

This information is intended to be a brief introduction to the subject. Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law.

**Leaflet 6**

**February 2016**

## **The employment contract**

This section tries to explain in general terms the main legal issues relating to the employment contract. It is not intended to be a precise statement of law nor is every legal aspect dealt with. For instance, it does not deal with the law relating to the hiring of independent contractors who will be self-employed. When self-employed people are hired, the resulting contract is fundamentally different from an employment contract and most of the employee rights described in this chapter do not apply.

### **What is an employment contract?**

All employees have a contract of employment which forms the basis of the employment relationship. In simple terms, an employee agrees to work for an employer in return for wages. A contract is made when the offer of employment is accepted. A number of rights and duties, enforceable through the courts, arise as soon as this happens.

However, most rights and duties, particularly statutory ones, apply only when the employee starts work; and a number of them require specific periods of service to have been worked. For instance, there is a service qualification of one year for most unfair dismissal claims to an Industrial tribunal.

## Does an employment contract need to be in writing?

Most employment contracts (except those for apprenticeships) need not be in writing to be legally valid; a verbal agreement can be sufficient. However, writing down the terms of the contract can minimise later disagreements. The Employment Rights (Northern Ireland) Order 1996 requires employers to provide most employees, within two calendar months of starting work, with a written statement of the main terms of the contract.

The following details must be included in the written statement:

- the names of the employer and the employee
- the date when the employment (and the period of continuous employment) began
- remuneration and the intervals at which it is to be paid
- hours of work
- holiday entitlement
- entitlement to sick leave, including any entitlement to sick pay
- pensions and pension schemes
- the entitlement of employer and employee to notice of termination
- job title or a brief job description
- where it is not permanent, the period for which the employment is expected to continue or, if it is for a fixed term, the date when it is to end
- either the place of work or, if the employee is required or allowed to work in more than one location, an indication of this and of the employer's address
- details of the existence of any relevant collective agreements which directly affect the terms and conditions of the employee's employment - including, where the employer is not a party, the persons by whom they were made.

If an employee is normally employed in the UK but will be required to work abroad for the same employer for a period of more than one month, the statement must also cover:

- the period for which the employment abroad is to last
- the currency in which the employee is to be paid
- any additional pay or benefits
- terms relating to the employee's return to the UK.

Where there are no particulars to be given for one of the items required to be covered in the statement (for example, where there is no pension entitlement), this must be indicated.

The statement must also include a note giving certain details of the employer's disciplinary and grievance procedures, and stating whether or not a pensions contracting-out certificate is in force for the employment in question.

All employers will have to provide workers with a workplace pension scheme by law over the next few years. The biggest employers started doing this in October 2012. This is called **automatic enrolment**.

When a business must start doing this (called a 'staging date') depends on how many people are on the business's payroll. **Check staging date on the Pensions Regulator website (link is external)**.

If an employer does not already offer workers a workplace pension scheme, they must make the necessary arrangements before their business's staging date. The employer will receive a letter from the Pensions Regulator 12 months before their staging date, confirming their staging date and outlining the support available. More information is available at <https://www.nibusinessinfo.co.uk/pensions>

### **What are implied terms?**

The first part of this leaflet has outlined the formation of contract terms by explicit agreement, preferably in writing. Terms agreed in this way are called express terms. However, it is unusual for all the terms of an employment contract to be expressly agreed. For example, the courts have established that all employment contracts have the following terms in them, whether explicitly agreed or implied:

- to maintain trust and confidence through cooperation
- to act in good faith towards each other
- to take reasonable care to ensure safety and health in the workplace.

When no express term exists, implied terms can become part of the contract:

- by the conduct of the parties
- by custom and practice if reasonable to do so and if generally applied in the area or trade in question for some time

- through firms' rules - rules can become part of the contract particularly if an employee has been made aware of them and given access to them.

## Statutory rights

Over the years, employees have become entitled to a wide range of statutory rights, derived from parliamentary acts or regulations which affect the employment relationship. In general, despite any express term to the contrary, they cannot be waived. They include the right:

- **not to be discriminated against** (including the right not to be dismissed) - on grounds of age, race, sex, marriage, disability, sexual orientation or religion or belief or political opinion
- **to equal pay** - with members of the opposite sex if it can be shown that they are doing like work or work of equal value
- **not to be unfairly dismissed** - most employees can complain to an Industrial Tribunal within three months of their dismissal, provided they have at least one year of continuous service. No service period is required if the dismissal was:
  - for participation in trade union activities, for membership or non-membership of a trade union and in respect of trade union recognition or de-recognition
  - for activities as an employee representative, or as a candidate for election, for purposes of statutory consultation over redundancies or business transfers or European Works Councils
  - because the employee asserted or sought to assert a statutory right
  - for taking (or proposing to take) action on health and safety grounds as a designated or recognised health and safety representative, or as an employee in particular circumstances
  - or taking part (or proposing to take part) in consultation on health and safety matters, or taking part in elections for representatives of employee safety (representatives elected by groups of employees not covered by trade union safety representatives)
  - because of pregnancy or childbirth
  - for refusing to do shop work on Sundays
  - for being a trustee of an occupational pension scheme and performing, or proposing to perform, any of the trustees' functions
  - qualifying for working families tax credit or disabled persons tax credit, or seeking to enforce a right to them

- taking or seeking to take parental leave or time off for dependants
- to an itemised pay statement
- to maternity benefits/rights - all pregnant women have the right to paid time off for ante-natal care, the right to 52 weeks' maternity leave (26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave) and the right not to be dismissed because of pregnancy or childbirth. An employee dismissed during pregnancy or statutory maternity leave is entitled to receive a written statement of the reasons for her dismissal without the need to request it. During the full 52 weeks' maternity leave the employee must continue to receive all her contractual benefits except remuneration. Where a statutory health and safety regulation prevents a woman from doing her normal work, because of childbirth or pregnancy, she must be offered suitable alternative work on no less favourable terms and conditions. If none is available, she is regarded as suspended on full pay
- to paternity leave - employed fathers who have responsibility for the upbringing of the child and who have at least 26 weeks' continuous service with their employer by the 15th week before the baby is due have the right to two weeks' paid paternity leave. The father need not be the child's biological father but must be the mother's husband or partner. To qualify for Statutory Paternity Pay employees must, on average, have weekly earnings which are equal to or above the lower earnings limit for National Insurance.
- Shared parental leave and pay (SPL) - is a legal entitlement for eligible parents of babies due, or children placed for adoption, on or after 5 April 2015. It provides both parents with the opportunity to consider the best arrangement to care for their child during the child's first year. The regulations give parents the right to take SPL and place a duty on employers to ensure that their employees are not penalised for using their entitlement or put under pressure to cancel/change a leave notification. For more information see [Shared Parental Leave: a good practice guide for employers and employees](#)
- to adoption leave - providing 26 weeks' paid leave and a further 26 weeks' unpaid leave when an employee is newly matched with a child for adoption, regardless of their length of service. Adoption leave is available to one member of the couple only, of their choice. The other member of the couple may be entitled to two weeks' paid paternity leave provided that they have responsibility for the child's upbringing, are the partner or spouse of the adopter and have 26 weeks continuous employment with

their employer leading into the week of notification of the match and average weekly earnings above the lower limit for National Insurance Contributions.

- **to parental leave** - employees who have worked for over one year with their employer are entitled to take unpaid time off work if they have a baby or adopt a child. The right applies to both mother and father and allows for up to 18 weeks in total (over 5 years) for each child. Parents can take parental leave up to the child's 18th birthday.
- **to time off for dependants** - all employees have the right to take a reasonable period of time off work to deal with an emergency involving a dependant and not to be dismissed or victimised for doing so. There is no statutory right to payment for any such time off.
- **to apply for flexible working** - all employees have the right to apply to their employer to work flexibly. The request can cover hours of work, times of work and place of work and may include requests for flexitime, home working, term-time working, shift working, self-rostering, annualised hours etc. The request must be made in writing and the employer will have a statutory duty to consider the request seriously and to refuse it only if there are clear business grounds for doing so. Employees making applications for flexible working will have the right to be accompanied at meeting by a fellow employee.
- **to notice of termination of employment** - most employees are entitled to receive from their employers at least one week's notice after one month's service, two weeks' after two years and an additional week's notice for each complete year of employment up to 12 weeks for 12 years' service
- **not to have unlawful deductions from pay** - employers must not deduct from an employee's pay unless the deduction is required or authorised by law or by a relevant provision of the employee's contract; or if the worker has previously given written agreement or consent for the deduction to be made. Where employment has been terminated, an employee may be able to make a claim for breach of contract to an Industrial Tribunal for wages or sums of money due under the contract. The employer may be able to make a claim against the employee where the employee has claimed against the employer
- **to pay when laid off** - whether or not an employer is entitled to lay off an employee is determined by what has been agreed in the individual contract of employment. Most employees who can be laid off by their employers are entitled to a minimum payment - a guarantee payment, for up to five workless days in any period of three months

- **to redundancy pay** - employees with at least two years' service are entitled to redundancy payments, the size of which depend on the individual's pay, age and service
- **to a safe system of work** - when you hire someone, you become statutorily responsible for their health and safety. The Health and Safety at Work Act 1974 requires you, for example, to have a health and safety policy, to report certain injuries, diseases and dangerous occurrences, to provide information and training, and to provide first aid facilities. Additionally, all employers are required to carry out risk assessments in their workplace
- **to statutory sick pay (SSP)** - paid by the employer (provided the employee meets the qualifying conditions).
- **to time off** -
  - i) for public duties (civic, magistrate, etc)
  - ii) to look for work if declared redundant with at least two years' service
  - iii) for trade union activities, duties and training where a trade union is recognised for collective bargaining (see LRA *Code of Practice 3*. [Time off for trade union duties and activities](#)).
  - iv) for Union Learning Representatives to reasonable paid time off to carry out their duties and to undergo training
  - v) for duties as an employee representative, or as a candidate for election, for purposes of statutory consultation over redundancies or business transfers or European Works Councils
  - vi) for carrying out functions as a safety representative (trade union or non trade union) or as a candidate for election as a representative of employees not in groups covered by trade union safety representatives
  - vii) for performing the functions of a pension fund trustee or undergoing relevant training
  - viii) to study, if employees aged 16 or 17 have not attained a certain standard of education
  - ix) for medical suspension if continued employment would endanger health
- **trade union membership** - employees have the right:
  - to belong or not to belong to a trade union
  - to time off to take part in trade union activities/duties

- not to be excluded or expelled from a trade union other than for a permitted reason
- not to be unjustifiably disciplined by a trade union
- not to be refused employment or the service of an employment agency because of membership or non-membership of a trade union
- not to suffer unauthorised or excessive deductions from trade union subscriptions
- **to protected employment rights** - employees have the right to be transferred automatically, on the same terms without loss of service-related employment rights, from one employer to another when the business in which the employee is then employed is transferred to a new employer. Employees have the right to object to the transfer of their contract to the new employer but they will normally lose the right to claim there was a dismissal. Employees with one year's service who are dismissed solely or mainly because of the transfer, are regarded as being unfairly dismissed unless a tribunal is satisfied that it was necessary for economic, technical or organisational reasons
- **to written reasons for dismissal on request** - provided they have at least one year's service (no request or service period required where dismissal is on maternity grounds)
- **to a written statement - of the main terms of the contract.** The Appendix to this leaflet contains an example of a written statement
- **to minimum pay** - under the National Minimum Wage Act 1998, workers are entitled to be paid at least the level of the National Minimum Wage
- **to annual leave and working time limits** - under the Working Time Regulations 1998 (as amended), workers are entitled to 5.6 weeks paid leave per year, to rest periods and in-work rest breaks and health assessments in certain circumstances. The regulations also limit the average working week to 48 hours and limit night working to an average of eight hours in any 24 hour period. Special rules apply to young persons. For further information see LRA Information Note [No.3 Holidays and holiday pay](#)
- **to protection from being required to work on Sundays** - shop workers have the right to opt out of the requirement to work on Sundays
- **to payment on insolvency of the employer** - dismissed employees can receive payments for certain debts, within limits, from the National Insurance Fund on the formal insolvency of their employer
- **to be accompanied at disciplinary and grievance hearings** - workers are entitled to be accompanied by a fellow worker or a trade union official of

their choice at certain disciplinary and grievance hearings provided that they make a reasonable request to be so accompanied. The right applies when the hearing could result in the administration of a formal disciplinary warning or some other punitive action such as suspension without pay, demotion or dismissal. The right to be accompanied at grievance hearings applies only where the grievance relates to the performance of a legal duty by an employer in relation to a worker

- [for part-time workers to be treated no less favourably than comparable full timers](#) - the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 aim to ensure that part-time workers have the same terms and conditions as comparable full timers. Less favourable treatment must be objectively justified
- [for employees on fixed-term contracts to be treated no less favourably than comparable permanent employees](#) - the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 aim to ensure that employees on contracts of fixed duration have the same terms and conditions of employment as comparable permanent employees. Less favourable treatment must be objectively justified. The regulations came into force on 1 October 2002
- [to protection when making disclosures of wrongdoing to the employer](#) - the Public Interest Disclosure (Northern Ireland) Order 1998 protects employees who have a reasonable belief that they are disclosing information relating to criminal offences, miscarriages of justice, danger to health and safety or the environment or breaches of legal obligations to their employer.

In most cases individuals have the right to make a complaint to an industrial tribunal if they consider their rights have been infringed. LRA conciliation officers are available in most of these instances to help both parties to understand the way tribunals work and to help the parties reach a voluntary solution which would avoid the need for a tribunal hearing.

The LRA also offers conciliation before a claim is made to an employment tribunal. [Pre-Claim Conciliation](#) can save time, money and stress and promote a quick solution which suits the employer and employee and helps them avoid a permanent breakdown in their relationship. For more information ring the LRA helpline on 028 9032 1442 open 9.00am - 5.00pm Monday to Friday.

Employers should follow the guidance set out in the [LRA Code of Practice Disciplinary and grievance procedures](#) when dealing with disputes. Industrial tribunals are legally required to take the LRA Code of Practice into account when considering relevant cases.

Tribunals will also be able to adjust any compensatory awards made in these cases by up to 50 per cent for unreasonable failure to comply with any provision of the Code.

### **How can a contract be altered?**

Most changes to an employment contract require the consent of employer and employee. They can be agreed:

- either verbally or in writing (although written consent can avoid later disagreements)
- through collective bargaining arrangements
- when the employee works in accordance with the new terms without objecting to the changes
- through a term which provides for a variation in the contract, eg a clause specifically allowing an employer to change an employee's duties.

It is important that changes are discussed and agreed where possible with the jobholder since disagreement over the changes may lead to the ending of the contract and employers facing claims for unfair dismissal and wrongful dismissal. Wrongful dismissal occurs where an employee is dismissed and the terms for ending the contract have not been observed.

Action for wrongful dismissal can be taken in the courts or, if the employment has been terminated, through an Industrial Tribunal.

But there may be occasions when employers feel that changes to the contract are essential to the operation of the business - perhaps arising from changes in technology.

In some circumstances an Industrial Tribunal may consider that it was not unreasonable to alter the contract without the employee's consent. However, in view of the potential problems, any decisions concerning change where there is no employee agreement require very careful consideration and discussion with those concerned.

The LRA Advisory guide [Advice on agreeing and changing contracts of employment](#) gives more detail on good practice.

### **How can a contract be ended?**

A contract can be ended by the employer or employee, normally by giving the required notice of termination. But if the employer fails to give required notice, the employee can make a claim to the courts for damages for wrongful dismissal. Alternatively, if the employment has been terminated, a claim can be made to an Industrial Tribunal.

Where the employee leaves without giving the required notice, the employer may also have, in certain circumstances, a right to claim damages.

There are exceptions, where no notice is required - where dismissal is for gross misconduct or where constructive dismissal occurs

If you are unsure whether specific areas of the employment contract are covered by legislation, or if you have any employment contract problems, please telephone the [LRA Helpline on 028 9032 1442](#) where LRA advisers with specialist knowledge can provide you with useful information.

For practical help and guidance in drawing up a Statement of Main Terms and Conditions of Employment and disciplinary and grievance procedures you can sign up for one of our [Workshops](#).

A self help guide to preparing these documents is also available at [Self-help Guides](#).