

EMPLOYMENT BASIC RIGHTS

This factsheet aims to clearly set out your basic statutory rights as an employee. It does not cover family-friendly statutory rights - these are explained in another factsheet: Employment Law - family-friendly rights.

The statutory rights set out here relate to people classed as employees. Workers - those not employed on a contract of employment - are not protected in the same way.

Terms and conditions of employment

Whether you are employed full-time, part-time or on a fixed-term contract, you must be given a written statement of your terms and conditions - also known as a written statement of particulars or a section 1 statement – the day you start work. This applies to all workers who started work after 6th April 2020. As a minimum this document should include:

- your name and job title or description of duties
- the date the employment begins and, if it isn't permanent, when it will end
- any period of your continuous service – how long you have been employed, including any time with another employer that counts towards the continuous service
- your pay or how it is to be calculated and when you will be paid (e.g. monthly)
- conditions relating to hours of work
- holiday entitlement, including public holidays
- the notice you or your employer has to give to terminate the contract

- details of where you will work
- information on disciplinary and grievance procedures and conditions relating to holiday and sick pay and pension schemes
- details of pay and allowances and other conditions if you are to work outside the UK for more than one month
- any collective (union) agreements that apply to the work

Very often this type of information is contained within a letter offering you employment or your employer may use a template, such as that provided by Acas, known as a Statement of Terms and Conditions. The template can be found [here](#).

Failure by your employer to provide the above details could result in a successful claim for not being given a written statement of particulars. If a claim is successful, you can be awarded between two and four weeks' pay.

This written statement may be the only evidence of a contract between you and your employer. Other things may, however, provide additional evidence of a contractual agreement, such as:

- job description
- correspondence
- company policies
- custom habit and practice

There are also implied terms in any employer/employee relationship, such as:

- an obligation for your employer to provide a safe place to work
- a mutual obligation not to undermine the trust or confidence of either party
- your obligation to serve your employer honestly and faithfully, to obey any instructions and to work with diligence, skill and care
- your obligation not to undermine your employer's business or act in a manner which may undermine that business

You are also entitled to receive an itemised pay statement from your employer containing certain basic elements. This typically includes gross pay (including overtime and bonuses if applicable), tax and national insurance deductions, pension contributions and rolled-up holiday pay (if applicable).

The Government has introduced a 'Good Work Plan' which provides that from 6th April 2020 a written statement of employment particulars should be available on day one of employment.

Statutory notice periods

In the event of dismissal, an employee who has been employed between one month and two years is entitled to receive minimum notice of one week. For employees who have been employed for two years or more, notice of one week for each year of completed service (up to a maximum of 12 weeks) is required. Under a month, no notice is required unless stipulated as part of a contract

If you wish to leave and you have worked for your employer for at least a month, you are required to give at least one week's notice. However, you should also check your employment contract as your notice period may be longer than that. Failure to work your notice may amount to a breach of contract - unless an alternative notice period is agreed with your employer.

Wrongful dismissal

Before dealing with the statutory rights of unfair dismissal, it is also important to be familiar with the term wrongful dismissal. Wrongful dismissal

generally refers to a situation where you are dismissed in a way that is in breach of your contract. If you are not given the correct notice period or pay, for example, or an incorrect procedure is followed. Wrongful dismissal is particularly relevant where you have been employed for less than two years. In this case, breach of contract may be the only option you have to bring a claim.

Unfair dismissal

If you have worked for your employer for a continuous period of two years (including the statutory notice period of one week), you have the right not to be unfairly dismissed.

For a dismissal to be fair it must be for one of these statutory reasons:

- misconduct
- capability
- redundancy
- statute bar/illegal i.e. where the employee is prevented from working due to some regulatory reason, such as a driver who has been banned from driving

Lastly, a fair dismissal can be made for 'some other substantial reason', which includes such things as a breakdown in the working relationship - often referred to as a breach of mutual trust and confidence. This example is not exhaustive.

Although the right not to be unfairly dismissed generally arises after two years' continuous employment, it also arises automatically within that period in certain circumstances. If you are dismissed for one of the reasons listed below it may be automatically unfair and may form the basis of a claim:

- taking leave for family reasons, including pregnancy, maternity leave and pay, paternity leave and pay, adoption leave and pay, childbirth and parental leave
- taking leave for family emergencies or to care for dependants (even if, as in a case in 2008, the employee knew she would need to take time off to look after her child two weeks in advance and failed to organise alternative arrangements)

- a discriminatory reason relating to age, sex, race, religion/belief, gender assignment, sexual orientation or disability
- performing certain health and safety activities
- refusing to work in a shop or betting business on a Sunday
- performing certain working time activities
- performing certain functions as a trustee of an occupational pension scheme
- performing certain functions as an employee representative under the TUPE or collective redundancies legislation
- making a protected disclosure (i.e. whistleblowing)
- asserting a statutory right, such as submitting a grievance
- seeking to exercise the right to be accompanied at a disciplinary or grievance hearing
- taking certain steps under the National Minimum Wage Act 1998
- seeking to exercise the right to flexible working
- being a part-time worker
- participating in 'protected' industrial action
- performing certain functions in relation to trade union recognition
- participation in trade union membership or activities
- exercising rights under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- undertaking jury service

Whistleblowing

You cannot be dismissed, or subjected to a detriment or disadvantage (for example, not getting a pay rise or a promotion) if the reason (or, if more than one reason, the principal reason) is that you made a protected interest disclosure.

To qualify for protection, the disclosure must be a 'qualifying disclosure' of which there are six categories.

These include:

- that a criminal offence has been committed, is being committed, or is likely to be committed
- that your employer has failed, is failing, or is likely to fail to comply with a legal obligation
- that the health or safety of any individual has

- been, is being, or is likely to be endangered
- that a miscarriage of justice has occurred, is occurring, or is likely to occur
- that the environment has been, is being, or is likely to be damaged
- that information tending to show any matter falling within any one of these categories has been, is being, or is likely to be deliberately concealed

In addition to falling into one of these six categories, the disclosure should be in the public interest, or at least you should genuinely believe it to be in the public interest. A disclosure can be verbal or written.

For a qualifying disclosure to be 'protected', it will usually be made to your employer. In certain circumstances (for example, if you feel they may cover up the issue or if you have reported it already and nothing has been done about it) you may make a protected disclosure to another organisation e.g. the Health and Safety Executive. If you need to make a disclosure to an organisation which is not your employer, it should be to a 'prescribed body'. You can find a full list of these organisations [here](#).

A qualifying disclosure has to be in the public interest but doesn't need to be made in 'good faith'. However, Tribunals will have the discretion to reduce compensation by up to 25 per cent if a disclosure is not made in good faith, for example, if a disclosure was motivated by malice.

Discrimination and the Equality Act 2010

The Equality Act 2010 was designed to incorporate all aspects of discrimination law. The Act is a large and complex piece of legislation and was designed to incorporate previous legislation and put it all in one place.

The Act identifies protected characteristics which the law protects both in the workplace and other parts of our lives. You can find out more about this on the Equality and Human Rights Commission website [here](#).

The protected characteristics are based on:

- gender
- sexual orientation
- gender reassignment
- race or ethnic origin
- disability
- religious or philosophical belief or lack of belief
- age
- marriage or civil partnership
- pregnancy or maternity

Types of discrimination

Generally, if you suffer a detriment in the workplace based on one of these characteristics, it may be due to discrimination. There are several different types of discrimination and in some circumstances the law allows the discriminatory behaviour to be justified where it achieves a certain outcome i.e. a legitimate aim for the business.

Direct discrimination occurs if you are treated less favourably than another employee because of a protected characteristic. The only type of direct discrimination that can ever be justified is on the grounds of age. An action in this category can be justified if it is a proportionate means of achieving a legitimate aim. This means if the action is necessary or appropriate for the business needs or efficiency then it can be justified. However in practice this can only be justified in a very limited range of circumstances.

Indirect discrimination occurs if your employer applies a provision, criterion or practice to your working terms or arrangements that has a less favourable effect on you because you belong to a class of people with a protected characteristic. Where there is a working practice which affects you more than others and it relates to a protected characteristic it may be indirectly discriminatory.

An example of this may be someone who is treated differently due to pregnancy-related illness. An employer may be able to justify indirect discrimination if it achieves a legitimate aim for the business in an appropriate and proportionate way. In other words, if there is a good enough business reason why your employer is introducing

the provision, criterion or practice then it may be acceptable.

Victimisation occurs if your employer subjects you to a detriment because you have complained about discrimination or have helped someone else who has been the victim of discrimination. A detriment can be anything that isn't in your best interests e.g. not promoting you or putting you on performance review.

Harassment occurs when there is unwanted behaviour that has the purpose or effect of violating your dignity or causing a degrading, hostile, humiliating, intimidating or offensive environment e.g. telling offensive jokes aimed at people with a particular protected characteristic.

Discrimination by association or perception occurs where you don't have a protected characteristic but are associated with someone who does. For example, an employee shouldn't be treated less favourably because she has a disabled child or parent.

An employer can't discriminate against you because they think you have a protected characteristic, even if you don't actually have that characteristic. For example, you will be protected if you are treated badly because your employer thinks you are gay, but you are not.

Reasonable adjustments for disabled employees

Your employer has a duty to make reasonable adjustments for you if you are disabled. To be disabled under the Equality Act you need to suffer with a long-term physical or mental condition or illness which substantially affects your day-to-day life. In this situation, long-term means anything which has lasted, or could last, for a year.

Some illnesses are automatically treated as disability.

These are:

- cancer
- HIV infection

- multiple sclerosis
- severe disfigurement (not including tattoos and piercings)
- being certified as severely sight impaired, sight impaired or partially sighted

If you suffer from a condition that fulfils these criteria, and you are at a substantial disadvantage compared to people who are not disabled, your employer is required to make reasonable adjustments in the workplace e.g. an employer may need to provide specialist equipment or allow flexible working hours. Whether or not an adjustment is reasonable depends on several factors, including the size of your employer's business.

Sexual Harassment

Your employer has a duty to take reasonable steps to prevent sexual harassment in the workplace. You should expect your employer to deliver training on sexual harassment so that all employers are clear on what is acceptable workplace conduct. If you have concerns about harassment in the workplace, your employer should have up to date policies on harassment and effective processes that are in place to investigate any complaints impartially.

Working time

The amount of time you can be required to work, your holiday entitlement and rest breaks are all detailed in the Working Time Regulations (WTR).

There are different rules for young employees (under 18 years old) and night staff, but the basic minimum rights the Regulations provide are:

- a limit of an average of 48 hours working time each week measured over a 17 week reference period
- a right to 11 hours rest per day
- a right to at least one day off (24 hours) each week or two days (48 hours) every fortnight
- a right to an in-work rest break (unpaid) of at least 20 minutes if you work more than six hours in one stretch
- a right to 5.6 weeks paid leave (which can include Public and Bank holidays)

If you work full-time you are entitled to 28 days holiday in total, which must be apportioned if you work part-time. It is not an automatic right to have bank holidays off work and this may depend on the type of business you work for. You will find a useful interactive tool to calculate holidays available at [gov.uk](https://www.gov.uk). If you work irregular hours there has been a change to how your holiday pay may now be calculated. Previously, your employer would have calculated the amount payable by calculating the average pay for the 12 weeks prior to your holiday.

Now the relevant pay reference period has been extended to the average pay over the previous 52 weeks (ignoring weeks where you may not have worked) and if you have not been employed for a full year taking the average of the weeks actually worked.

Holiday entitlement continues to accrue during long-term sickness absence and maternity leave. If you are off work for either of these reasons you are entitled to the same amount of holiday as when present in the workplace. Overtime payments (some of which may be voluntary), commission and other contractual payments may also be taken into account when calculating holiday pay.

When calculating working time, you should note that:

- lunch breaks are generally excluded from working time and are not paid
- training usually counts as working time and should also be paid
- emergency time at work counts as working time and will need to be paid
- on-call time spent in the workplace will generally count as working time and also be paid
- travelling to work is not working time and is not paid but travelling for work, such as between appointments, should be paid

National Minimum Wage

As an employee you are entitled to the National Minimum Wage.

The rate for pay periods starting on or after 1 April 2023 will be:

- £10.18 per hour 21-22 years old
- £7.49 per hour 18-20 years old
- £5.28 per hour 16-17 years old
- £5.28 per hour apprentices under 19 and all apprentices in the first year of their apprenticeship
- The National Living Wage for workers aged 23 is £10.42 per hour

From the 1st April 2024, these rates will increase to:

- £11.44 per hour for employees over the age of 21 (known as the 'National Living Wage')
- £8.60 per hour 18-20 years old
- £6.40 per hour 16-17 years old
- £6.40 per hour apprentices under 19 and all apprentices in the first year of their apprenticeship

If you earn more than an average (over eight weeks) of £123 per week you are entitled to statutory sick pay (SSP) if you are off work due to illness. SSP is paid from the fourth day of sickness if there is an appropriate medical note, usually a fit note from your GP (see below). SSP is currently £116.75 per week for up to 28 weeks. You can check the National Minimum Wage and National Living Wage rates at any time by visiting [acas.org.uk/nmw](https://www.acas.org.uk/nmw). To check you are receiving the correct wage, use the minimum wage calculator found [here](#).

The WTR and minimum wage rates are connected and can be the subject of some debate in some employment sectors. As an employee, you should receive the minimum wage for every hour worked, which is not the same as receiving your contractual pay for each hour worked. If there is some of your working time that you do not receive your contractual rate of pay this is not unlawful provided you receive at least the minimum wage for each hour worked overall. It could, however, be a breach of contract depending on the wording of the agreement with your employer.

From April 2019 it has been a legal requirement for your employer to provide a payslip detailing the total number of hours worked if you are hourly paid.

Statutory sick pay (SSP)

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SSP is the minimum pay you receive if you are absent from work due to illness. Your contract may provide for a greater rate of pay than SSP (contractual company/sick pay) for a period of time.

Fit notes

Doctors no longer certify your absence from work with a sick note but now produce a 'statement of fitness to work' instead. This statement indicates either that you are not fit to work, or that you may be fit to work if certain changes are made in the workplace. These changes can include a phased return to work, amended duties, altered hours or some workplace adaptations.

If your employer cannot make the changes recommended by your doctor, for example there are no lighter duties available, you will be treated as though you are not fit for work and will receive SSP, or contractual sick pay, for that period.

If you are absent for more than four weeks at any one time your employer may treat your absence as long term. They may want to obtain a report from your doctor as to the reason for your absence and to find out when you are likely to be able to return.

They will need your signed consent to do this and will therefore send you a form to sign.

In addition to the statutory employment rights detailed above, you have other family-friendly statutory rights in the workplace. These are explained in another factsheet: Employment Law - family-friendly rights.

NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.

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