



EMPLOYING STAFF IN GREAT BRITAIN

With English employment law increasing in complexity and with substantial tribunal awards being awarded to employees where employers fail to comply with the legislation, employers are advised to have in place procedures and policies to deal with the issues highlighted below.

1. The contract of employment

Statement of Terms and Conditions pursuant to S1 Employment Rights Act 1996

While UK law does not require the contract of employment to be in writing, an employer must provide each employee with a written statement of certain terms of their contractual relationship within two months of the start of the employee's employment. The statement must contain, amongst other things, details of:

- Salary and benefits;
- hours of work;
- holiday entitlement;
- entitlement to sick leave and any provisions for sick pay;
- provisions for stakeholder pension arrangement, if applicable;
- grievance and disciplinary procedures; and
- the period of notice required to terminate the employment. The minimum notice which may be given is one week's notice for each year of employment, subject to a maximum of 12 weeks.

Staff handbook

In addition to these basic terms and in order to minimise the risk of potential claims it is recommended that employers issue their employees with a Staff Handbook containing policies and procedures addressing workplace issues such as:-

- Disciplinary policy and procedure
- Grievance policy and procedure
- Equal Opportunities policy
- Maternity/Paternity/Adoption policy
- Poor performance procedure
- Sickness policy
- Bullying policy
- Data Protection policy
- Alcohol and Drug use policy
- No Smoking policy
- Health and Safety rules
- Parental Leave and Emergency Leave for Dependants Policy

2. Employment protection rights

Working Time

The maximum number of hours workers (i.e. employees and the self employed) are allowed to work per week is 48 hours). However, at present an individual has the right to agree to work longer hours, due to the 'opt-out' agreement which the UK has

with the EU. Workers have the right to 4.8 weeks' paid annual leave and to regular rest breaks during the working day, and within every 24 hour and 7 day period. Further rights are extended to night and shift workers and to adolescents.

Holidays

The statutory minimum paid holiday entitlement increased from 1 April 2009 from 4.8 to 5.6 weeks (24 to 28 days) which includes the 8 UK Bank Holidays: Christmas Day, Boxing Day, New Year's Day, Good Friday, Easter Monday, Early May Bank Holiday, Spring Bank Holiday and Summer Bank Holiday.

National Minimum Wage

UK employment law provides that a national minimum wage applies to employees and "workers", currently £5.80 per hour for those over 22, £4.83 per hour for those between 18 and 21 and £3.57 for workers aged under 18, but above the compulsory school age.

Fixed Term Contracts

Employees working under fixed term contracts must be treated in the same way as comparable employees working under a contract for an indefinite term unless there is an objective reason for any difference in treatment.

Part time employees

English employment law requires that part-time employees are not treated less favourably than comparable full-time employees, unless it is objectively justified. This means part-timers are entitled, for example, to the same hourly rate of pay, the same access to company pension schemes, the same entitlement to contractual sick pay, the same entitlements to annual leave (on a pro rata basis) and no less favourable treatment in access to training.

Maternity, Paternity and Parental Leave

All pregnant employees are entitled to take up to one year's (52 weeks) maternity leave, regardless of how long they have worked for their employer.

An employee on maternity leave will be entitled to Statutory Maternity Pay from her employer for a maximum of 39 weeks provided she fulfils the following conditions: She must be employed by the employer in the qualifying week which is the 15th week before the week her baby is due. Furthermore, she must be employed by the same employer without a break for at least 26 weeks up to the 15th week before the week her baby is due. The rate of Statutory Maternity Pay is 90% of the employee's average weekly earnings for the first six weeks. The remaining 33 weeks of SMP will be paid at either £123.06 a week or at 90% of her average weekly earnings, whichever is the lower. Additional maternity leave after the 39th week will not attract Statutory Maternity Pay.

Expectant fathers, who have worked continuously for their employer for 26 weeks ending with the 15th week before the baby is due, are entitled to take up to two weeks' paid paternity leave around the birth of their baby. Statutory Paternity Pay is currently £123.06 per week (or 90% average weekly earnings if this is less). Parents adopting a child have similar rights and the Statutory Adoption Pay is paid to one of the adoptive parents on the same basis as Statutory Maternity Pay.

Finally, employees are entitled to 13 weeks' unpaid parental leave (once he or she has completed one year's service) for the purpose of caring for his or her child until the child's 5th birthday. A maximum of 4 weeks' parental leave in a year can normally be taken in respect of any individual child.

Flexible Working

Currently, employees with children aged 16 or under (or under 18 if the child is disabled) are entitled to request alterations in their terms and conditions of employment including to the number of hours they work and whether to work at home to accommodate their young families. There are circumstances in which the request can be denied by an employer but only if the employer can show that it has duly considered the request and has adequate reasons for refusing the request.

3. Restrictive covenants

In appropriate circumstances it may be important to include provisions within the contract which are designed to protect the employer's business after an individual's employment comes to an end, for example, restrictive covenants dealing with activities in a competing business, solicitation of customers and poaching of employees. The law of this area is highly technical, and the covenants need to be carefully drawn up if they are to be effective.

4. Notice periods

The Employment Rights Act 1996 provides that the minimum notice to terminate employment to be given by an employee who has been employed for one month or more is not less than one week. The statutory minimum notice to be given by the employer to terminate the employment is as follows:

- one week's notice where the employee has more than one month but less than two years' continuous employment;
- one week's notice for each complete year of continuous employment where the period of employment is two years or more but less than 12 years; and
- 12 weeks' notice where the period of continuous employment is 12 years or more.

These statutory minimum notice periods can of course be increased under the terms of the contract.

5. Retirement

The statutory default retirement age is 65 years for both men and women. Employees can request permission to work beyond the age of 65, but an employer is not required to make arrangements for this. An employer who wants to retire an employee must give at least 6 months' and maximum 12 months' notice to the employee in question.

6. Stakeholder Pension Scheme

All employers with 5 or more employees are required to make a Stakeholder Pension Scheme available to its employees. Employers do not currently have to make any contributions to the Stakeholder Pension Scheme although there will be new rules regarding this from 2012.

7. Termination of employment

It is possible to validly dismiss an employee under English employment law provided that the reason is "fair" and the dismissal was dealt with "fairly". The five 'fair' reasons for dismissing an employee are as follows:

- Capability – in general terms, an employee may be regarded as incapable of performing the services required under his contract of employment because he does not have the necessary qualifications for the job, he is incompetent or his health renders him incapable.

- Conduct – many situations can give rise to good reasons for dismissal on conduct grounds; for example, theft, abusive behaviour, absenteeism or taking holidays without consent.
- Redundancy – this will be a fair reason for dismissal providing that the selection methods are fair.
- Contravention of a duty or restriction imposed by law.
- Some other substantial reason – this is a catch all provision and specialist advice should be sought before an employer seeks to rely on this as a fair reason for dismissal.

8. Unfair dismissal

One of the most common claims brought by employees against employers in the employment tribunal is for unfair dismissal. To manage the risk of unfair dismissal claims being successful, employers should put in place appropriate policies and follow proper procedures leading up to dismissal.

If an unfair dismissal claim is successful in an employment tribunal the employee may be entitled to compensation for which the maximum award is £76,700 (£65,300 compensatory award plus 30 x £380 for maximum basic award) from 1 February 2010.

9. Breach of contract and constructive dismissal

A breach of the contract of employment by the employer in such a way as to breach a fundamental term of the contract of employment, for example, failure to pay wages, or a failure to pay a bonus to which the employee is contractually entitled, can be regarded by the employee as a repudiatory breach of contract giving rise to a claim for damages for breach of contract and for constructive (unfair) dismissal.

6. Wrongful dismissal

Wrongful dismissal is where the employee is not in breach of his contract of employment but where the employer decides to terminate the contract of employment by dismissing the employee without notice. The claim by the employee is for damages for breach of contract.

7. Redundancy

Redundancy situations should be handled with care because failure to comply with, amongst others, procedures and consultation can result in a claim for unfair dismissal in the employment tribunal, which is usually more costly for an employer than following the proper selection and consultation procedures.

8. Compromise Agreements

Compromise agreements record agreed terms of severance upon the termination of the employee's employment. They are very common and popular with employers in that they give employers the means to lock out any potential claims the departing employee may have. For the employee, there are usually opportunities for tax savings on the severance package negotiated.

9. Discrimination

Under English employment law legislation it is possible to bring claims in the employment tribunals for race, sex, and disability discrimination, and discrimination on grounds of sexual orientation, religion or belief and age..

Potential discrimination claims should always be carefully considered as there is no financial limit on the size of awards that can be made to those who have suffered discrimination at work.

10. Business sales and TUPE

Where there is a transfer of an undertaking (that is, of any trade or business) or of part of an undertaking, and which is situated in Great Britain immediately before the transfer, there will be a duty to inform and consult employees, or their representatives. Failure to do so may entitle the affected employees to claim a protective award of up to 13 weeks' uncapped pay. More importantly, if employees are dismissed for a reason connected to the transfer, this will be treated as an unfair dismissal, subject to certain exceptions. The employee (unless s/he objects) is entitled to be employed after the transfer on the same terms and conditions s/he enjoyed before the transfer. English employment law in this area is complex and is subject to rapid change so legal advice in this area is essential.

11. Health and safety and employer's liability insurance

A UK operation will be required to establish policies and procedures to ensure that the health and safety obligations imposed upon all employers by UK and EU legislation are complied with. An employer is liable for accidental injuries sustained by an employee in the course of his or her employment. The employer must therefore ensure that he provides his employees with safe place of work, a safe system of work and competent fellow workers.

There is an obligation on employers to take out Employer's Liability Insurance to cover disease or injury sustained by an employee during the course of his or her employment and to cover damage caused by employees to third parties.

12. Taxation and social security

Employers must withhold income tax and employee's National Insurance contributions ('NIC') from their employees' pay in accordance with the PAYE system. Employers must also pay employer's NIC in respect of every employee.

Employers are required to pay 12.8% NIC on each employee's gross salary irrespective of how much the employee earns.

13. Data Protection

Personal data held manually or on a computer or other media, is subject to the Data Protection Act 1998. Data Controllers (which includes employers) have the responsibility to store and deal with the information in accordance with the data protection principles. Employers holding employee records must be registered with the Information Commissioner's Office as a Data Controller.

For further information and advice please contact:

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