

# EMPLOYMENT and PERSONNEL HELP Index

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## **IMPORTANT INFORMATION**

**The legal help texts and certain terms, policies and procedures contained within this special version of the *Employment and Personnel Desk* have been edited, abridged or, in part, deleted.**

**Upgrading to any of the full versions will give you access to the 24 hour legal help-line, the complete legal help, regular upgrades and updates (including changes in the law covered) and direct telephone access to technical support. Also, on full versions, the constraint on the number of employee records is removed.**

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## **Industrial tribunals**

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## History

Industrial tribunals were supposed to provide a less formal, quicker and less costly forum to resolve employment matters but their case-load has increased over the years which, in turn, has led to delays in the system. They were also meant to allow persons to bring claims in person and to represent themselves in the tribunal without the need to engage a lawyer but, today, legal representation is quite common, on both the employers' side and that of employees. This has led to an increase in legal costs (there is no legal aid in the industrial tribunals).....

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## **Jurisdiction of the Tribunals**

Tribunals have a wide jurisdiction which includes the power to hear the following claims, among others:

- unfair dismissal;
- discrimination;
- equal pay;
- contract claims up to £25,000 (arising or outstanding on the termination of employment);
- written particulars of employment;
- itemised pay statements;
- rights to time off;
- appeals against improvement and prohibition notices under the Health and Safety at Work Act etc. Act 1974;
- appeals against non-discrimination notices under the Sex Discrimination Act 1975 (SDA) and the Race Relations Act 1976 (RRA);

## **Tribunal Make Up**

### **The Tribunal Panel**

Tribunals consist of a legally qualified Chairman and two lay-members, one from each side of industry, although there are powers for chairmen to sit alone to hear certain cases. These include applications where the does not contest the claim; where the applicant withdraws the claim (in writing); unlawful deduction from wages claims; where the parties consent agree in writing to a hearing with a Chairman sitting alone and breach of contract claims. In certain circumstances, a direction for the application to be heard by a full tribunal may be given e.g. where a complicated point of law arises or where the parties request it. Chairmen may sit alone to decide preliminary issues e.g. where the right of a party to bring a claim is at issue.....

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## **Instituting Proceedings**

To bring a claim, the employee must present an originating application to the appropriate Regional Office (this is found by reference to the postcode of the employer). The application must be in writing, must set out the name and address of the applicant and the respondent (the employer), the grounds of the claim and particulars.....

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## Time limits for applications

Claims must be brought within certain time limits, although the tribunal has the power to hear complaints out of time where it was not "reasonably practicable" to present the claim in time (in discrimination cases, the power may be exercised where it is just and equitable to do so.

The main time limits are:

- Three months for unfair dismissal claims, discrimination claims and unlawful deductions from wages claims and breach of contract claims.
- Six months for redundancy payment claims.

In breach of contract claims, an employer has a right to counterclaim against the employee within six weeks of receipt of the originating application.....

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## **Pre-hearing Reviews (PHR)**

Pre-hearing reviews are intended to sift out claims without merit and to dissuade those parties with no reasonable chance of success from proceeding with the matter by putting them at risk on costs (see below).....

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## **Witnesses, Discovery, Further and Better Particulars**

### **Interlocutory powers**

The tribunal has powers to make certain orders before the hearing e.g. to require a party to give further particulars or to give discovery of documents (see below), to order a witness to attend the hearing (and produce documents), or to give written answers to questions. Such orders may be made either upon the application of a party or by the tribunal's own motion. Failure to comply with such an order may lead to a fine of a maximum of £1,000, or to striking out of the application or notice of appearance or an order preventing the respondent from defending.

### **Discovery of Documents**

This is the process whereby relevant documents in the case are disclosed to the other side (apart from those which are protected from discovery such as those subject to legal professional privilege i.e. communications between a party and their legal advisor. The idea is to ensure that there are no surprises in the hearing.....

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## Hearings and Applications

### **Representation at the hearing**

Many parties represent themselves in the tribunal e.g. employers might send a manager to put their case, an employee might represent himself or have a trade union official to do so.

Increasingly, parties choose proper legal representation, although this escalates costs and no legal aid is available to litigants in the tribunal.....

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## **The documentation required**

### **The Bundle of Documents**

Documentation such as the contract of employment, staff handbooks, written particulars of employment, pension details, records of any disciplinary matters etc. should all be collected for the hearing.

All the relevant documentation should be gathered together in a bundle of documents and this bundle should be agreed with the other side ("an agree bundle") i.e. there is no dispute as to the authenticity of the documents. This bundle should be paginated and, if lengthy or complex, an index should be included. Six copies are required for the hearing: one for each panel member, one each for the parties and one for witnesses. The originals of documents should be available at the hearing.

### **Witnesses Statements...**

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## Settlements and Compromise agreements

### Settlement of the claim

Generally, an agreement not to pursue a tribunal claim is void and unenforceable. However, this does not apply in breach of contract claims, nor where an ACAS conciliation officer has taken action and a COT3 form records the agreement.

The claim may be settled before the hearing by way of private settlement between the parties or by using an ACAS conciliation officer, where such an officer has a statutory power to act in this way. Any ACAS conciliated settlement is recorded in a form (COT3). This agreement is binding on the parties.

### Compromise agreements

This is a way to settle the claim without involving ACAS. The agreement must be:

- in writing;
- it must relate to the particular complaint...

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## **The tribunal hearing**

### **Opening the case**

The party having the burden of proof usually opens the case. In unfair dismissal cases where the fact of dismissal is not in dispute, this is the employer who must show the reason for the dismissal. Where dismissal is contested e.g. in constructive dismissal claims, it is the employee who opens.

Opening statements are permitted in some tribunals, although practice varies. This statement should briefly introduce the parties, outline the facts, introduce the issues, the main points of law etc.

### **The tribunal hearing**

The hearing is formal (but not as formal as in a court) and takes place in a room (rather than a court) before a Chairman and two lay members (one with management experience and one with trade union experience). In sex discrimination cases, members of both sexes will sit on the tribunal. In race discrimination cases, at least one member should have special knowledge of race relations.

The hearings generally take place in public and may be reported (unless a restricted reporting order is made (in sexual misconduct and disability discrimination cases)....

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## **The Possible Outcomes**

### **The Decision**

This may be unanimous or by majority decision. Written reasons are sent to the parties in either summary or extended form. Extended reasons are given in discrimination cases, equal pay cases and in other cases where the tribunal thinks it appropriate. It must provide extended reasons if requested to do so by a party.

All tribunal decisions are kept on a public register and available to the press and public.

### **Remedies**

Remedies available from the tribunal depend on the kind of case. They are dealt with in other parts of this work. Orders for payment of money are enforceable as if they were county court orders but must first be registered with the court.

### **Interest**

Interest is payable on compensation ordered where it has not been paid within 42 days of the issue of the written decision. It runs from the end of the 42 day period and currently stands at 8%.

### **Costs**

Costs are not usually awarded in the industrial tribunal. Exceptionally, they may be awarded where, for example, a party has acted vexatiously, abusively or disruptively. Where they are awarded, costs may be given against both unsuccessful applicants and respondents who unreasonably defended an indefensible case. The order may require all or part of the other side's costs to be paid (as taxed by the county court if not agreed), or an agreed amount to be paid or a fixed amount (maximum £500).

Costs may be awarded where a party's actions have caused a hearing to be postponed or adjourned through that party's fault.

### **Appeals to the Employment Appeal Tribunal (EAT)**

Appeals from an industrial tribunal decision may be made within 42 days of the date on which the decision or order appealed from was sent to the appellant.....

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## Introduction

Employment law is complex. Our objective in designing this system has been to provide a useful, inexpensive tool for Employers to establish and maintain systems of control through which to manage their Employees effectively.

Thorough, properly prepared written terms and conditions of employment should firmly establish your position and expectations as the Employer. Resistance to change can be dissolved to leave a more flexible organisation.

Detailing rules, policies and procedures goes to establish professionalism, 'procedural accuracy' and fairness in handling employment matters such as discipline. Of no less importance, the existence and application of certain policies can avail you of defences to many claims, including your liability for harassment by Employees.

Readily accessible records and meaningful reports allow you to monitor and adjust behaviour and performance.

The system comprises four main elements, updated from time to time and supported by telephone access to qualified legal advice 24-hours a day:

### **Written terms and conditions of employment:**

Core terms and conditions of employment are prepared before individual statements of main terms and conditions of employment are produced and a Company Handbook developed. Example terms and conditions are included for you to edit with 'help' to ensure you can make informed decisions. Any existing terms can be imported (in 'rich text format') and the question of amending terms is addressed.

### **Rules, Policies and Procedures:**

Examples including Discipline, Grievance, Company Cars, Annual Leave, Equal Opportunities and others that might affect your business are included for you to edit. Again, 'help' is included and any that already exist can be imported - including your own working practices - for inclusion in your Employee Handbook.

### **Forms and Letters:**

Example forms and letters handling applications, references, requests for time off, access to medical reports and health records, discipline and absence are included.

### **Records:**

Here attendance, performance, training, discipline, grievance and other



matters are recorded and can be reported upon and monitored.

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## **New Employees**

Recruitment and Induction

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## **Existing Employees**

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# Contracts of Employment

Who is an Employee?

When did Employment begin?

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Continuous Employment

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The Statement of Main Terms and Conditions of Employment

The Parties to the Agreement

The Date Employment Began

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The Job Title/ Description

The Place of Work

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Hours

Annual Leave

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Fixed Term and Temporary Contracts - expiry date

Notice periods

Sickness Absence

Pension

Collective Agreements

Discipline

Appeals

Grievance

## Conviction for Criminal Offences

You might wish, or even need, to have information about employees relating to criminal offences committed by them. This can be a particularly important part of the recruitment process, although conviction of persons already in employment for certain offences may be critical

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## Who is an Employee?

The question of who is an employee is central: employees have certain rights under the law (see below) and are subject to different tax and national insurance arrangements compared to self-employed persons. A desire on the part of many businesses to achieve flexibility in their labour force in order to remain competitive has led to contracting out of labour and the offer to existing employees of a transfer to self-employment.

The Employment Rights Act 1996 defines an Employee as a person employed under either a **Contract of Service**, or a Contract of Apprenticeship.

**Contract of Service:** Employed people have special status - they have Employment rights, their Employer owes them certain duties, he can be liable for their negligence and he will pay them through PAYE. [Fixed term contracts are Contracts of Service but other issues can apply - See [Fixed Term Contracts](#). ]

**Contract for Services:** Self - employed people are engaged under a Contract for Services - basically they are contracted to perform a piece of work and on completion they are paid and the contract ends by virtue of it's having been fulfilled, e.g. a plumber who repairs your loo.

The difference is significant [see [Employment Rights](#)]. There are tests [see below] applied by the courts to decide which type of Contract applies but each case depends on its facts and the weight accorded to the facts by the court in any particular case. The general principles given by the courts will help to determine the matter in cases of doubt. Home workers, casual or bank staff and part-time maintenance workers are among those often involved in such cases:

Imagine you are a builder and a plumber has been working for you, not in a domestic capacity but as one of your tradesmen. He's been with you twenty years. Today, following a minor annoyance, you throw him off site and give him his cards. The Job Centre listen patiently and then surprises him with the news that he's probably got rights under the Employment Rights Act.

Tomorrow the Citizens Advice Bureau advise him that he could claim Unfair Dismissal.

Subsequently an Industrial Tribunal uphold his claim. As well as costs, a basic award and compensation there might also be some questions about National Insurance contributions and Taxation.

### **The Common Law Tests:**

**The Control Test:** Where there is a right to control the manner in which the work is carried out and to give instructions about working arrangements, including such matters as when and by whom the work is done it is likely that the worker is employee. If it is all up to the plumber it is probably a Contract for Services. (i.e. the person is Self-employed) - see above. Further, can the worker refuse work or must he do it? The degree of control is critical.

Given the complexities of many jobs today, the control test cannot provide the complete answer because most employers do not exercise this degree of control over their workforce. For this reason, other tests have been developed by the courts.

**The Integration Test:** This test asks whether a person is employed as part of the business so that his work forms an integral part of it: if this is the case, the contract is likely to be seen as a Contract of Service.

**The Multiple Test:** This test, which is the one now applied by the courts, looks at a number of factors such as:

1. Whether there is a risk of financial loss to be borne by the worker? If the plumber has to correct his mistakes at his own cost then it is probably a Contract for Services.
1. Does the person have to perform the work personally or can he substitute other workers to carry out his work? If personal work is required it is likely to be a Contract of Service.
1. Is the person in business on his own account e.g. must he provide his own tools and other equipment? If so, this would be a Contract for Services.
1. Is the person responsible for paying his own tax and national insurance contributions? If so, this points towards a Contract for Services.

Other questions which may be asked under the multiple test are: Does he work for several others? Does he have premises of his own? Does he incur expenditure on his own account? Who provides materials? Are there contractual provisions for sick pay, holiday pay and pension rights (these all point towards employee status - a Contract of Service)?

Courts seek to balance all of the relevant factors, some of which have been outlined above, and no single factor is decisive. Furthermore, the weight given to each factor is within the discretion of the court on the evidence before it.

**Note:**

Employment status is not a matter of choice. A title or label on its own will not change the relationship.

Company Directors are usually **employed** if they work and are salaried rather than paid fees.

Sub-contractor exemption certificates don't guarantee self-employed status.

Agency supplied workers might be self-employed, or employed by the Agency, or by the Company contracting with the Agency.

When in doubt call the help line. Employment Law is complex and often individual circumstances add to the complexity.

## When did Employment Begin?

Certain Employment Rights are related to length of service, or more specifically to the period of 'Continuous Employment' (see [Employment Rights](#)) . Hence, defining the start date is important and it's required within the Statement of Main Terms.

1 The critical date is the day the Employee starts to work under the Contract of Employment - i.e. A Contract of Service/ Apprenticeship. The fact that the same tasks were performed previously under some other form of Contract should not be significant - but as usual it is an area open to challenge so **DO take advice**.

2 There is an exception - for Redundancy Payments the critical date will not precede the Employee's 18th birthday. [E.g. If the Employee joined you on his 17th, his first year won't count towards the period of Continuous Employment used to assess his entitlement.]

3 Where there has been a transfer of undertakings continuous service may have started when the Employee was first employed, by another Company, at that undertaking - [see [Transfers of Undertakings](#)] .



## When and How Employment Ends

[See also [Dismissal](#).]

These questions are important to establish whether the Employee has a right to claim unfair dismissal and redundancy payments and to establish whether a claim by an ex-Employee is 'Out of Time'. In the main, an applicant claiming unfair dismissal has three months from the relevant date in which to submit his claim to an Industrial Tribunal and six months for a redundancy application, although the tribunal has the power to extend these time-limits in certain circumstances [see [Industrial Tribunals](#)].

**As usual, this is a complex area of law and advice is only a 'phone call away.**

**Dismissal:** If an employee is dismissed, then.....

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Dismissing an Employee without notice for reasons other than gross misconduct will probably result in a claim from the Employee for wrongful dismissal and, if the employee qualifies, unfair dismissal. The notice period that should have applied will be added to the Employee's service to establish what rights have accrued.

### Notes:

- Once you have given notice of dismissal, you cannot change your mind. [Agreement may, of course, be reached.]
- An Employee cannot dismiss himself, even by walking out (although this might constitute a resignation) but such action may amount to gross misconduct or a repudiation of the contract. You would have to accept the repudiation before such an act amounted to termination of the contract. Further action must be taken before termination could be considered 'safe'.
- Notice periods are usually calculated without including the day on which the notice of dismissal is given.

**Summary Dismissal:** Where an employee is dismissed without notice or pay in lieu for gross misconduct then the day he is dismissed is the relevant date for unfair dismissal purposes.....

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## Continuous Employment

In addition to the date Employment began, the date Continuous Employment began must be included in the Statement of Main Terms. It is important in calculating whether an Employee has the requisite two-year qualifying period to claim redundancy and unfair dismissal.....

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**Pregnancy or Childbirth:** up to 26 weeks off work are allowed (subject to the woman's right to return to work after childbirth or pregnancy).

Periods of Employment with other Employers can form part of Continuous Employment e.g. where there has been a transfer of a business from one employer to another which is covered by TUPE. If no periods of Employment with other Employers are intended to be recognised, a statement to that effect can be included to remove doubt as to intent. E.g. No period of Employment with a previous Employer will count towards your Continuous Employment with *our Company*.

**Remember, advice might prove valuable.**

## Employment Rights v. Employment Benefits

A Benefit is a part of the Employee's package - often a matter for negotiation such as:

- Length of Annual Holiday entitlement
- Sick Pay [this may be either full pay while the Employee is absent through sickness or a "top-up" i.e. a sum representing the difference between Statutory Sick Pay and full Salary.]
- Private Health Insurance

An Employment Right is one granted by statute such as the right not to be unfairly dismissed or the right to written reasons for dismissal. These rights are not negotiable and cannot be 'signed away' [although one exception can exist in [Fixed Term Contracts](#)].

An outline of some of the rights of employees [and, on occasion, prospective employees] follows together with the period of continuous employment needed to qualify.

<b>Who has the Right:</b>	<b>What is the Right:</b>	<b>Continuous Employment needed:</b>
Job Applicants & all employees.	Not to be discriminated against/ dismissed/ suffer detriment on the grounds of :-	See <a href="#">Dismissal</a> for more information.
	1. Race	None
	2. Sex	
	3. Marital status	
	4. Union membership	
	5. Not being a Union member	
	6. Pursuing an Employment Right.	
	7. Pregnancy.	
	8. Certain Shop workers refusing Sunday work.	
	9. Certain matters concerned with Health & Safety.	
	10. Certain matters concerning Pension Trustees.	
11. Disability	None - but special rules apply - see <a href="#">Discrimination</a> .	
Employees	Itemised pay statement	None
	Equal pay for equal work	None
	Statutory sick pay	None
	To receive a statement of main terms and conditions of	One month. (It should be issued within two months of starting.)

employment	
Paid time off for:	None
1. Ante-natal care	
2. Trade union duties	
3. Duties as representatives re. Transfers or redundancies	
Unpaid time off for:	None
1. Trade union activities	
2. Public duties (e.g. Jury service)	
Not to suffer deductions from wages without written consent	None
Notice of termination.	One month
Maternity leave	None
Extended maternity Leave	Two years by the start of 11th week before the expected week of giving birth. [See <a href="#">Pregnancy &amp; Maternity</a> ].
Statutory maternity pay	26 weeks (at 15th week prior to expected week of giving birth).
Return to the same job from maternity leave.[or similar, or otherwise accommodate her if possible and reasonable].	None [see <a href="#">Pregnancy &amp; Maternity</a> ].
Return to work from Extended maternity leave, within 29 weeks of birth	Two years (before the start of the 11th week prior to expected week of giving birth).
Not to be unfairly dismissed	Two years (less the notice period) [See also <a href="#">Dismissal</a> .]
To receive, on request, written reasons for dismissal	Two years (none if pregnant or if maternity leave ends on dismissal. Further, no request is necessary.)
To reasonable time off to seek alternative work following redundancy	Two years

## Fixed Term Contracts

[See also [Contracts of Performance](#). ]

Fixed Term Contracts are not as straightforward as they sound:

1. Under these contracts, Employment is from one date to another, unless you want to include a notice period to terminate the contract before expiry of the fixed term, of at least the statutory minimum, by both sides. If you don't, it is likely that you will be paying throughout the term of the contract, even if you don't want to, unless the Employee acts in such a way as to allow summary dismissal e.g. by committing an act of gross misconduct.
1. The contract will expire on the given termination date and this is automatically a [Dismissal](#). [There is an exception - see [Contracts of Performance](#)]
- ) For once you can actually write out of the contract the rights concerned with redundancy and unfair dismissal, **provided**.....

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**Warning:**

- Where a series of fixed term contracts have been used consecutively this will usually create a total period of [Continuous Employment](#) - and more Employee rights.
- Even where breaks of several weeks occur between contracts it has been known for the periods to count, together, towards [Continuous Employment](#). This is the case where the breaks are seen as 'custom and arrangement' or as just a temporary cessation of work.

## **Contracts of Performance**

In this kind of contract the contract expires on completion of a particular task. This is a variation on the Fixed Term Contract. The significant difference is that this does not automatically mean dismissal has occurred - instead the contract is discharged by performance and there is no need for notice to be given. As such the waivers referred to above would not normally be written in. Where an Employee is expected to keep himself available for work after completion of the task, it is likely that his employment continues.

### **Notes:**

The statement of main terms and conditions of employment for a person covering, temporarily, for a person on maternity leave should state that they have been taken on as a replacement for the Employee on maternity leave and that employment ends on the return of the maternal Employee – the termination should then be lawful and fair (i.e. it would be for "some other substantial reason" justifying dismissal). This would also apply for a person covering, temporarily, for a person suspended on medical grounds.

## Annualised Hours Contracts

These contracts are used where an employer faces fluctuating demands for employees over the course of the year, thereby reducing overtime payments and the costs associated with poorly-used staff. It stipulates that a set number of hours will be worked during the a year, but the employer has the right to state exactly when the hours must be worked. The advantage of this kind of contract to the employee over the zero hours contract is that in the former the employee is guaranteed an income on a regular basis. A notional average rate is calculated over a certain period for the annualised number of hours for which the employee will be required to work but the employer has the power to decide when those hours will be worked. A simple annualised hours clause is ....

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- you will also have to amend any clauses relating to sickness and holidays accordingly.

**[Do use the help line.]**

## **Zero Hours Contracts**

These contracts (also called "nil hours" contracts) contain a clause under which the employee has no contractual minimum hours or a set number of hours but is paid for hours actually worked. This can give you maximum flexibility. These contracts are common where casual or irregular work is offered and the person engaged may not actually have the status of employees. Zero hours contracts are becoming more common in employment contracts. The requirement is often to be available for work on reasonable notice but there is no obligation to provide work or to pay for this availability.

A simple clause covering hours of work in a zero hours contract is included in .....

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## Terms and Conditions of Employment

Contracts exist even if nothing is 'in writing': a contract may consist entirely of written terms, purely spoken terms or a mixture of written and spoken terms (the problem with spoken terms is that of proof). Furthermore, the terms may be either 'express' or 'implied'.

**Implied terms:** Such terms are inserted into the contract on various grounds e.g. because the courts believe that the contract can work only if such terms are implied or because the court believes that the parties must have intended to include such terms at the time that contract was made but which they omitted to mention. Others are always implied because of established law e.g. that the employer must take reasonable care to ensure the health and safety of all Employees. Others are implied on the basis of "business efficacy" i.e. implied by the very nature of the job. These would be such terms as are necessary to make the contract work as a business agreement. An example of this latter category in the employment context is the implied term that employees must obey lawful orders and work diligently, giving loyal and faithful service to the Employer. One of the most important implied duties of the Employer is that he shall do nothing calculated to destroy or seriously undermine the relationship of trust and confidence in the employment relationship.

**Express terms:** These are terms made explicit in the contract, in either written or spoken form. Though such terms may be expressed in the spoken word we recommend they are committed to **writing** to avoid disputes later.

Whether the term is included in the Statement of Main Terms and Conditions of Employment [see below] or it forms part of a handbook and is referred to in the Statement is not critical. Proof of its service on the Employee may be critical, however, and therefore popping it on a notice board for general attention is not advised.

**New or Amended terms:** Where there are already documents and statements in place it is likely that from time to time you will want to amend existing terms or introduce new ones. Where no written evidence of the contract exists you will need to address this. [See [Issuing terms](#).].

### Statement of Main Terms and Conditions of Employment:

It is a requirement of UK Employment law that a written 'Statement of Main Terms and Conditions of Employment' is given to an Employee who has completed one month in your employ \*. It must be issued in the first two months of employment. There are key elements that must be included and there are elements that it is very useful to include.

\* There is an exception: - if you provide a formal written Contract that expressly covers all necessary particulars and fulfils certain other criteria. Otherwise the Statement of Main Terms and Conditions of Employment is still necessary.

### **Note:**

- An existing Employee can request a Statement of Main Terms and Conditions of Employment and it should be issued within two months of the request.
- With very specific exceptions in [Fixed Term Contracts](#), Employees cannot sign away their

statutory rights.

- Contracts in which both parties agree to the commission of an unlawful or immoral act cannot be enforced. [Trying to avoid Tax or National Insurance is a common one]

The absence of a Statement of Main Terms and Conditions of Employment does not mean a Contract does not exist but it can mean that an Industrial Tribunal may determine that certain terms are, in fact, within the contract where they have been omitted e.g. terms relating to notice periods, holidays, sick pay and so on. You cannot be fined for not issuing the statement but in the interests of proper control the statement should be defined and issued properly so as to avoid any other party forcing less favourable terms on you, the Employer.

This system offers a series of suggestions and example statements, but there is much to consider before that stage: -

1. Is the individual your Employee?
2. If she is, what type of Contract exists, or should exist?
3. What period of Continuous Employment has she?
4. What rights exist, or will exist for her?

## Issuing Terms

The introduction of new or amended policies and terms of employment is a matter for careful consideration. A fair process must be adopted. Where you recognise trade unions for the purposes of negotiating such matters it is recommended that you take advice from the outset. Significant changes, such as the unilateral replacement of company cars with scooters or just moving someone's office can result in claims of constructive (unfair) dismissal or breach of contract.

### **Breach of contract:**

Where a party breaks an express or implied term. **NB. The Employee does not require a two-year period of continuous employment to make a breach of contract claim.**

There are two levels;

1. A fundamental breach, one that goes to the root of the contract. Here, the contract may be viewed as terminated and the aggrieved can sue for losses.
2. A minor breach, not going to the root of the contract. This is rarely pursued.

### **Constructive dismissal:**

A constructive dismissal occurs where.....

**Some of the legal help texts contained within this *Employment and Personnel Desk* demonstration have been edited, abridged or, in part, deleted.**

## Computer Misuse

With the increasing prevalence of computers in the workplace, you might need to ensure that all employees with access to computers and other electronic equipment are bound by a policy statement regulating their use of it. This can specifically include statements identifying what employees may and may not do with such equipment, which employees have access to it, rules relating to the use and misuse of passwords and unauthorised access.

- Misuse of computers, faxes and e-mail might constitute serious misconduct by the employee. Examples of such misconduct should be included in the statement.
- Particular attention should be given to the use of confidential or sensitive information on computers, faxed messages, Internet communications and e-mail communications.
- There is vast potential for placing defamatory or obscene material on these systems which you might address in the policy document.
- These matters may be referred to in the contract of employment and thereby incorporated within your employee's contractual terms.
- A simple clause covering this topic is included in the example terms.....

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## Transfers of Undertakings

One of the most difficult areas of employment law is that relating to the transfer of undertakings. This concerns business transfers, for example where company A takes over company B as a going concern: under current legislation, employees who were working for company B at the time of the transfer may become employees of company A, with their contract of employment simply being transferred from B to A - i.e. the same terms and conditions of the employees transferred are the same as with their previous employer.....

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What is and isn't a transfer is being tested repeatedly, so if in doubt – **use the advice line.**

## The Statement of Main Terms and Conditions of Employment

There are minimum requirements as to the information that must be contained in the statement of main terms and conditions of employment to be provided to all employees who have worked for at least one month.

This system assumes you will either issue such a document and append greater detail in the form of a 'handbook', or you will issue one all-encompassing contract of employment statement. The points that must be included are: -

### **In one document:**

1. The parties to the agreement - you and the employee.
2. The date employment began.
3. The date continuous employment began.
4. The job title [or, if preferred, a brief description of the role.].
5. The place of work. If there is not one specific work place this should be indicated and the company's full address should be included - particularly travel to Customers, Etc. Where, for a period of more than one month, he employee is to work outside the UK then extra information must be given concerning the currency he will be paid in, how long he is to be abroad and details of his repatriation.
6. How, what and when he will be paid, including overtime if applicable and fringe benefits.
7. What hours he will work (including times allowed for meal breaks)..
8. Annual leave entitlement, including treatment of Public holidays.
9. How, on termination, pay for accrued annual leave is calculated so that the employee can calculate his entitlement.

### **With 1 to 9 above, or in subsequent instalments within the two months:**

10. For fixed term and temporary contracts, the expiry date or expected period of employment.
11. What notice periods are to be provided (these are subject to the statutory minima, whatever is stated in the contract).
12. Rules affecting sickness absence and details of sick pay (if any is to be paid).
13. Pension scheme information and whether the employee is contracted out of the State scheme.
14. Collective agreements which affect the contract.
15. Details of disciplinary and appeals procedures, if any, where the employer employs twenty or more employees - we recommend these are included - see [Discipline](#).
16. Grievance rules and procedures.

This is the minimum. For details of pensions, sickness rules, discipline and grievance rules and notice periods reference may be made to a further document [**such as an Employee hand book**] in the statement. Where any point doesn't apply, this needs to be stated - just missing the point out altogether, e.g. because you don't have a pension scheme, would not comply with employment legislation.

It is recommended that far more information than the minimum is included. This makes your intentions clear and it becomes a contractual requirement that your policies are observed. It may

also avail you of certain defences, particularly in some cases of unlawful discrimination.

Employees who are entitled to written particulars of employment have a right to make a reference to an industrial tribunal if either no statement is issued, certain particulars have been omitted or incorrect particulars have been included. The tribunal may determine the particulars to be included, confirm that the particulars given are correct, amend or substitute particulars where necessary. Employees have a right to make such a reference at any time during the course of their employment or within three months of its termination.

If there is a change to the terms of employment after the statement has been issued, employees must be informed of them within one month by issuing another written statement. Where the change is only that of a change of the name or identity of the employer, the employer must notify the employee in writing of the change within one month of it (there is no need to issue another written statement of particulars).

Included in the system are sample policies on such matters as Alcohol abuse, Appearance, Harassment and Smoking at work. You may elect to exclude these, edit them before inclusion or take them as they are - see [Issuing terms](#). Your own existing policies can, of course, be included as well references to any collective agreements. **In all cases you are urged to talk the help line or seek other professional advice before varying any terms and conditions of employment.**

## **The parties to the agreement**

You and the Employee. Where the employer is a limited company, care should be taken to ensure that the full name of the limited company is given. Where the company trades under a different trading name, the full name of the limited company should be supplied followed by its trading name, e.g. "Wizzo Company Limited, trading as 'Supadupa Kleaners'".



## **The place of work**

If there is not one specific work place this should be indicated and the company's full address should be included. Where it is to be a contractual requirement that employees travel to customers or to other places this should be expressly stated.

Where, for a period of more than one month, the employee is to work outside the UK then extra information must be given concerning the currency he will be paid in, how long he is to be abroad and details of his repatriation.

Homeworkers' 'places of work' should be broad enough to include occasional visits to business addresses and so on. Where Employees are employed to work from home and also visit client addresses, this should be stated.

### **Mobility clauses:**

These are often the subject of challenge in the courts. To maintain the maximum flexibility, Employers should ensure that they are able to move the location of their business taking all (or some) of their Employees with them without fear of constructive dismissal claims by using well-drafted, clear and reasonable mobility clauses....

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## Pay

[See also [Laying off and Shortages of Work](#) and [Equal Pay Policy](#). ]

The Contract of employment will determine the rate, frequency and method of pay. There is, as usual, no right to change these terms without the employee's express or implied consent. The rate, frequency and method of remuneration must be included in the [Statement of Main Terms and Conditions of Employment](#).

Employers should be aware that "pay" has a very wide meaning in employment law: it includes not just monetary sums in the pay packet/salary but also pensions, holiday pay tips and even, in some circumstances, discretionary, non-contractual bonuses.

**Deductions from Pay:** Certain deductions made.....

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## Working Hours

What hours are to be worked must be included in the [Statement of Main Terms and Conditions of Employment](#).

The EU working hours directive, which is to be implemented in the UK, places the following requirements upon the majority of employers, with certain exceptions.

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If you are uncertain about your working practices – call the help line for guidance.

## Annual Leave

[See also: [Discrimination](#)/ [Paternity and Compassionate Leave](#)/ [Dismissal](#)/ [Issuing Terms/ Working Hours](#)]

An Employee's annual leave entitlement and detail as to how, on termination, pay for accrued annual leave is calculated so that the employee can calculate his entitlement must be included in the statement of main terms and conditions of employment.

Disputes over holiday entitlement and pay for unused holiday, particularly on termination, are common. Detailed clarification of the rules is a must.

Where you intend changing established holiday rules see [Issuing terms](#) - **and do take advice**. In other cases, where you are merely restating rules established either by custom and practice, by collective agreement, or a by an existing express term, you may simply edit the example given....

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## Notice Periods

[See also [Issuing terms.](#) ]

0 The notice periods included in the example terms of notice are in line with the statutory minima. Where your existing notice periods are less than the statutory minima they should be brought in line. Where they are greater than the statutory minima it may be the safest course to leave them unchanged for existing employees.

1 Where a contract is for a fixed term, to expire on a date defined at outset, there is no need to give further notice, although it may be wise to do so.

2 Similarly, where the retirement age is given in a contract, notice of retirement need not be given although it may be better practice to do so.

The notice need not be in writing (although from the Employer's point of view it may be advisable to give written notice of termination and to keep this on file) and either side may waive the right to notice. The Employee may accept payment in lieu of notice.

5 The period of notice for termination of the contract by the employer is required in the [statement of main terms and conditions of employment](#) and may not be less than the statutory minima: -

### **6 Statutory minimum notice periods - Employer to employee:**

<b>Length of service:</b>	<b>Minimum notice period:</b>
Up to one month	None.
One month to two years.	One week.
More than two years to twelve years.	One week per year.
More than twelve years.	Twelve weeks.

The period of notice for termination of the contract by the employee - notice of intention to resign - is required in the [statement of main terms and conditions of employment](#) and may not be.....

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## **Pensions**

The right to join pension schemes and retirement ages should not be directly or indirectly discriminatory - see [Discrimination](#).

The minimum information required to be given to employees about pensions is given in [The Statement of Main Terms and Conditions of Employment](#).

The rules of company schemes vary between companies and the scheme providers - therefore the details you require for your employee's information should be obtained from the scheme provider and, if desired, imported into the system.

## Collective Agreements

[See also [Trade Unions](#). ]

Collective agreements, whether express or implied through custom and practice, are binding on the individual where the terms have been incorporated into the individual employment contract. The parties will usually be bound by the.....

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Any that apply must be detailed to the Employee and pointed out in the [statement of main terms and conditions of employment](#).

## **RULES, POLICIES & PROCEDURES**

Alcohol

Appearance

Appraisals

Annual leave

Bullying and Harassment

Business Expenses

Company Cars and Vehicles

Computer Misuse

Discipline

Equal Opportunities

Equal Pay Policy

Grievance

Health & Safety at Work

Laying Off and Shortages of Work

Paternity and Compassionate Leave

Pregnancy and Maternity

Racial Harassment

Redundancy

Resignation

Restrictive Covenants

Retirement

Searching Employees

Sickness Absence

Sexual Harassment

Smoking

Trade Unions

Unauthorised Absence



## Alcohol

The consumption of alcohol during or before the working day may be of no significance to your business. Alternatively, either for health and safety reasons or in the interests of image or productivity it may be desirable to be ready to control the consumption of alcohol.

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## Appearance

0 [See also [Issuing terms.](#) ]

For a host of reasons including image, Health & Safety and hygiene, the way some or all of your employees look and dress may be important to your business.

With any dress or grooming policy which the Employer may adopt, there must be some reason beyond personal taste upon which it is based (a desire to achieve a conventional appearance might well be sufficient reason), otherwise the requirement may be unenforceable and/or lead to claims of discrimination or unfair dismissal..

Different Dress codes for men and women are reasonable in the main, if the standards you seek to apply are equitable. Care must be taken to avoid direct or indirect discrimination - no employee should be treated less favourably than any other on the grounds of Sex, Race or Disability [see [Discrimination](#)].....

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A clause to secure the return of uniform is essential, particularly where the clause includes permission for a deduction from wages where the uniform is incomplete, damaged or missing.

## Appraisals

Appraisals are often thought to be something only the big companies do, but for morale, training, employee retention and a sense of ownership appraisals can be productive for any employer.

There is no legal requirement to appraise employees, however there can be benefits when trying to defend a variety of claims, particularly over Equal Pay.

Full-circle appraisal is an interesting alternative to the usual annual meeting between the appraisee and his immediate boss. Here, some of the appraisee's subordinates are asked to contribute to the appraisal. No defamation or slander, just the good and the bad from the subordinate's view.

## Bullying and Harassment

Bullying or harassment can have a detrimental effect on the health and morale of the victim. Apart from the effect on productivity, the employer must provide a healthy working environment [[Health & Safety at Work Act 1974](#)]. There is also the risk of a claim of [constructive dismissal](#) or **harassment** on the grounds of **sex, race or disability** (harassment of a disabled employee is likely to constitute a "detriment" under the Disability Discrimination Act 1995) - by not addressing these issues such claims might succeed, so it is recommended that you include the policies on these matters....

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## **Business Expenses**

There is a common law requirement for Employers to indemnify their Employees against certain expenses. To provide a degree of control and avoid at least some disputes an Expenses Policy is recommended. The example should be edited as required but take care not to render existing terms less favourable without first taking advice. [See [Issuing Terms](#). ]

## Company Cars and Vehicles

The reason for including rules about how vehicles are used is to:

- ensure you have control of the image your vehicles portray.
- ensure your insurance is not invalidated.
- give you a chance of recovering certain costs.
- give you a chance of avoiding certain criminal responsibilities.

**2 NOTE: The example policy included in the handbook will need some editing. It may be more effective if, in addition to issuing it through the handbook, it is issued in the form of a letter to any company vehicle drivers.**

## Equal Opportunities Policy

There are risks of claims of **sexual or racial harassment** or **sexual or racial discrimination**. An applicant who didn't get an interview, a prospective employee who was short-listed but ultimately refused a post, or an existing employee may make a claim.

The claim may well be spurious. It may be justified because of the actions of an employee or some other person your company is in contact with. By not addressing these issues such claims might succeed. Your only defence may be to show you've done everything that is reasonable to prevent such behaviour - so it is recommended that you include an equal opportunities policy and policies concerning harassment and bullying.

## Equal Pay Policy

[See also [Discrimination](#).]

Equal pay claims can be brought by men or women. The right to equality in the terms of their contract (not just pay) exists if they are employed in like work, work rated as equal or work of equal value.

A defence is available if the Employer can prove the difference is due to some genuine factor and not gender. The factor must be both significant and relevant. Otherwise, if such a claim succeeds the less favourable term can be improved to match the more favourable (and more expensive) term.

Where there are only a few persons employed and their terms have been negotiated individually an equal pay policy is probably unnecessary and the pay grade elements of this system will not be applied.

Within larger organisations where there are more Employees, many performing similar or comparable roles, there are benefits in developing an equal pay policy and applying a system of remuneration that is 'transparent': -

- Planning, forecasting and agreeing pay and benefits for new and existing Employees becomes easier but in particular it can be easier to demonstrate that rates of pay are not influenced by matters other than the role itself – and the defence may be easier to prove.
- A transparent pay system allows Employees to understand their remuneration package and removes suspicion of discrimination.....

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[see [Useful telephone numbers](#). ]



## Grievance

It is a requirement that the statement of main terms and conditions of employment contains reference to how a grievance should be raised and to whom.

A grievance might relate to any employment issue. A formal grievance procedure can ease frustration just by allowing an employee to express his feelings. More importantly it may allow the early resolution of a seemingly minor problem that might otherwise grow to become a real threat.

### Note:

- Where necessary, you should edit the example policy and procedure to fit your company's size and structure. **If you're unsure, call the help line.**
- Grievances should be treated separately to disciplinary action and appeals, though a grievance may lead to a disciplinary action.
- You may choose to allow an employee to have a member of staff present with him.
- If you recognise a Union you may have to allow for the presence of Union officials and distinguish between any collective disputes procedures.
- **Do remember to take notes - an unbiased record of what transpires at such meetings is likely to be very important in reaching (and perhaps even justifying) a decision. The decision itself should, of course, also be recorded.**

## Laying Off and Shortages of Work

[See also [Redundancy](#).]

An Employee is considered to be laid-off where he is not provided with work for a particular week and he is not paid for that week. Forced lay-offs or reducing paid hours because of a reduction in work is likely to amount to a breach of contract unless an express term is included in the contract of employment.....

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## **Paternity and Compassionate Leave**

Unless already a part of your contracts of employment, whether you wish to include paternity leave and the like as benefits is up to you. Short examples are given but they must not be included unless you mean to give your employees these benefits as contractual rights.....

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## **Pregnancy and Maternity**

A policy or statement of rights should be included in the information given to female Employees to ensure they are aware of their rights if they should be or become pregnant. The example reflects the minimum rights – see [Issuing Terms](#) and seek advice before endeavouring to reduce any existing contractual rights.

### **Antenatal Care – The Right to Time Off:**

A pregnant Employee has the right to paid time off for antenatal care appointments. Her employer cannot refuse unreasonably, but can request proof of the appointment (such as an appointment card). The employer can also ask to see a certificate stating she is pregnant – but only after the first appointment.

### **Maternity Leave:**

Any pregnant Employee is entitled to.....

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## Redundancy

Redundancy is a dismissal [see [Dismissal](#)]. The selection of Employees for redundancy can be an emotive issue. It can also produce claims of unfairness.

0 We recommend a policy on selection for redundancy should be included in the information provided to Employees. This will go to demonstrate the absence of unlawful discrimination and allow the Employer to choose who is to go – flexibility is a must.....

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## Resignation

[See also [Dismissal](#).]

If, in accordance with the contract of employment, the employee gives notice, then he has resigned and the contract ends at the end of the notice period, unless you both agree to pay in lieu of notice and the date is brought forward.

Where an employee resigns and claims he was constructively dismissed the resignation is a dismissal.

### Notes:

- Once you accept his resignation, the employee cannot usually change his mind - but a cooling-off period may be appropriate in some circumstances e.g. where it is obvious that the apparent resignation was made "in the heat of the moment" and was not really meant as such.
- It is worth specifying in the contract that resignation must be tendered in writing - it makes proving a resignation a lot easier.
- There is usually no right to work through the notice period when paid in lieu of notice, unless some detriment results whereupon a breach of contract claim may result.

## Restrictive Covenants

[See also [Issuing Terms](#). ]

Opinions and legalities in this area are fluid. Until a specific covenant is tested in Court it's enforceability will be in question. Then there's the appeal. ....

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**NOTE: The example is intended to be useable but to have a chance of being enforced it must be edited as appropriate - do use the help line and take advice. It is included in the example Job Conditions Grid for JOB SPECIFIC CONDITIONS - using a restrictive covenant globally, through the handbook, may weaken it. Better to issue it sparingly, rather than give it to every Employee from the Sales Director to the Janitor.**

## Retirement

[See also [Discrimination](#).]

Where the retirement age is given in a contract, further notice of retirement need not be given - although it may be better practice to do so - [see [Notice Periods](#)].

65 years is taken to be normal retirement age unless your employment contract dictates otherwise. Where a retirement age below 65 is to apply, it must be rigorously adhered to or a precedent may be established.



## Searching Employees

This area can produce serious problems for all concerned - allegations of assault, indecency, unlawful imprisonment, harassment and discrimination.....

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## Smoking Policy

[See also [Issuing Terms](#)].

You owe your employees a duty of care and non-smokers could argue that you weren't meeting this duty if you did not help them avoid the hazards of passive smoking. In fact, if you allow smoking in your workplace and this affects the environment of non-smoking employees, you may be open to claims from non-smoking employees that the passive smoking to which they were subjected has damaged their health.

A case decided in 1997 established that a non-smoker was constructively dismissed where her employer .....

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## Trade Unions

### Recognised Trade Unions:

At present, there is no legal obligation to recognise any Trade Union, though recognition may be established practice without a written agreement. A policy concerning Trade Union Membership is included if you wish to establish your position – it should be edited as necessary.

A number of rights accrue to recognised Unions. ACAS issues a code of practice on disclosure of information to Unions [see [Useful Numbers](#)]. If in doubt – seek advice...

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# **DISCRIMINATION**

[Application Forms Free of Sex Bias](#)

[Equal Opportunities Monitoring](#)

[Equal Opportunities Policy](#)

[Equal Pay Policy](#)

[Model Guidance Notes to Interviewers](#)

[Unlawful Discrimination - Overview](#)

[Direct Discrimination](#)

[Indirect Discrimination](#)

[Genuine Occupational Qualification](#)

[Victimisation](#)

[Disability Discrimination](#)

[Remedies](#)

## **MODEL GUIDANCE NOTES TO INTERVIEWERS**

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## **APPLICATION FORMS FREE OF SEX BIAS:**

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## Equal Opportunities Monitoring

[See also [Equal Opportunities Policy](#).]

There is no specific requirement to monitor the composition of either candidates or employees. Such monitoring may, however, provide evidence of the sincerity of your Equal Opportunity Policy and reduce or eliminate claims to the contrary.

The size and complexity of your organisation will affect how monitoring might be carried out. Certainly within a small organisation (perhaps a dozen employees) it might be reasonable to say the information for monitoring is within the personal knowledge of the Proprietor.....

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## Unlawful Discrimination - Overview

Unlawful discrimination in employment may be direct or indirect. Employers are responsible for the actions of their employees when at work. In cases of indirect discrimination the only defence is to prove you had taken every reasonably practicable step to prevent the discrimination. There is no defence to direct (unlawful) discrimination. The equal opportunities policy, equal opportunities monitoring, and sexual and racial harassment policies are included in an effort to stop discrimination and, if necessary, avail you of the defence.

**N.B. There is no requirement of a qualifying period of employment before a person may bring a complaint of discrimination, unlike that for an unfair dismissal claim.**

Broadly, discrimination is divided into:

1. **Direct discrimination** i.e. treating a person less favourably because of their:
  - Sex,
  - Marital status,
  - Race,
  - Disability
  - Membership / non-membership of a union
  
1. **Indirect discrimination** i.e. Applying some unjustifiable condition that disadvantages persons of a particular sex (or marital status), racial group or disability.
2. **Victimisation** i.e. treating a person less favourably where they have brought proceedings against a person under the discrimination statutes, alleged discrimination or a breach of the discrimination statutes or given evidence in such a case, or sought to help another to do so.....

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## **Direct Discrimination**

In the case of the SDA and the RRA, direct discrimination occurs where a person is treated less favourably on the ground of his or her sex or race than a person of the other sex or from another racial group. In the case of the Sex Discrimination Act 1975 (SDA), which also covers marital status, less favourable treatment on grounds of marital status of a married person compared to that of an unmarried person is unlawful.

In the case of the DDA, a person discriminates against a disabled person if he treats that person less favourably than he treats or would treat others to whom that reason does not or would not apply (the reason must relate to the person's disability) and the employer cannot show that this difference in treatment is objectively justified. Therefore, the less favourable treatment must be for a reason connected to the person's disability - if it is not, for example if the reason is that the disabled person is not the best candidate (once the disability has been taken into account), then discrimination against the disabled person would be lawful.

It is also unlawful discrimination against a person with a disability where an employer fails to make reasonable adjustments where there is a duty to do so (see the section on disability discrimination below).

Examples of "less favourable treatment" are cases where a person is not selected for interview or for a job and this is based on the fact that the person is a man/woman or from a particular race/ethnic group or because he or she is disabled.....

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## **Indirect Discrimination**

Indirect discrimination can occur where .....

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## **Genuine Occupational Qualification**

An employer may discriminate in the arrangements he makes for recruitment, or by refusing to offer employment or access to opportunities for promotion, transfer and training within the employment where being a member of a particular sex or race/ethnic group is a genuine occupational qualification (GOQ) for the particular position.

The SDA specifies the situations in which a GOQ may operate. They are:-

1. Where the essential nature of the job calls for a man or a woman for reasons of physiology, or in dramatic performances or other entertainments, for reasons of authenticity;
1. Where the job needs to be done by a man or a woman for reasons of decency or privacy e.g. where members of the opposite sex are in a state of undress or using sanitary facilities.....

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## **Victimisation**

Victimisation of a person is unlawful under the discrimination statutes. It occurs where a person is treated less favourably because they have brought proceedings against a person under the discrimination statutes, alleged discrimination or a breach of the discrimination statutes or given evidence in such a case, or sought to help another to do so.

## **Disability Discrimination**

### **To which employers does the DDA apply?**

- The DDA applies only to employers with 20 or more employees (including employees, contractors and sub-contractors).
- It also applies to principals who engage contract workers i.e. those who are employed by someone other than the person who is making the work available e.g. where the employer is an employment agency supplying workers to a company (the principal).....

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## Remedies

If the employer is found to have discriminated against the complainant on the ground of race, sex or disability, the remedies available against the employer are:

1. Declaration
2. Compensation
3. Recommendation

### Declaration:

This is where the court or tribunal makes a declaration as to the rights of the complainant (employee) and respondent (employer) e.g. that an act of unlawful discrimination has taken place (which is specified in the declaration). This remedy is appropriate only where no loss has been suffered or to establish a legal principle.

### Compensation

Compensation is unlimited in discrimination cases and occasionally extends to *several hundred thousand pounds* in the very worst cases. It may be awarded where the tribunal considers it to be just and equitable. Compensation for *injury to feelings* may be awarded which, again, may be substantial. Interest may be awarded on the compensation ordered to be paid.

### Recommendation

The tribunal may make a recommendation that certain action be taken by the respondent (employer) within a certain time to reduce or obviate the adverse effect on the complainant in relation to any matter to which the complaint relates. If the respondent fails to take the action recommended, without reasonable justification, the tribunal may order compensation or increase the compensation already ordered, if any.

### Note:

- These laws protect job applicants, trainees, employees and other workers too.
- There is no limit to the size of the award against an employer who unlawfully discriminates.
- Harassment of a person because of their race, sex or disability may be a criminal offence under the Criminal Justice and Public Order Act 1994 (the offence of causing *intentional* harassment, alarm or distress) or the Protection from Harassment Act 1997 (where intention does not have to be proved).
- Currently discrimination on the grounds of age is lawful (and prevalent.) although the Labour Government has pledged to introduce age discrimination legislation in the future.
- Soon legislation concerning discrimination on the grounds of religious beliefs is expected - **if in doubt - call the helpline.**

# **RECRUITMENT and INDUCTION**

[Overview of Recruitment](#)

[Job Descriptions](#)

[Person Specifications](#)

[Advertising](#)

[Application Forms Free of Sexual Bias](#)

[Application Forms](#)

[Illegal Workers](#)

[Interviews](#)

[Model Guidance Notes for Interviewers](#)

[Satisfactory References](#)

[Offer of Employment](#)

[Medical information](#)

[Induction](#)

## Overview of the Process of Recruitment

Getting recruitment right will save you money:

- Simply employing the wrong person wastes your time and advertising costs.
- Unlawfully discriminating at this stage could result in ruinous legal action.
- Employ someone who doesn't have permission to be here and it could cost you £5,000 in fines alone. [See [Illegal Workers](#). ]

The suggested recruitment process includes the following stages/forms: -

1. [Job description](#).
2. [Person specification](#).
3. [Advertising](#)
4. [Application Forms](#)
5. Rejection letter
6. Please wait letter
7. Attend interview letter
8. [Interviews and assessment](#) forms
9. Failed interview letter.
10. [Offers of employment](#) letter
11. [Reference letter](#)
12. [Health checks](#).
13. [Induction](#).

Where necessary additional stages can be added. Where you find certain steps are not applicable you might prefer to ignore them - however, do check that you aren't opening the doors to claims of unlawful discrimination or prosecution for employing an illegal worker. **Treat all applicants in the same way.**



## Job Descriptions

### Why:

- Either the Job Title or a Brief Description of the work to be done is required within the Statement of Main Terms and Conditions of Employment.
- Flexibility may be a requirement, even a change of roles in some circumstances and using only a Job Title might prove restrictive.
- The scope of a role may also be important in cases arising out of redundancy, equal pay or discrimination.
- To help you decide the desirable traits in your candidates and thus build the Person Specification.

### How: [see the Job Description/ Person Specification Tool in Versions 2 and 3.]

- Accurately describe the main duties, functions and responsibilities of the role.
- What skills does the work require.
- Describe the relationships - who reports to whom.
- Define the limits of the remuneration package.

**Note:** See [Discrimination](#).

## Person Specifications

### 0 Why:

- To identify the qualities the successful candidate will need.
- To provide a Benchmark to help you judge objectively between candidates.
- To aid in interviewing - guidance on what questions to ask.
- To allow monitoring of the selection process for equality.

### 2 How: [see the Job Description/ Person Specification Tool in Versions 2 and 3.]

- Describe the main skills and attributes the role will require.
- List which particular attributes would be preferred - avoid stereotyping, e.g. "Woman's work" against "Man's work".
- List what questions will lead the candidate into the areas to be tested.

### 2 Notes:

3 See [Discrimination](#). It is not unlawful to discriminate against smokers, so your Person Specification can prefer or even demand a non-smoker.

4 A Matrix, using the Person Specifications, can be used to compare the short listed Candidates and decide objectively between them.

5 The **Person Specification Form**, and any matrix used should be retained for at least three months after the selection process has been completed so as to be able to demonstrate the reasons for your decision and to defend allegations of discrimination, where necessary.

## Advertising

[See also [Discrimination](#).]

Remember to apply any [Equal Opportunities policy](#) as you compile your advert. - whether you are recruiting internally or externally.

Direct discrimination is unlawful and indirect discrimination may be so if it cannot be justified - an advertisement requiring a degree from a British University was held to be unlawful. Requiring a particular language where no actual need exists has similarly been deemed unlawful. Direct sex and race discrimination can not be justified but indirect discrimination may be objectively justified. To do this you must be able to show that any requirement or condition applied by you corresponds to a real need of the business, that it was appropriate and necessary for achieving that objective. Special rules apply where a significant reason exists for employing persons belonging to a particular gender or race (see Genuine Occupational Qualifications in *Discrimination*). If in any doubt - **Call the advice line**.

## Application Forms

[See also [Application Forms Free of Sex Bias/ Discrimination/ Equal Opportunities Monitoring/ Medical Information.](#) ]

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The example application forms are included for you to edit before use. There is a strong case for job-specific application forms and they can be saved for future use.

Unless required for genuine reasons connected with the post, or for equal opportunities monitoring, information as to marital status, number of children, race and disabilities should not be requested – see also [Application forms free of sex bias.](#)

Application forms should be completed in the candidate's handwriting when possible. Where appropriate, the Application form will provide information to enable you to sift through the applicants and decide who to interview.

The space reserved for 'Office Use' is for your observations as to suitability. This should not be ignored - if the applicant does not pass this early stage of selection, the form should be endorsed and **retained for at least three months after the end of the recruitment procedure.** This will enable you to demonstrate the reasons for your decision - to defend allegations of Discrimination, where necessary.

## **Illegal Workers**

Directly employing someone (i.e. on a contract of service) who is not permitted to be in the UK, or is not permitted to work in the UK is a criminal offence. Under the Asylum and Immigration Act 1996, you have a defence if you have requested sight of certain documents e.g. a passport with a work permit stamped into it, a birth certificate issued in the UK or a passport issued by a Member State of the European Union. The employer must not know that the worker was not entitled to work in the UK otherwise the defence does not apply.

At some point in the recruitment process, before offering a job, you should verify they are allowed to apply for work. **All candidates** [to avoid claims of discrimination] should be asked to produce to you an original official document including either a passport, P45, P60 or birth certificate. You should check it pertains to the candidate, before retaining a copy for at least the 6 months following the end of employment. A fine of up to £5,000 may be imposed if an Employer is convicted under the Asylum and Immigration Act 1996.

**Keep the copies safe - they may form your defence.**

## Interviews

[See also [Model guidance notes to Interviewers](#)]

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The Interview Assessment Form is included and as usual you should edit it as necessary and save your version for future use.

**For unsuccessful candidates the completed forms should be retained for at least three months after completion of the recruitment procedure - particularly to enable you to defend claims of unlawful discrimination.**

The form should be thought of as your contemporaneous record of this stage of selection, affecting this applicant. Therefore your reasons for not selecting the candidate should be clearly recorded - and they should reflect your observance of any [Equal Opportunities Policy](#).

Successful candidate's forms should be retained in their Individual Personnel File throughout their Employment with you.

## References

It is recommended that Job Offers are only made subject to satisfactory references being obtained. Precisely what is 'satisfactory' must be defined. This enables the retraction of the offer if, subsequently, the references are not satisfactory or not forthcoming.

'Open' letters of reference should not usually be accepted nor given where avoidable. Written references might be preferred but in the absence of a reply, or where time is short, the letter format can be used to obtain the information by telephone.

The referee has a responsibility to both the ex-employee and to the prospective employer. Nothing but objective, accurate and pertinent information should be given - otherwise either party might have recourse at law. In the light of this, where you are asked to provide a reference you might prefer to respond using the included reference format.

## Offers of Employment

[See also [References.](#)]

It is not necessary to issue a full [Statement of Main Terms and Conditions of Employment](#) at this stage, though you may prefer to. Certainly the terms of offer would be expected to conform to the statement of main terms and conditions of employment.

Spoken offers, if made, should only be made subject to acceptance of the full terms and receipt of references that satisfy the company. Where appropriate, it should also be conditional upon any other particular conditions that need to be met - perhaps a medical report. In this case a letter confirming the offer and its terms should be sent.

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### Notes:

- Spoken offers are enforceable, though it may be difficult to prove an offer was made.
- An Employee who has accepted an offer of employment can claim unfair dismissal even before actually commencing work. This can occur where the offer is withdrawn for an automatically unfair reason such as pregnancy or seeking to enforce a statutory employment right. [See [Dismissal.](#)]



## **Induction**

Good Induction processes allow you to get the most out of new Employees from the earliest. They improve staff retention and morale and reduce absence.

Induction processes should be tuned to the individual coming into the organisation. An example Induction form is included as a checklist - some elements will have been completed during the recruitment process and the role itself will cause other variations.

# PERSONNEL RECORDS

[Building the File](#)

[Medical Information](#)

[Termination Information](#)

[Data Protection](#)

## Building the File

[See also [Disciplinary Action](#), [Illegal Workers](#), [Termination Information](#) and [Data Protection](#)]

Personnel files must be secure and maintained so as to preserve confidentiality.

The retention of original documents is essential for evidential purposes. The ability to prove that an employee has accepted terms and conditions of employment, that an inaccurate statement was made on a health questionnaire, or that he has had four previous warnings for lateness is a real benefit when facing an Industrial Tribunal.....

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## Medical Information

[See also [Discrimination](#).]

**NOTE: Medical information concerning an employee must, of course, be treated as confidential.**

Medical and health related information concerning an employee may become important to you. Attendance may be poor and you need to discipline an employee or consider his capability, Health & Safety legislation may require you to assess an individual, or you might want to recruit someone who doesn't take more sick leave than holiday.

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You might seek information from the individual, from the individual's own medical professional, or you may prefer to have a private assessment performed by a medical professional of your choosing.

## **Termination Information**

As well as establishing why Employees decide to move on, questionnaires designed to obtain information about leavers might provide a useful piece of evidence if the Employee should surprise you with a claim months after leaving.

To this end, keep a completed form for at least three months after the date of termination.

## **Data Protection**

The Data Protection Act 1984 is concerned with the processing of personal information about living, identifiable individuals by computer systems. It makes certain requirements as to the information held, including: -

1. The employee must be told it is held.
2. Access to and correction of the data by the employee.
3. Its disclosure.
4. That it is current and accurate.
5. That it is pertinent - relevant to the purpose and not retained unnecessarily. To meet this requirement, ex-employee information might be archived in hard copy. Some employers who do not wish to reveal certain areas of their personnel files maintain them as hard copy. Although at present there is no right of access to manual files, this may change.

Periodically a check with the Employee about the data held will address most of these points.  
**The advice line will clarify any questions on these issues.**

## **ABSENCE**

[Annual Leave](#)

[Medical Information](#)

[Paternity and Compassionate Leave](#)

[Pregnancy and Maternity](#)

[Sickness Absence](#)

[Sickness and Discipline](#)

[Unauthorised Absence](#)

## Unauthorised Absence

Unauthorised absence is included in the examples of Gross Misconduct, within the example policy on Discipline, to provide a degree of control.

An Employee's absence will usually have been authorised previously, e.g. annual leave, or the absence is authorised by its nature and the procedure followed subsequently, e.g. sickness absence. In all other cases an investigation would normally precede any action, and the Employee would be offered the chance to offer an explanation [see [Discipline](#)].

There are two approaches most often taken. Either the unauthorised absence is misconduct and an investigation and disciplinary action may follow, or the absence is viewed as a repudiation of the contract of employment [see [When and How Employment Ends](#) ].

**NOTE: An Employee cannot dismiss himself, even by walking out, though such action may amount to gross misconduct or a repudiation of the contract. Further action [and advice] should be taken before termination could be considered 'safe'.**



## Sickness Absence

[See also [Issuing Terms](#), [Dismissal](#) and [Sickness and Discipline](#)].

There are five main areas for concern:

- The reporting of sickness absence.
- The pay a sick Employee is entitled to.
- Poor attendance through genuine ill health – [see [Sickness and Discipline](#).]
- Malingerers – [see [Sickness and Discipline](#).]
- Disability discrimination – if you employ 20 or more, ensure you know if an Employee whose attendance or capability you are addressing is disabled [see [Unlawful Discrimination](#).] If the Employee is disabled under the Act, other considerations will apply.

### **Reporting of Sickness Absence:**

Rules affecting sickness absence and details of sick pay must be given to Employees. The example term for inclusion in the statement of main terms and conditions of employment and the reporting rules included in this system should be edited as appropriate.

### **Sick Pay – Notes:**

- There is no legislative requirement to provide 'Company sick pay', though many Employers do.
  - Information regarding sick pay is required in the statement of main terms and conditions of employment.
1. Statutory sick pay is payable for a maximum of 28 weeks to most Employees, no qualifying service necessary, except ...

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# **DISCIPLINE**

[Discipline Overview](#)

[Sickness and Discipline](#)

[Investigation Procedure](#)

[Suspension](#)

[Disciplinary Action](#)

[Disciplinary Appeals](#)

[Gross Misconduct](#)

[Dismissal](#)

[Termination Information](#)

[Entitlement to Written Reasons for Dismissal](#)

## Discipline - Overview

Unfair dismissal claims are becoming more common. Other claims also arise out of matters relating to the behaviour and productivity of employees. Often there is no dispute about what actually happened - the dispute is likely to be about the procedure you adopted in your efforts to correct the employee. The absence of rules stipulating what will happen when the behaviour and productivity of employees is not what you want will make it harder to put matters right.

For these reasons the inclusion of discipline and appeals rules and procedures is recommended but the disciplinary procedure need not be part of the contractual terms and conditions - indeed, there may be advantages to including a provision a provision in the contract stating that the disciplinary procedure is non-contractual. This will avoid claims for breach of contract in circumstances where the procedure is not followed or is incorrectly implemented: such breach of contract claims could be substantial as the Employee might claim that he would have been employed (and paid) for the entire period during which the procedure was being followed (had it been properly implemented).....

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## Sickness and Discipline

[See also [Medical Information](#), [Sickness Absence](#) and [Investigation Procedure](#). ]

There are two main areas where discipline procedures come into play in controlling sickness absence - where the report of sickness is simply untrue, or where there are simply too many short periods of sickness.

Proper information should be obtained [see [Medical Information](#)] - the assumption that an employee is malingering usually won't stand up. However, very frequent periods of short sickness absences have, in the past, been accepted as fair grounds for eventual dismissal without further medical information beyond the employee's explanation (or lack of one).

Longer-term sickness might need to be addressed not as a discipline matter but as a matter of capability [see [Dismissal](#)]. An investigation must still be conducted and proper information should be sought but a resulting dismissal is not for a breach of discipline but for incapability.

The clause, 'In particular, frequent or excessive sickness absence will be addressed through the discipline procedure where it places a burden on the company.' is included to put employees on notice that sickness will be addressed. You may want to further define at what point management intervention will occur. Interviewing all employees who take uncertified sick leave can have significant impact on absenteeism.

The attendance monitoring function should help you identify any malingerers and put a cost to sickness absence. It costs the UK more than ten billion pounds a year in wages and salaries alone, so the exercise might be of value.

**Dismissal on grounds of ill health:** [See also [Dismissal](#)].

In the absence of any express or implied term regarding an employee's health, an employee who has not acquired protection by way of service (two years) can normally be dismissed with notice. Otherwise the fair dismissal of an employee whose sickness absence is a concern will be for one of two reasons: -

1. Capability.
2. Discipline.

**Note: Care should be taken where the employee is pregnant or enjoys Permanent Health Insurance as a contractual benefit – do take advice.**

The action that you take might result in claims of unfair dismissal or breach of contract, so being 'fair' from the outset is usually preferable.

Keeping accurate records of attendance is vital when managing sickness absence and absenteeism.

Much will depend on the employee's explanation (or lack of one), but where there have been a

number of short and unrelated periods of uncertified or self-certified sick leave it may be safe to terminate the individual's employment without obtaining further medical information.

Access to medical reports and health records [see [Medical Information](#)] addresses the gathering of information useful in dealing with existing employees.

## **Gross Misconduct**

Gross misconduct is misconduct that goes to the root of the contract. The example list included is not exhaustive, however you may have specific matters that apply to your business that you wish to add. Do leave the list as 'not exhaustive', though.

Summary dismissal often follows gross misconduct. Usually emotions are running high and it's hurried, so **do take advice before acting.**

## **Suspension**

There are various situations in which an employee might be suspended from work e.g. while an investigation into conduct is going on, as part of a disciplinary step, where it is necessary to avoid a health hazard etc. Suspension on full pay and contractual benefits may not constitute a breach of contract although this will depend to a great extent on the circumstances of the case.

Suspension should not be applied lightly. The belief that either the business or the investigation would suffer if the employee remained at work (e.g. because of tampering with evidence) should be a prerequisite of suspension and will usually require an allegation of serious misconduct before suspension is invoked.

## Dismissal

[See also [When and How Employment Ends](#)].

For the purposes of unfair dismissal, the following events constitute a "dismissal" according to the statutory definition:

- The employer ending the contract (with or without notice).
- A fixed term contract ending without renewal.
- An Employee ending the contract (with or without notice) because of the Employer's actions [see **Constructive Dismissal** below].

There are a number of ways to get a dismissal wrong and open yourself to a successful claim of unfair dismissal, even when it is not automatically unfair, so it is worth seeking advice before dismissing an Employee. To get it right there must be procedural fairness, as well as an acceptable reason for the dismissal, i.e.:

- Conduct
- Capability [this can include ill health and incompetence]
- Legal restriction [e.g. A lorry driver being disqualified from driving]
- Redundancy [see [Redundancy](#)]
- Some other substantial reason [this can include reorganisation towards greater efficiency. This is a wide and complex category – **seek advice**]

2 If the dismissal is for one of the five potentially fair reasons for dismissal indicated above, the Employer must then take steps to ensure that the dismissal was fair in all the circumstances. Certainly, for a first offence dismissal should normally only apply in cases of [Gross Misconduct](#).

**NOTE: An Employee cannot dismiss himself, even by walking out, though such action may amount to gross misconduct or a repudiation of the contract. Further action [and advice] should be taken before termination could be considered 'safe'.**

Certain dismissals are automatically unfair.....

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## **Entitlement to Written Reasons for Dismissal**

An Employee can request a written statement of reasons for dismissal if certain criteria are met. It should be supplied within 14 days.

The first requirement is two years service, unless the Employee is pregnant or if her basic leave ends with dismissal when she is automatically entitled to the statement irrespective of the reason for dismissal.

Otherwise the request will only be enforceable if:

1. The Employer terminates the employment with or without notice.
2. A fixed term contract expires without renewal.

Obviously, the statement could be used as evidence – **so take care (and advice?) in its preparation.**

## Investigation Procedure

The investigation procedure should be adapted to suit your organisation and the nature of the conduct or allegations in question. This procedure can be applied to issues other than discipline - e.g. Long-term absence.

**Note: The Employee has the right to have a fellow Employee, of his choice, accompany him throughout Disciplinary and Appeal meetings. Failing to inform him of this right, or not according it to him may be held to be unfair. Where you recognise a Union for Disciplinary representation, he may have the right to have a Union Official with him. If in doubt – seek advice.**

### **Stage 1:**

A thorough investigation must precede a decision to invoke any further stage of the disciplinary procedure. If there is no case to answer inform the employee.

### **Stage 2:**

Where there.....

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## Disciplinary action

[See also [Dismissal](#).]

Disciplinary action should be appropriate to the nature of the misconduct, the employee's previous discipline record and length of service. Remember it should be fair and reasonable in the circumstances and you should be able to justify the action taken, especially if a different action was applied in another comparative case.

A letter should be issued and a copy, which the Employee has been invited to sign, placed on the employee's personnel file confirming:

- The level of action taken
- Where appropriate the future performance requirements.
- What action will follow further similar conduct or failure to achieve the future performance requirements.
- When the letter will be removed from the file.
- That any appeal should be made in writing to [a Director] within [five] days of receiving written notice of the disciplinary appeal decision.

The action will be either:

An **ORAL WARNING**. In this case, further misconduct will render the employee liable to receive a written warning. [We recommend written confirmation is supplied even for oral warnings – proving they were given is then so much easier.]

A **WRITTEN WARNING**. In this case, further misconduct will render the employee liable to receive a final written warning.

A **FINAL WRITTEN WARNING**. In this case, further misconduct will render the employee liable to dismissal.

**DISMISSAL**. Notice would normally be given unless the employee is dismissed for gross misconduct - [see [Gross Misconduct](#)].

## **Disciplinary Appeals**

For the discipline process to be fair, the employee must always have the right to appeal.

An example procedure is included. Remember - don't prejudge or exhibit bias. A tribunal will look at the whole process in deciding if a dismissal was fair - including the appeal.....

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# TERMINATION OF EMPLOYMENT

[When and How Employment Ends](#)

[Dismissal](#)

[Resignation](#)

[Redundancy](#)

[Laying Off](#)

[Retirement](#)

[Notice Periods](#)

[Termination Information](#)

# **HEALTH & SAFETY AT WORK**

[Health & Safety Overview](#)

[General Duties - Health & Safety At Work Etc. Act 1974](#)

[Duties to Non-Employees - Health & Safety At Work Etc. Act 1974](#)

[Duties of Employees - Health & Safety At Work Etc. Act 1974](#)

[Risk Assessments](#)

[The Control of Substances Hazardous to Health](#)

[The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995](#)

## Health & Safety Overview

There is a huge amount of common law and legislation concerning the Health & Safety of everyone affected by work. This system is designed to:

- allow you to import existing policies and procedures regarding Health & Safety.
- allow you to allocate and record Health & Safety duties, responsibilities and accountability through the 'Job' forms in Versions 2 and 3..
- enable you to communicate information directly through the Handbook.
- enable you to handle breach of Health & Safety rules through discipline procedures.

As a rough guide, references to some of the Health & Safety legislation affecting Employers are made in this section, and an example Health & Safety policy (part 1) is included for you to edit as required.

**'SO FAR AS IS REASONABLY PRACTICABLE'** is a term that recurs in Safety legislation. Basically, this is about a subjective test and the onus for getting it right is with the Employer. He must strike a balance between the degree of risk and potential severity of injury with the time, trouble and cost of reducing the risk to an 'acceptable' level.

We are currently developing Health & Safety Management Control System tools to ease the development of Health & Safety policy, monitoring and management.

## **General Duties - Health & Safety At Work Etc. Act 1974**

**The Health & Safety at Work Etc. Act 1974** places a number of duties and responsibilities on employers and employees. These include: -

Section 2. General duties of employers to their employees.

(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees. ....

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## **Duties to Non-Employees - Health & Safety At Work Etc. Act 1974**

Section 3. General duties of employers and self-employed to persons other than their employees.

1. It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.
1. It shall be the duty of every self-employed person to conduct his undertaking.....

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## **Duties of Employees - Health & Safety At Work Etc. Act 1974**

Section 7. It shall be the duty of every employee while at work-

- (i) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and.....

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## Risk Assessments

The Management of Health & Safety at Work Regulations 1992 introduced further requirements and responsibilities, including: -

1. Every employer and self-employed person shall make suitable and sufficient assessment of the risks to the health & safety of persons at work, or arising out of his activities.
2. The assessment must be reviewed if there is reason to suspect it is no longer valid.
3. Appropriate arrangements must be established for planning, organisation, control, monitoring and review of preventive and protective measures.
4. **The arrangements and assessments must be recorded if 5 or more are employed.**
5. Appropriate health surveillance must be provided.
6. Employers shall appoint 'competent' persons to assist. ['Competent person' - sufficient training, experience or knowledge and other qualities to assist.]
7. Establish procedures regarding serious and imminent danger and danger areas.
8. Provide employees with information.
9. Take into account employee's capabilities regarding health & safety.
10. Employees shall use materials and equipment appropriately, and inform their employer of dangerous situations and shortcomings concerning health & safety.

Risk assessments are not of one type. There is the requirement under the Management of Health & Safety at Work Regulations mentioned above, then there are further statutory requirements that come from other legislation, including:

1. The Control of Substances Hazardous to Health Regulations 1994 (COSHH)
2. The Health & Safety (Display Screen Equipment) Regulations 1992
3. The Manual Handling Operations Regulations 1992
4. The Personal Protective Equipment at Work Regulations 1992
5. The Noise at Work Regulations 1989

**[This list is not exhaustive.]**

## The Control of Substances Hazardous to Health [COSHH]

Here the regulations address not just the processes, operations or activities but also the nature of the substances involved. A 'suitable and sufficient' assessment is required and this will depend on the nature of both the substances and the process, operation or activity.

Again, competency is an issue. It may be necessary to buy-in expertise, depending on the risks. ['Competent person' - sufficient training, experience or knowledge and other qualities to assist.]

The first step is probably to establish what needs this type of assessment. Often, obtaining information will only require that you read the label or contact the supplier - but not all regulated substances come in a bottle. Certain dusts and even micro-organisms might be regulated.....

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**NOTE:**

**Substance data sheets [the information a supplier might forward about the nature of their product] are sometimes confused with COSHH risk assessment records. Just having a file of substance data sheets is rarely enough.**

Ultimately, whether you stop using a particular substance or carrying out a particular activity or whether you employ 'control measures', e.g. protective equipment or special training, will depend on:

- How harmful the substance is [e.g. is it correction fluid or arsenic]
- The likelihood of persons being exposed to it [e.g. breathing it in]
- How much of the substance they will be exposed to
- How long such exposure will continue

## **Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995**

This act places upon employers specific requirements to notify their 'enforcing authority' of the details of certain events. An overview of the broad requirements follows. Only major injuries are listed here - the lists of dangerous occurrences, reportable diseases and additional provisions were considered too lengthy and in many cases too specific for inclusion - **advice should be sought if you are in doubt as to whether or not to report an incident.**

### **NOTES:**

**1. It is a defense to prosecution under this act to prove you were not aware of the event required to be notified to the enforcing authority and that you had taken all reasonable steps to have all such events brought to your notice. Hence, the inclusion of a procedure in your Health & Safety Policy, via your handbook, concerning the reporting and investigation of an 'incident' and notification is worthwhile.**

**1. If in doubt.....**

**The legal help texts contained within this special version of the *Employment and Personnel Desk* have been edited, abridged or, in part, deleted.**

## **USEFUL TELEPHONE NUMBERS**

1. 1. Advisory, Conciliation and Arbitration Service [ACAS]  
Brandon House, 180 Borough High Street, LONDON SE1 1LW  
TELEPHONE: 0171 210 3000 [BOOKLETS 01455 852225]

2. ASH (Action on Smoking and Health)  
TELEPHONE: 0171 314 1360

3. The Commission for Racial Equality  
TELEPHONE: 0171 828 7022

4. The Data Protection Registrar  
TELEPHONE: 01625 535 777

5. The Employers Forum on Disability  
TELEPHONE: 0171 403 3020

5. The Equal Opportunities Commission  
TELEPHONE: 0161 833 9244

6. The Health Education Authority  
TELEPHONE: 0171383 3833

7. The Health & Safety Executive [HSE]  
TELEPHONE: 0171 717 6000

8. The Industrial Tribunal Central Office  
TELEPHONE: 01284 762300

9. The Institute of Personnel and Development  
TELEPHONE: 0181 971 9000

10. The Terrence Higgins Trust [advice on AIDS and HIV]  
TELEPHONE: 0171 242 1010

11. Quit [advice on giving up smoking]  
TELEPHONE: 0171 388 5775



