Employment Guide

A – Z for England & Wales (per March 2012)

1. Anti-discrimination regulations

Employers are under a duty to treat all employees equally, regardless of their age, gender, race, nationality, marital status, disability or sexual orientation. The Equality Act 2010 came into force on 1 October 2010 in Great Britain to protect employees from being discriminated against, directly or indirectly. In addition, there are Regulations to protect against the less favourable treatment of part-time and fixed-term workers. There are circumstances where discrimination may be allowed, for example where it can be justified by the needs of the business.

There are a number of remedies available to an employee who has been discriminated against, including unlimited financial compensation.

2. Business Transfers

The Transfer of Undertakings (Protection of Employment) Regulations 2006 is the main piece of legislation regulating the transfer of one undertaking, or part of it, to another. The Regulations are designed to preserve the rights of the employee enabling them to transfer to the new company under the same terms and conditions of their existing contract of employment. In this way, the employees' continuity of employment is maintained. In addition, the Regulations aim to ensure that an employee is not dismissed as a result of the transfer and that employees are consulted about the transfer and kept informed through representatives. This can either be Trade Union officials or employee representatives elected by their colleagues.

The dismissal of an employee due to the transfer is automatically unfair unless the employer can show an economic, technical or organisational (ETO) reason for the dismissal. An employee can object to transferring to the new employer but will then be considered to have resigned and will not be able to claim unfair dismissal.

3. Compromise Agreements

A compromise agreement is a legal agreement usually made on the termination of employment. It sets out the terms on which the employee agrees to waive all rights to claim against the employer. The parties normally agree that the employee will receive a payment in exchange for waiving their employment rights.

A compromise agreement is the only way a potential claim can be settled without the employee having to apply to the employment tribunal. For the compromise agreement to be binding, it is a legal requirement that the employee receives independent legal advice before entering into the agreement.

4. Employment Contracts

An employment contract is an agreement between the employer and employee, setting out the parties' rights, duties and responsibilities in relation to the employment. In the UK, the employment contract does not have to be in writing. However, under Section 1 of the Employment Rights Act 1996, all employees are entitled to a Written Statement of Particulars of Employment within two months of commencing the employment.

Both the employer and employee are bound by the terms in the employment contract until the contract is terminated or amended. A change to the contract must be by mutual agreement. This change can be agreed between the individual and his employer, by collective agreement with the involvement of a trade union, or by a change in a long-standing custom. In cases where changes are made by collective agreement, it is important to note that the changes will still apply to those employees who are not a member of the trade union. Agreed changes do not have to be in writing.

5. Employee Benefits

Employee benefits may be provided to an employee in addition to their usual wage and can act as an incentive to employees. The type of benefit will usually depend on the employee's length of service and performance. Typical benefits include private medical insurance, private health insurance, pension contributions and company cars. Benefits are usually taxable to some degree. Employee benefits will usually be set out in the contract of employment.

Employers who employ 5 or more employees must offer their employees access to a stakeholder pension scheme. From 1 October 2012 employers in the United Kingdom are required to automatically enrol employees in an occupational pension scheme or a personal pension scheme.

6. Handbook for Employees

In addition to the contract, employees can often refer to a staff handbook, which sets out policies and procedures in more detail. The handbook may contain information on policies concerning sickness absence, maternity pay, the grievance and disciplinary process, equal opportunities, anti-harassment and other policies and procedures. It is not a statutory requirement for companies to have a staff handbook but it is recommended as it allows staff to have easy access to important information. Breach of the rules set out in the staff handbook will often lead to the employer taking disciplinary action.

7. Health and Safety

All employers have a statutory obligation to take the health and safety of their employees into consideration. Much of the law surrounding safety in the workplace can be found in the Health and Safety at Work Act 1974.

Employers are required to carry out a risk assessment to establish the possible health and safety hazards in the workplace. Employers with five or more employees, must produce a formal record of the results of the risk assessment and have in place a written health and safety policy.

In addition to civil action being taken by employees for an employer's breach of health and safety rules, an employer can also face criminal law sanctions for breach of health and safety laws.

8. Sickness Absence

Employees who are off work due to sickness for four or more consecutive days may be entitled to receive Statutory Sick Pay (SSP) for up to a maximum of 28 weeks. To qualify for SSP, the employee must satisfy the following conditions:

- be an employee;
- have been absent for a period of four days or more (this can include weekends, or such other days that the employee is not contracted to work);
- the days the employee receives SSP must be qualifying days, which are the days they normally work;
- usually earn a minimum of £107 per week;
- not have already received the maximum amount of SSP;
- have notified the employer of the sickness within seven calendar days; and
- provide evidence of sickness absence such as a self-certification form or a doctor's statement. The employer is entitled to ask the employee to provide a doctor's statement on the eighth day of sickness.

Employees who are not entitled to receive SSP will be given a form SSP1 by their employer, which they can use to claim Employment and Support Allowance (ESA) from their local Jobcentre.

SSP is treated like earnings and is taxable. It is paid at a weekly rate of £85.85 (March 2012).

9. Immigration and Work Permits

Employers wishing to recruit migrants from the EEA or Switzerland are generally able to do so without permission from the UK Borders Agency. Up until 26 November 2008, non EEA nationals wanting to work in the UK could apply for a work permit. This scheme was abolished on 27 November 2008 for all but Romanian and Bulgarian nationals and has been replaced by a points based scheme.

The new scheme aims to ensure that British employers can recruit the skills they need from abroad whilst assuring the public that only workers with skills that are required can enter the UK.

Under the new rules, workers will have to pass a points based system. The system consists of five tiers (although one of the tiers is suspended for the time being), each of which has different points requirements. Points will be awarded for experience, ability, age and the need for the migrant within their working sector.

The tiers are:

Tier 1 - highly skilled workers (e.g. scientists), investors and entrepreneurs;
Tier 2 - skilled workers with a job offer;
Tier 3 - low skilled workers filling temporary labour shortages (this tier is currently suspended);

Tier 4 - students
Tier 5 - youth mobility and temporary workers

Migrants applying for work under tiers 2, 4 and 5 will need to be sponsored for their application to be successful. To recruit migrants under tier 2, 4 and 5, organisations will need a sponsor license.

10. Industrial action (strike)

Employees who decide to take industrial action against their employer would normally be in breach of the terms of their contract. However, they are afforded some protection from dismissal in the event of a strike. The statutory immunities allow individuals and trade unions to enforce industrial action.

Industrial action will be protected by law provided:

- There is a trade dispute between employee and employer.
- The majority of workers have supported the strike action by way of a secret voting ballot.
- The employer is provided detailed notice at least seven days in advance of the strike.

Industrial action will be deemed to be official when organised by a trade union. Where employees participate in such protected industrial action an employer will only be permitted to dismiss them if a 12 week protected period has expired, the employer has taken reasonable steps to resolve the dispute and it dismisses all participants and does not selectively keep any of the employees.

It is unlikely that employees will be paid for the duration of the industrial action.

11. Non Competition Clause/Other Restrictive Stipulations

All businesses have information that they consider fundamental to the company and its success. Most employers will look to restrict the use of such information by employees once their employment has come to an end. An employee may have had access to trade secrets and client details and protecting this information could be vital to the market position of a business. This can be done by the inclusion of a restrictive covenant in the contract of employment. A restrictive covenant clause will usually prevent an employee from competing with the company by working for a competitor, or a similar business within a certain radius, for a specified amount of time. Furthermore, such a clause can prevent former employees from soliciting clients, customers or suppliers of the business by using information obtained during their employment.

Restrictive covenants are difficult to enforce. If the restriction is too onerous on the employee, the Court may deem it unreasonable and in restraint of trade. To be enforceable the employer must prove that the clause is necessary to protect the interests of the business and that it extends no further than to protect those interests.

Where an employer believes that an employee has breached this clause, an application for an injunction can be made to prevent the employee from inflicting further damage to the business. The company may also seek damages against the employee for any loss sustained as a result of the breach.

12. Restructuring and Redundancy

Redundancy is defined in section 139(1) of the Employment Rights Act 1996. The dismissal must be wholly or mainly attributable to the employer ceasing to carry on the business for which the employee was employed, ceasing to carry on the business in the place where the employee was employed or there must be a diminution in the need for employees to carry out work of a particular kind.

The employer must act reasonably and fairly in discussing the proposed redundancy wit the employee before the dismissal takes place. This is done by notifying the employee that their position is at risk and looking at alternatives with them. Where there are no alternatives, the employer would normally confirm the dismissal in writing and advise the employee of their right to appeal. If the employee is offered alternative employment but refuses to accept the offer, and the refusal is deemed to be unreasonable, then the employee will lose their right to statutory redundancy pay.

Employees must have a minimum of two years service to claim their statutory redundancy pay. The payment is calculated using a formula based on age, length of service and pay.

Where an employer is proposing to make more than 20 redundancies in a 90 day period it has a duty to inform and consult employee representatives and notify the department for Business, Innovation and Skills (BIS) of the proposed redundancies.

13. Secondment of Employees and Expatriates

A secondment takes place when an employee is temporarily assigned to work for a different part of the organisation or for another business. During a secondment, the employee will remain employed by their original employer on their existing contract of employment and will generally return once the secondment comes to an end. However, in certain circumstances, the secondee might become an employee of the new organisation despite the parties' intentions. To avoid the secondee becoming an employee, the parties must ensure that:

- the employee does not owe any duties to the host, but only to the original employer and that the new organisation does not owe any duties to the employee;
- the original employer retains control over the employee;
- the original employer deals with matters involving the employee, including appraisals;
- the employee does not become integrated into the new organisation.

The employee will want to ensure that the move will not sever their continuity of employment as most employment rights require a certain minimum period of service.

Another reason why it is important to determine the status of the employee is to decide which organisation is legally liable for them. The original employer will be vicariously liable for the acts of the employee although the new organisation may also be held to be liable depending on the circumstances.

The terms of the secondment should be written up in an agreement to avoid ambiguity.

Expatriates posted on a temporary basis from an EU Member State to the UK are covered by the Posting of Workers Directive.

Under the Posting of Workers Directive, the employer must ensure that the worker receives the basic key terms and conditions of the Member State they have been posted to. For example, if the UK has a higher minimum wage than the worker normally receives, they are entitled to the higher amount. Workers sent to the UK are entitled to receive the same standards as a national in regard to

- maximum work periods and minimum rest periods
- annual paid holidays
- national minimum wage
- health and safety at work
- protection of workers who are pregnant or who have just given birth
- equal treatment between men and women and other provisions regarding non-discrimination

Posting a worker to another EU state may require changing their employment contract.

14. Social Security

Social security is generally the term used for financial assistance. The principle behind social security is that people earn benefits whilst they work, contributing to the various schemes through deductions in their wages.

There are a number of benefits available in the UK, including state pension, jobseekers allowance and child benefit (payable to parents).

15. Specifics of UK Employment Law

UK employment law, although essentially contractual in nature, is heavily regulated by local and European legislation. Therefore, employment law in the UK has three main sources:

- **Common law** – based on Court decisions. The relationship between employer and employee is governed at common law by the contract of employment.
- **Legislation** – UK statutes and statutory instruments enacted by Parliament.
- **European Law**

In most cases an employee cannot surrender or contract out of statutory rights, including the right to claim unfair dismissal, breach of contract, discrimination and redundancy. Any agreement purporting to remove such rights from the employee will essentially be void. A private settlement between an employer and employee claiming to be in full and final settlement of any claims cannot prevent an employee from pursuing the matter further in the employment tribunal. There are some exceptions to this rule including:

- a settlement involving the Advisory, Conciliation and Arbitration Service (ACAS), usually made on Form COT3
- a collective agreement
- a compromise agreement.

16. Tax Matters

Income tax is a tax paid on income. It can be payable even if an individual is not working, e.g. where they have an income from a pension or savings. Not all income is taxable and individuals are only taxed on income above a certain level. There are reliefs and allowances that can reduce the amount of tax payable.

Taxable income in the area of worker and employees includes the following:

- earnings from employment
- earnings from self-employment
- pensions income

UK tax payers are entitled to receive a 'personal allowance', which is an amount of tax-free income. From 6 April 2012, the basic personal allowance - or tax-free amount - is £8,105. Income Tax is only due on taxable income that is above the tax-free allowances. The amount of personal allowance depends on an individual's age or their total income in the tax year if over the age of 65.

PAYE

Pay As You Earn (PAYE) is the system used by HM Revenue & Customs (HMRC) to collect income tax and national insurance contributions (NICs) from employees' pay as they earn it. The employer is responsible for deducting tax and NICs from the employees' pay and sending the sums on to HMRC. Each time the employee is paid the employee must be provided with a pay slip detailing the amount of tax and NICs that have been deducted from his or her wages.

Self Assessment

Self assessment involves completing a tax return form in order to tell HMRC about an individual's income and capital gains (profits on the sale of certain assets), or to claim tax allowances or reliefs against their tax bill. Under the self assessment system, individuals have to provide details of their income in addition to their employment. This could include:

- income from renting out a room
- income from self-employment
- untaxed income.

Individuals that are self-employed need to complete a self assessment return every year in which they must provide details of the profits from their business. The self assessment return is used to work out how much tax and NICs the individual has to pay. Individuals are required, by law, to keep records of all relevant information that may be required to complete the return.

17. Termination of Employment

A contract of employment can be ended by mutual agreement between the employer and employee or by either party giving the required length of notice as expressed in the contract. If the contract is silent on notice, it may be up to the Court to imply a term.

Legislation in the UK affords the employee a number of statutory rights, including the right not to be unfairly dismissed. Therefore, when considering whether the termination of the contract by resignation or dismissal was lawful, two aspects need to be considered. First, whether the termination was in breach of a term in the contract, and secondly, whether it contravenes any legislation. The employee can sue for wrongful dismissal in the case of a contractual breach and for unfair dismissal in the case of a dismissal in contravention of statute.

Employees claiming unfair dismissal must have one year's service with the employer and must bring their claim within three months of the date of dismissal. However, from 6 April 2012 an employee must have two years' service with the employer to be able to bring a claim for unfair dismissal. There are six potentially fair reasons for dismissal:

- conduct
- capability
- retirement
- redundancy
- a legal requirement preventing the employee from working
- some other substantial reason.

If the employee is successful in their claim for unfair dismissal, they may be entitled to reinstatement, re-engagement and/or compensation.

Employees do not need the one year qualifying period (or two years from 6 April 2012) when making a claim for discrimination.

18. Trade Unions

Trade unions play an important role for employees by maintaining or improving their conditions of employment. Approximately 27% of employees in the UK are members of a trade union.

Trade unions negotiate with employers on behalf of their members. Negotiations commonly relate to pay, working conditions, benefits and health and safety issues.

Trade unions are protected by the Trade Unions and Labour Relations (Consolidation) Act 1992.

19. Works Council and Information & Consultation

A works council is a permanent consultative body made up of management and employee representatives whereby an employer can inform and consult its workforce about economic, business and employment-related matters. Any company can put a works council in place but there is no sanction if this has not been done. The purpose of a works council is to allow a greater degree of employee input into the business.

The Information and Consultation of Employees Regulations 2004 gave employees the right to request that their employer makes arrangements to inform and consult them about issues in the organisation for which they work. There is no set method that employers need to follow to inform and consult their employees.

Provided the company employs more than 50 people, the requirements can be enforced either by a formal, written request for an information and consultation agreement from at least 10% of employees. The employer will need to make arrangements to allow the employees to elect representatives to negotiate the agreement.

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