and discipline and grievance procedures, for example.

You must allow a woman to return to her old job after taking ordinary maternity leave. After additional maternity leave, an employee is entitled to return to the same job unless this is not reasonably practicable, in which case you

Maternity, paternity and adoption rights



must offer a job that is suitable and appropriate for her to do in the circumstances.

You must seriously consider a returning employee's request for flexible working. Refusal to offer such an option may amount to indirect sex discrimination.

If a redundancy arises during maternity leave the woman must be offered any suitable alternative vacancy.

You can make reasonable contact with your employee during her maternity leave. If you both agree she can do up to 10 days' work for you during her maternity leave.

Pay on maternity leave

Many pregnant women also have the right to receive a minimum level of pay during their maternity leave. You can claim most – or all – of this money back from the Government (see the section below about recovering Statutory Maternity, Paternity and Adoption pay).

Pregnant women expecting babies on or after 1 April 2007 are entitled to receive 39 weeks' Statutory Maternity Pay if they:

- have worked for you for a continuous period of at least 26 weeks into the 15th week before the week the baby is due; and
- have average earnings at least equal to the lower earnings limit for National Insurance contributions (£87 per week for the 2007-08 tax year).

The rate of Statutory Maternity Pay for the first six weeks is 90 per cent of the woman's

average weekly earnings. For the remaining 33 weeks, the rate is either £112.75 a week or 90 per cent of the woman's average weekly earnings, whichever is the lower.

Statutory Maternity Pay is subject to income tax and National Insurance contributions in the same way as normal pay.

When a woman qualifies for Statutory Maternity Pay you must pay it even if her contract ends after the start of the 15th week before the week the baby is due.

Paternity leave and pay

Working fathers can take up to two weeks' paid leave following the birth of a baby. To qualify for paternity leave an employee must:

- have or expect to have a responsibility for the child's upbringing
- be the child's father or the mother's husband, civil partner, or partner
- have worked continuously for you for at least 26 weeks by the end of the 15th week before the week the baby was due and have continued working for you until the birth.

To qualify for Statutory Paternity Pay the employee must also have average earnings at least equal to the lower earnings limit for National Insurance contributions (£87 per week for the 2007-08 tax year).

You can ask an employee to fill in a self-certificating form as evidence of their entitlement to Statutory Paternity Pay. You can use the HM Revenue & Customs form *Becoming A Parent* (SC3).

Maternity, paternity and adoption rights



Fathers can take a block of either one or two whole weeks' leave – but not odd days.

Leave must be taken within 56 days of the child's birth or, if the child is born early, within the period from the actual date of birth until 56 days after the expected week of birth.



Employees have the right to return to the same job after taking paternity leave. You must not dismiss an employee or treat him unfairly because he has taken paternity leave.

Working fathers are entitled to keep their normal terms and conditions of employment – except those relating to wages or salary – while taking paternity leave.

Most fathers are entitled to Statutory Paternity Pay (SPP) and can choose to have either one week or two consecutive weeks SPP. From 1 April 2007 the SPP rate is £112.75 or 90 per cent of the employee's average weekly earnings, whichever is lower.

Staff who earn less than the lower earnings limit for National Insurance contributions don't qualify for Statutory Paternity Pay.

Adoption leave and pay

One member of a couple – or an individual – who adopts a child can take Statutory Adoption Pay and leave. The other member of a couple may qualify for Statutory Paternity Pay and leave. If they are adopting the child together, they can choose which of them will take adoption leave and pay and which will take paternity leave and pay.

To qualify for adoption leave, an employee must have worked continuously for you for at least 26 weeks when they have been matched with a child by an approved adoption agency. To qualify for Statutory Adoption Pay from you they must also have average earnings at least equal to the lower earnings limit for National Insurance contributions (£87 per week for the 2007-08 tax year).

Statutory Adoption Pay (SAP) is paid for 39 weeks for adoptions expected to take place on or after 1 April 2007. From that date the rate of SAP is either £112.75 or 90 per cent of the employee's average weekly earnings, whichever is lower.

Employees must give you evidence from the adoption agency as proof of their entitlement to adoption leave and pay: for example, a letter on headed paper confirming they have been matched with a child or a 'matching certificate'.

Adoptive parents are entitled to up to 52 weeks' adoption leave made up of 26 weeks' ordinary adoption leave followed by 26 weeks' additional adoption leave. This period of leave can start from the date of the child's placement or from up to 14 days beforehand.

An adopter keeps all of their normal terms and conditions except wages or salary while they are on ordinary adoption leave (the first 26 weeks' adoption leave).

Only some terms and conditions of employment remain during the additional adoption leave period (the second 26 weeks) – relating to

Maternity, paternity and adoption rights



compensation in the event of redundancy, notice periods and discipline and grievance procedures, for example.

You must allow an adopter to return to their old job after taking ordinary adoption leave. After additional adoption leave, an employee is entitled to return to the same job unless this is not reasonably practicable, in which case you must offer them another job which is both suitable for him and appropriate for him to do in the circumstances.



Employees who want to return to work before the end of their full adoption leave entitlement, or wishing to change a previously notified date must give you eight weeks' notice (or 28 days where the child was expected to be placed on or before 31 March 2007).

You must seriously consider a returning employee's request for flexible working. Refusal to offer such an option may amount to indirect sex discrimination.

Paternity leave can be taken by an adoptive parent if they have worked for you for at least 26 weeks by the week in which they are told they or their partner has been matched with a child, and they have continued working for you until the child is placed with the adopter.

Recovering Statutory Maternity, Paternity and Adoption Pay

Employers recover Statutory Maternity, Paternity and Adoption Pay from the income tax and National Insurance contributions they pay to HM Revenue & Customs.

If your business's total annual Class 1 National Insurance contributions are £45,000 or less, you can claim back all Statutory Maternity, Paternity and Adoption Pay from HM Revenue & Customs plus a compensation payment of 4.5 per cent on top. Otherwise you can claim 92 per cent of the payments you make.

You must record maternity, paternity and adoption payments in the relevant sections of your P11, P14 and P35 tax forms available from HM Revenue & Customs. A number of explanatory booklets are also available (see Next steps below).

All records must be kept for three years.

Unpaid leave for parents

Parents can take extra, unpaid time off during the first few years of their children's lives. Generally, you agree with your employee how this parental leave is to be taken.

Employees who have completed one year's service with you can take 13 weeks' unpaid parental leave for each child born or adopted. They can take leave until the child's fifth birthday or until five years after they have adopted a child.

Parents of disabled children can take 18 weeks' unpaid leave until the child's 18th birthday.

Maternity, paternity and adoption rights



Employees remain employed while on parental leave. Some contractual terms and conditions – such as those relating to notice periods and redundancy – still apply.

You must allow staff returning from parental leave of four weeks or less to return to the same job. With longer periods of leave, you must let them go back to the same job or, if that is not reasonably practical, to a job with similar or better terms and conditions.

You can agree how and when leave is to be taken with staff or their representatives, though there is a fallback scheme if there is no agreement. Under this, up to four weeks' leave can be taken in one year, in blocks of one week at a time.

You can postpone parental leave if you think an employee's absence would disrupt the business too much – perhaps when work is at a seasonal peak or when an employee's skills are essential to the business at a particular time. You must discuss the postponement with the employee and then give them written notice. The leave can be postponed for a maximum of six months.

Next steps

- For further information on how the maternity leave and pay rules apply to you, see the *When an employee is pregnant* guide on www.businesslink.gov.uk/maternity
- For further information on how the paternity and adoption leave and pay rules apply, read the *Managing paternity and adoption leave and pay* guide on www.businesslink.gov.uk/paternityandadoption

- Use the interactive tools available on the Business Link site to generate practical checklists on: how to manage new and expectant mothers in your workplace; your rights and responsibilities in relation to new fathers; and the rights of adoptive parents
- To help calculate any Statutory Maternity and Paternity Pay you have to pay, and how much you can recover, use the interactive calculators at www.hmrc.gov.uk/calcs/smp (maternity); or www.hmrc.gov.uk/calcs/sppb (paternity)
- Order HM Revenue & Customs' forms and Employer Helpbooks or the Employer CD-ROM from the Orderline on 0845 7 646 646. The helpbooks include *Pay And Time Off Work For Parents* (E15), and *Pay and time off work for adoptive parents*
- For telephone advice on Statutory Maternity, Paternity and Adoption Pay contact HM Revenue & Customs Employer's Helpline on 0845 60 70 143 (new employers) or 08457 143 143 (existing employers)
- Contact the Acas helpline for advice on maternity, paternity and adoption issues in the workplace on 08457 47 47 47
- Your employees can find information about statutory maternity leave and pay from www.direct.gov.uk/en/Parents/Workingparents/DG_10029285



Contractual changes



15. You must ensure that changes to employment contracts are discussed and agreed with your employees or, where there is a collective agreement, with their representatives

If you want to make changes to an existing employment contract, you must discuss and agree them with your employee or, where there is a collective agreement, with their representative.



A contract of employment is binding on both you and your employee which means that it is unlawful for one of you to vary the terms and conditions in the contract without the agreement of the other.

The contract itself may, however, include provisions allowing you to make important changes – for example, requiring the employee to move to a different place of work or to undertake a different type of work. In the case of a change covered by a provision of this kind, the change will be lawful, and would not require agreement.

You must inform the employee in writing within a month of any resulting change made to the details of the written statement.

Next steps

- Read the *Change an employee's terms of employment guide* on www.businesslink.gov/employment which includes a checklist of things to do and to consider
- Read *Contracts Of Employment – Changes, Breaches Of Contract And Deductions From Wages* (URN 07/535) available online from www.berr.gov.uk/publications
- Read Acas' advisory booklet on *Varying a Contract of Employment* (ACAS/AL02) available from www.acas.org.uk or by contacting 08702 42 90 90

Equal treatment



16. Your part-time workers must be treated no less favourably than their full-time equivalents, and your fixed-term workers must be treated no less favourably than permanent workers



You must not treat part-time workers less favourably than comparable full-timers. (A “comparable” worker is anyone working for the same employer doing the same or broadly similar work.) The rules cover employees, freelancers or casual workers, but not the genuinely self-employed. However, you may be able to treat a part-timer differently from a full-timer if you can show that it is necessary and appropriate to achieve a real business aim.

Part-time workers should get the same hourly rates of pay as comparable full-timers. Overtime rates must be the same too – but legally you do not need to pay overtime rates until they have exceeded normal full-time hours.

In addition, part-time workers enjoy leave proportionate to the number of days they work each week. So if a full-time worker who works five days a week is entitled to 20 days’ annual leave, a part-timer who works two days a week is entitled to eight days.

You must also treat part-timers the same as full-timers when calculating entitlement to maternity and parental leave and calculating levels of sick pay and maternity pay.

You must give them the same access as full-time workers to promotion opportunities and pension schemes; they must not be treated unfavourably if you are selecting positions for redundancy; and you should not exclude people from training because they work part-time. Where possible, training should be organised when all staff can attend.

You must not victimise part-timers who have made a complaint of unfair treatment against you.

Unless there are special circumstances which can be justified, you must also treat fixed-term workers the same as comparable permanent workers. This means they must be given the same pay and conditions, the same or equivalent benefits package and pension scheme, and the same opportunities to apply for vacancies for permanent posts in the business. They also have access to the same employment rights as their permanent equivalents.


Any employee who has been on a fixed-term contract for four or more years will usually be classed in law as a permanent employee if their contract is renewed, or if they are re-engaged on a new fixed-term contract.

Next steps


- Read the *Employing part-time workers* guide on www.businesslink.gov.uk/employment
- For additional information read *Part-Time Workers: The Law And Best Practice* (URN 02/1710) and *Fixed term work – Guidance* (URN 06/535) both of which are available online at www.berr.gov.uk/publications

Equal treatment

17. You must ensure that work of equal value gets paid at equal rates



Men and women employed by you on like work, work rated as equivalent, or work which is of equal value are entitled to equal terms and conditions, including pay and other conditions such as bonuses, holiday entitlements, sick pay and pension contributions, unless you can show that any difference in terms is not due to the difference in their sex.



Measuring the value of work is usually done by job evaluation. This compares factors such as the levels of effort, skill, decision-making, knowledge and responsibility involved in a job. It is important to avoid basic errors such as assuming jobs which are being done part-time are easier.

With regular reviews of your pay system and by following the guidance on equal pay reviews at the Equal Opportunities Commission website (see below), you can build and maintain a robust, fair pay system capable of standing up to scrutiny.

A person who believes they haven't received equal pay may take the case to an employment tribunal where they will need to be able to identify a colleague of the opposite sex who is employed on work that is of equal value, but who is entitled to better terms.

Employees have the right to ask you for information via a pro forma "questionnaire" to help them work out whether they have received equal pay, and if not, why. The responses – or the fact that you have failed to reply – can be taken into account in any subsequent employment tribunal case.

Next steps

- Read about job evaluation and equal pay at www.acas.org.uk.
- Obtain the booklet *Equal Pay, Fair Pay – A Small Business Guide to Effective Pay Practices* from the Equal Opportunities Commission website www.eoc.org.uk or by contacting the EOC Helpline on 08456 015901
- Find out more about the Equal Pay Questionnaire by visiting www.womenandequalityunit.gov.uk

Equal treatment



18. You must not treat any of your workers less favourably because of their race, nationality, ethnic grouping, sex (e.g. in connection with maternity), disability, age, sexual orientation, religion or philosophical belief, membership or non-membership of a trade union or their marital status. You must meet this requirement at every stage of employment including recruitment, promotion and dismissal



As an employer you are obliged by statute to run your business without discriminating against people – whether because of something innate such as their sex, age or religion, or because they work part-time or wish to join a trade union

You mustn't discriminate against anyone who works for you (including self-employed contractors) or treat them less favourably, or dismiss them because of their:

- colour
- race
- nationality
- ethnic or national origin
- sex (including being married, civil partnership and gender reassignment)
- pregnancy or maternity leave
- sexual orientation
- religion or belief
- age
- membership or non-membership of a trade union.

You also have to ensure that other managers or members of staff don't discriminate against their colleagues because you may be held responsible for any discrimination or harassment practised by your employees. Discriminatory harassment might include demeaning remarks, graffiti, jokes, verbal abuse or physical assault.

In addition, the way you recruit staff must not be discriminatory.

You must not offer less favourable contractual terms – including those covering pay and benefits – to any employee or group of employees on these grounds. Nor must you deny them access to promotion, transfers, training or any other schemes, facilities or services.

Under equal pay laws, you must offer the same level of pay to men and women doing the same or similar work, or work of equal value.

Any attempt at separating people of a particular race from other staff counts as discrimination. You must also avoid indirect discrimination – where you apply a seemingly unbiased requirement or practice with which any of the above categories of employee is less likely to be able to comply. Examples of indirect discrimination might be creating new shift patterns which make things hard for working mothers or introducing a uniform banning headgear when some people wear headwear for reasons relating to their religious or ethnic background.

Equal treatment



There are a few limited exceptions to the rules – for example, some restaurants where food is served in a particularly authentic setting may be allowed to recruit from particular racial groups, and some employers seeking actors or fashion models may have to recruit on the basis of gender. In areas such as care work, it may be necessary to appoint someone of a particular sex for reasons of privacy and decency. It is best to take advice if you intend to apply one of the exceptions.



You may also take positive action to help men or women or members of a particular racial group, religion or sexual orientation or age compete on equal terms when looking for work – perhaps by running a training course or offering work experience. You can encourage people to apply for work – but you must always select the best person for the job when recruiting.

Any benefits you offer married employees and their spouses – such as health insurance or flexible working – must also be offered to employees who are civil partners, and to their partners.

Since October 2006, discrimination on grounds of age has also been prohibited. It is unlawful to discriminate against someone on grounds of age in any area of the employment relationship, including recruitment, pay, working conditions, training and promotion. The legislation also provides a default retirement age of 65 and gives employees the right to request not to be retired. You can set a lower retirement age if it is objectively justified, but you must consider any requests to work past retirement.

You mustn't victimise anyone who makes a complaint of discrimination against you.

Next steps

- Read the *Prevent discrimination and value diversity* guide on www.businesslink.gov.uk/employment
- Phone Equality Direct on 0845 600 3444 for authoritative, practical advice designed specially for small businesses on disability, race, sex, age and other equality issues
- For a copy of the Commission for Racial Equality's *Employment Code Of Practice*, go to www.cre.gov.uk or contact 020 7939 0000

Equal treatment

19. You must be prepared to make reasonable adjustments to enable people with disabilities to work

Disability is defined as a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities, including people with HIV, cancer or MS, from the point of diagnosis.

As an employer, you must be prepared to consider making 'reasonable adjustments' to premises, practices or procedures if it would make it easier for a disabled person to obtain or remain in a job. Examples might include:

- making alterations to your premises
- giving some of the disabled person's duties to another member of staff
- buying special equipment
- changing the person's working hours.

The level of adjustment deemed necessary will depend on the circumstances of each individual case, including the resources available. Change might not be necessary if the adjustment would:

- make no significant difference to the disabled person's ability to do the job
- not be practical
- cost more than you could afford, particularly when there is no financial help available to you
- contravene other legislation, such as health and safety rules.

More generally, you must not treat staff less favourably on grounds of a disability and you must not discriminate against a disabled person for a reason related to their disability, unless this can be justified

Recruitment and selection procedures which discriminate against a disabled person on the grounds of their disability are unlawful, and you could be taken to an employment tribunal if a disabled person believed that they had been discriminated against on these grounds, as you could by an existing employee who believed they had been discriminated against on the grounds of their disability. A person does not need to be employed by you to take you to a tribunal, and there is no limit on the amount they may be awarded if you are found to have discriminated unfairly.

You may need to make reasonable adjustments to your recruitment process to make sure people with disabilities are not disadvantaged in their application. For example, this may mean holding an interview in a room that is more accessible to a wheelchair user, making application forms available in accessible formats such as large print or Braille, allowing extra time for selection tests or providing special equipment or a sign language interpreter for an interview.

You must not offer less favourable contractual terms – including those covering pay and benefits – to staff because they are disabled. Nor can you deny disabled people access to promotion, transfers, training or any other schemes, facilities or services.



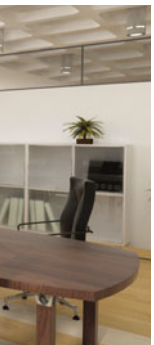
Equal treatment



You must not dismiss, nor select for redundancy, disabled employees on the grounds of their disability, nor must you harass disabled people or victimise a disabled person who makes a complaint of disability discrimination against you.

Next steps

- For a copy of the Disability Rights Commission's booklet on *Employing Disabled People – Top Tips For Small Businesses (EMP5)* go to www.drc-gb.org or phone 08457 622 633
- Read the *Prevent discrimination and value diversity* guide on www.businesslink.gov.uk/employment
- The Employers' Forum on Disability examines issues of disability in the workplace and offers best practice advice. Go to www.employers-forum.co.uk or phone 020 7403 3020



Health, safety and working environment



20. You must provide your workers with a secure, safe and healthy working environment. A health and safety policy must be in place, and be in written form if you employ five or more people



When you take on staff, you must ensure that they are provided with a secure, safe and healthy working environment. You must have a health and safety policy and, if you have more than four employees, you must put your policy in writing. This policy must be made easily available and revised regularly, particularly whenever the physical nature of your workplace changes. You must also have procedures in place in case of fire or other emergencies.

You should display the poster *Health and Safety Law: What You Should Know* in any place of work. This can be obtained from the Health and Safety Executive. You must give employees information about risks to their health and safety and about the preventative measures that are in place to control risks. All employees have a right to be consulted on health and safety issues that may affect them.

If you don't oversee health and safety in your business, you must appoint someone to do so. They'll need to be aware of all relevant law and industry standards that exist, and you must give them authority to implement the health and safety policy.

The provision of suitable first-aid facilities is also compulsory and your staff need to know where any first-aid boxes are located. You need to nominate someone to be responsible for restocking first-aid boxes and to take charge in an emergency (and call an ambulance if necessary). But this person doesn't have to hold a first aid certificate if you employ fewer than 50 people, unless your risk assessment shows otherwise.

There are specific regulations that help businesses minimise the risks of accidents happening in the day-to-day working environment which you need to comply with. These include responsibilities to check and maintain all working equipment on a regular basis, to supply all employees with suitable protective equipment for their job, and to assess the risks to your employees if their job involves heavy loads or repetitive handling of objects. Appropriate action needs to be taken to reduce the risk of injury.

Next steps

- Read the guide on *Your responsibilities for health, safety and the environment* on www.businesslink.gov.uk/employment. This site includes a checklist of the steps you need to take to meet your legal obligations and a practical guide on how to create and operate a health and safety policy
- For telephone advice, contact the Health and Safety Executive Infoline on 0845 345 0055

Health, safety and working environment



21. You must ensure that valid employer liability insurance cover is in force at all times

Most employers are required by law to insure against liability for injury or disease to their employees arising out of their employment.



Employers' liability compulsory insurance will enable you to meet the cost of compensation for your employee's injuries or illness whether they are caused on or off site.

You must be insured for at least £5 million. However, you should look carefully at your risks and liabilities and consider whether you need insurance cover of more than £5 million. In practice, most insurers offer cover of at least £10 million.

When you take out or renew a policy, your insurer will give you a Certificate of Employers' Liability Insurance, a copy of which must be displayed where your employees can easily read it.

You must retain for at least 40 years copies of certificates of insurance which have expired. This is because an employee could make a claim many years after an injury or disease is caused. You can keep copies electronically if this is more convenient than paper copies. You must make these available to health and safety inspectors on request.

Next steps

- Read the *Liability insurance* guide on www.businesslink.gov.uk/employment which provides practical information on the cover that each type of liability insurance offers, and how liability insurance is sold and priced
- For a copy of the Health and Safety Executive's *Employers' Liability (Compulsory Insurance) Act 1969: A Guide for Employers* (HSE40) visit www.hse.gov.uk/pubns/hse40.pdf or contact HSE Books on 01787 373995

Grievances, discipline and dismissal

22. You must ensure that disciplinary and grievance procedures that comply with minimum statutory requirements are implemented, and are specified in the statement of employment particulars

All businesses are required to have minimum disciplinary and grievance procedures in place and basic information on disciplinary and grievance issues must be included in your employees' written statement of employment particulars.

You should draw up disciplinary rules to set standards of conduct at work and explain what behaviour is unacceptable. The rules could cover areas such as:

- timekeeping
- absence
- holidays
- health and safety
- standards of work
- personal appearance
- use of company facilities
- smoking
- discrimination.

Disciplinary procedures set out the action you will take against staff who break your rules. All businesses have to put minimum disciplinary procedures in place which must include the following stages:

- informing the employee in writing of the problem
- holding a meeting to discuss the problem with the employee – who has the right to be accompanied by a fellow work colleague or trade union official
- after the meeting, informing the employee of the employer's decision and of their right to appeal against it
- an appeal, if the employee requests one.

Minor breaches of rules should be dealt with informally.

Gross misconduct is an action so serious that you may dismiss an employee for their first offence without notice or pay in lieu of notice. In practice, however, you should generally suspend the employee on full pay and investigate the incident before dismissal. The employee should be given a chance to put forward their case at a meeting.

Examples of offences which are normally regarded as gross misconduct include: theft; fraud; fighting; assault; deliberate damage to company property; being under the influence of alcohol or illegal drugs; serious negligence which causes unacceptable loss, damage or injury; serious acts of insubordination.

Grievances, discipline and dismissal



A grievance procedure allows individual workers to raise grievances with management about their employment. All businesses have to put minimum grievance procedures in place which must include the following stages:

- the employee informing the employer in writing of their grievance
- the employee being invited to a meeting to discuss the grievance – they have the statutory right to be accompanied by a colleague, who may be a trade union official
- the employer responding to the grievance
- a right of appeal for the employee if they feel the grievance hasn't been satisfactorily dealt with.

You must include details of disciplinary rules and grievance procedures in your written statement of employment particulars (or more detailed contracts if you have them). You must explain:

- what your disciplinary rules and disciplinary or dismissal procedures are
- to whom the employee should apply if they are dissatisfied with a disciplinary decision or a decision to dismiss or want to put right a grievance and how to apply
- what further procedures, if any, will follow.

For the first and last of these you can refer employees to a separate document that they should be able to access easily if these details are not covered fully in the written statement.

The Acas Code of Practice on *Disciplinary and Grievance Procedures* provides practical guidance on drawing up disciplinary and grievance procedures.

Next steps

- Read the *Handling discipline and grievance issues* guide on www.businesslink.gov.uk/employment
- Read the Acas Code Of Practice – *Disciplinary and Grievance Procedures* which is available at www.acas.org.uk or by contacting 08702 42 90 90

Grievances, discipline and dismissal

23. You must ensure that any dismissals are not unlawful or unfair

If you are dismissing an employee, you must make sure you are acting fairly and reasonably. Employees can complain to an employment tribunal if they think they have been unfairly dismissed.

Employees with at least a year's service with you have the right not to be unfairly dismissed. However, if the reason for dismissal is one of a number which the law regards as 'automatically unfair', an employee can make a tribunal claim regardless of length of service (see below).

For a dismissal to be fair, you must have a valid reason for dismissing the employee. Valid reasons relate to:

- the employee's ability or qualifications to do the job
- the employee's conduct
- since 1 October 2006, the retirement of the employee
- the employee's position being made redundant
- any legal requirements preventing the employee from continuing to do the job (for example, if a van driver is banned from driving)
- some other 'substantial' reason not covered by the four reasons above.

You must act reasonably in dismissing the employee (such as giving them a chance to improve or taking some other form of disciplinary action). There are no set rules on what is reasonable – it will depend on all the circumstances, including your business' size and administrative resources. Where the reason for dismissal is shown to be retirement, whether the dismissal is fair will depend on whether you complied with the duty to consider working beyond retirement.

You may be required to prove to an employment tribunal that you have acted reasonably if an employee makes a claim, and you should be able to show you have acted fairly and consistently.

Remember that a dismissal also takes place when an employee's limited-term contract expires but is not renewed.

Dismissals which are automatically unfair and unlawful

Some dismissals are regarded as automatically unfair. If you dismiss an employee or select them for redundancy when others in similar circumstances aren't selected it will automatically be unfair, regardless of their age or length of service, if your reasons include one or more of the following:

- pregnancy
- taking particular kinds of action on health and safety grounds
- carrying out or proposing to carry out functions as an employee representative
- membership or non-membership of a trade union; taking part, or making use of

Grievances, discipline and dismissal



the activities or services of an independent trade union; or discouraging people from seeking union recognition

- carrying out or proposing to carry out duties as a trustee of a company pension scheme
- seeking to assert a wide range of statutory employment rights, including rights under minimum wage, flexible working or working time legislation
- disclosing certain kinds of wrongdoing in the workplace
- taking – or trying to take – parental leave or adoptive leave, or time off for dependants
- taking lawfully organised industrial action lasting 12 weeks or less (longer if you don't take reasonable steps to resolve the dispute).

The list is not exhaustive. The government publication *Dismissal – Fair And Unfair* provides more detailed examples (see Next steps below).

A dismissal is also automatically unfair if you fail to follow statutory minimum disciplinary procedures before taking action – and tribunal awards may be increased.

Some reasons for dismissal are automatically against the law. It is unlawful to dismiss a worker or select them for redundancy because of their:

- sex (including being married, civil partnership and gender reassignment)
- race, nationality or ethnic origin
- disability
- sexual orientation

- age
- religion or belief.

A worker – who can be an employee or any individual who works for you who is not genuinely self-employed – who believes they have been dismissed for such a reason could make a discrimination claim against you.

Constructive dismissal

An employee may be entitled to resign if you breach a fundamental term of their employment contract. This is known as constructive dismissal. If the employee considers the constructive dismissal unfair and has at least one year's service with you, they can make an unfair dismissal complaint to an employment tribunal. The employee must first raise the matter with you in writing, unless the case involves harassment or bullying. Breaches of contract that may give rise to constructive dismissal claims might include anything which makes it impossible or intolerable for the employee to continue doing the job. Examples include:


- cutting – or attempting to cut – an employee's wages or salary or other contractual benefits
- transferring an employee to a different job or location in the absence of any stated or implied contractual right to do so
- failing to provide a safe place of work
- subjecting a supervisor or manager to unwarranted criticism or abuse in the presence of colleagues or subordinates.

Grievances, discipline and dismissal

Next steps


- Read the guide to *Dismissal* on www.businesslink.gov.uk/employment
- Use the interactive *End employment correctly* tool on this site to ensure that the right procedures are followed when ending a person's employment for reasons other than disciplinary action
- Read the *Acas Code Of Practice – Disciplinary and Grievance Procedures* available at www.acas.org.uk or by contacting 08702 42 90 90
- Read *Dismissal – Fair And Unfair: A Guide for Employers* (URN 06/1400) available online at www.berr.gov.uk/publications
- For telephone advice, contact the Acas helpline on 08457 47 47 47

Grievances, discipline and dismissal



24. You must ensure that employees who are dismissed are given the correct notice period. Where redundancy applies, you must give your employees the correct level of redundancy pay

Notice periods



If you dismiss an employee, they are entitled to a minimum amount of notice and this depends on how long they have been continuously employed. You can include longer periods of notice in your employment contracts if you wish.

You must:

- give one week's notice to employees with at least one month's service
- give two weeks' notice to employees with two years' service
- give an extra week's notice for each further year of continuous employment with you up to a maximum of 12 weeks' notice for service of 12 years or more
- pay employees at their normal rate during their notice period. They have the right to a minimum rate of pay if they are on sick leave, holiday or ordinary maternity leave during the period of notice.

You are not obliged to give notice if you are dismissing an employee for gross misconduct.

Giving reasons for dismissal

If an employee who has been continuously employed with you for at least one year asks for the reasons for their dismissal – orally or in writing – you must provide a written statement of the reasons within 14 days.

If you dismiss a woman who is pregnant or on

maternity leave or an employee who is taking adoption leave, you must give them a written statement of your reasons whether they ask for one or not and regardless of their length of service.

Redundancy pay

Redundancy is when you dismiss an employee because:

- you close your business
- you close the employee's workplace
- there is a diminishing need for the employee to do work of a particular type.

Employees are entitled to statutory redundancy pay if they are made redundant and have at least two years' continuous service. Payments are based on the length of the employee's continuous service (with service being counted up to a maximum of 20 years) and their weekly pay.

Employees are entitled to:

- 1.5 weeks' pay for each full year of service where age during year is 41+
- 1 week's pay for each full year of service where age is 22 or above, but less than 41
- 0.5 week's pay for each full year of service where age is less than 22.

This means, for example, that someone who is 45 and has completed 15 years service is entitled to 17 weeks' pay comprising 4 years at 1.5 weeks (above 41) and 11 years' at 1 week's pay (above 22 but below 41).

Grievances, discipline and dismissal



For employees with normal working hours (i.e. contracted hours) a week's pay is based on the employee's actual weekly wage. Broadly speaking this is calculated on the day that they were given the minimum notice period or if not given, the day it would have begun had it been given. Overtime is not included unless overtime is part of their normal working hours. Where the employee does not work normal hours the week's pay is the average of the previous 12 weeks' pay.



A week's pay is capped at £310. This means that where an employee earns less than £310 their actual pay is used. Where they earn more than £310, £310 is used.

Employees are entitled to a written statement showing the amount of statutory redundancy pay and how it was calculated. An online tool to calculate an employee's statutory redundancy pay and produce a written statement is available on the Business Link website (see the Next Steps section below).

Statutory redundancy pay is free of tax and National Insurance contributions; any additional severance pay can usually be paid tax-free up to a current total of £30,000, though this may depend on the terms of the employment contract.

Employees who are "laid off"

If you do not provide work for an employee on a day when you would normally do so because the business isn't working at its normal level, the employee is 'laid off'; but you cannot refuse to pay them because work isn't available unless their contract of employment states that you have the right to do so.

Employees may agree to be laid off without pay in particular circumstances – such as where redundancy would be the only alternative, but this does not give you the right to lay them off in future.

Most employees are entitled to a statutory guarantee payment for any complete day of lay-off without pay – but with a limit of five days' payment in any three-month period.

Next steps

- Read the *Issue the correct periods of notice* guide on www.businesslink.gov.uk/employment
- Read, *Rights To Notice And Reasons For Dismissal* (URN07/534) and *Guarantee Payments – Guidance* (URN 06/536) available online at www.berr.gov.uk/publications
- Read the *Making an employee redundant* guide on www.businesslink.gov.uk/employment
- Use the interactive tool at www.businesslink.gov.uk/employment to calculate an employee's statutory redundancy pay and produce a written statement.



This guide sets out the main regulations that apply when you employ people. It is not comprehensive or a substitute for independent, legal or other expert advice. Every reasonable effort has been made to ensure that the information in this guide is accurate, but no responsibility can be accepted for any errors or omissions. This guidance is issued to provide users with general background, and is not intended to be, nor should it be considered as amounting to legal advice which is capable of being relied upon. Users should seek their own independent legal advice where required.