

# 8.4

## HUMAN RESOURCES

- Contracts Of Employment
- Understanding Employees' Rights
- Resolving Problems With Employees

# CONTRACTS OF EMPLOYMENT

Many businesses require employees to operate. Not all kinds of work can be handled on a self-employed basis. And the Inland Revenue will often treat people working for you as employees no matter what your arrangements. You or your business are very likely at some point to be an employer and your role as an employer is governed by law. You need to know your legal duties if you want to avoid trouble later.

## When?

As soon as an employee agrees to work for an employer, a 'contract' exists, and some legal rights and duties arise immediately. However, most rights and duties only apply when the employment starts and some of them take time to come into effect, (for example, you have to work for an employer for two years before you can claim unfair dismissal at an industrial tribunal).

## In Writing?

A contract of apprenticeship must be in writing. Terms and conditions can be verbal, not written down. Some part time workers do not have to be given a written statement, for example, someone who works less than 16 hours per week must work more than 8 hours a week for over five years before they are entitled to a written statement.

## What's In It?

Most employees must be given a written contract within 13 weeks of starting work, (says the Employment Protection (Consolidation) Act 1978). Details must include:

- The employer's name
- The employee's name
- The date employment began
- The job title

And

- The amount of pay and how often payments are made
- Hours of work
- Holiday pay/entitlement
- Sick pay arrangements
- Pension arrangements
- Periods of notice
- Disciplinary/grievance procedures
- Appeals procedure

## What's Left Out?

Items spelled out in detail (as above) are called 'express' terms, because they are expressly agreed. Other things may be agreed but not be put in writing. They may be implicit. The courts have established that the following are implicit in all contracts, whether expressed or not:

- To maintain trust and confidence through co-operation
- To act in good faith towards each other
- To take reasonable care to ensure health and safety at work

Implicit terms can become part of the contract through:

- Repeated conduct of the two sides
- 'Custom and practice', especially if usual in the same trade
- Written rules of the company

## Statutory Rights

Other Acts Of Parliament cover employees' rights, and these cannot be set aside, even if the company tries to, in rules or contracts.

- No discrimination on grounds of race
- No discrimination on grounds of sex or marriage
- Entitlement to equal pay for equal work
- Entitlement to an itemised pay statement
- Entitlement to maternity benefits
- Entitlement to protection from the Wages Councils, (if they exist)
- Entitlement to minimum notice
- No deductions from pay without written permission

- Entitlement to pay if laid off (if allowed in their contract)
- Entitlement to redundancy pay (and time to look for work)
- Entitlement to safety at work
- Entitlement to statutory sick pay
- Entitlement to time off for civic duties or Trade Union work
- Entitlement to protected rights if the firm is taken over
- Entitlement to protection from unfair dismissal
- Entitlement to written reasons for dismissal

## Changing It?

To avoid problems later, any changes should be agreed by both sides and detailed in writing. Changes can be brought about:

- By individual agreement
- By collective bargaining
- By working to new terms without disagreement
- By short term agreed variations e.g. place of work

## Ending It?

Either side can end the contract by giving the required notice. If notice is not given, either side can claim damages. However, no notice is necessary: (a) in cases of dismissal for Gross Misconduct, or (b) where Constructive Dismissal occurs, (that is, the employee resigns because the employer has broken the contract).

# UNDERSTANDING EMPLOYEES' RIGHTS

## Workers And Employees

An 'employee' is someone who works for you under the terms of a contract of employment, whether it is written down, agreed orally or implied by the nature of the relationship. Many casual workers are likely to be employees with short-term contracts.

A 'worker' is any individual person who works for you, whether under a contract of employment with you or not, who provides a personal service e.g. a casual worker, agency worker or some freelance workers. In terms of the rules and regulations in this section, genuinely self-employed people or businesses to whom you subcontract are not defined as 'workers'.

All employees are workers, but not all workers are employees. Many rules, regulations and rights apply only to employees, but some apply to all workers.

Where 'workers' are referred to in this guide, everyone working for you who isn't self-employed or employed by someone else is entitled to the employment rights in question.

## Insuring Your Employees

You must insure against any claims arising from illness, diseases or injuries your staff may pick up as a result of working for you.

Employees' liability insurance, which protects your business against claims from employees for accidents or sickness they may suffer as a result of working for you, is a legal requirement. The statutory minimum cover is £5 million and you should display the certificate in any place of work. Keep your certificates even after they have expired - employees could make a claim many years after they have worked for you.

If you are an employer, you must purchase employees' liability insurance.

## Duty Of Care

The basic rule is that irrespective of the relationship between the social enterprise and the individual worker or employee, it, its employees and its committee members have a duty of care which, if breached, may make them liable for prosecution or civil action. It is important therefore that all people involved understand their responsibilities to employees and act upon them.

## Terms And Conditions Of Employment

### The National Minimum Wage

Nearly everyone who works for you is entitled by law to receive a minimum level of pay - the national minimum wage. This includes bonuses and incentive payments - but not overtime or shift-work premiums.

You must pay everyone who works for you at least the national minimum wage. This typically includes freelance and casual workers as well as employees who have a contract of employment.

The rates current from October 2004 are:

- £4.85 an hour - main (adult) rate for workers aged 22 and over
- £4.10 an hour - development rate for workers aged 18 - 21 inclusive
- £3.00 an hour - rate for 16 and 17 year olds (above compulsory school leaving age)

**N.B. 16 and 17 year old apprentices are exempt from the young workers rate**

When calculating whether you're paying the minimum wage, you can take into account any incentive or performance -related payments, bonuses and tips paid through the payroll. But extra money above basic pay - such as overtime or shift-work premiums - doesn't count.

Most benefits other than money can't be included, apart from a small amount for free accommodation.

Workers' average pay must be at or above the minimum wage for the period for which they're being paid. For workers on a wage or salary, the number of hours worked will generally be clear. If you have pieceworkers or workers paid to do set tasks, you can agree with them a fair number of hours for the work to represent.

You'll need to keep records to prove you're complying. Workers can ask to see them if they think they're being underpaid. If most of your staff have earnings well above the minimum wage, you probably won't need to keep any specific records beyond those you already keep for PAYE.

### Payments To Staff Who Are Off Sick

Staff who can't work for four days or more because of illness are entitled to a minimum level of sick pay. You can claim some of the money back from the Inland Revenue if your business's sick pay exceeds a set level.

You must pay statutory sick pay (SSP) to employees who can't work for four or more calendar days in a row because of physical or mental illness or disablement. The rate in the tax year 2004/05 is £66.15 a week.

All full and part-time employees and agency workers who are employees for National Insurance purposes, aged between 16 and 65, qualify for statutory sick pay provided they earn more than the National Insurance lower-earnings limit, which is £79 per week (2004/05 tax year). But you can withhold statutory sick pay if the employee has recently drawn incapacity benefit or severe disablement allowance or is in custody.

If your own arrangements are more generous than the statutory sick pay scheme you can opt out. But you must keep detailed records.

Statutory sick pay is subject to income tax and employee's National Insurance contributions. It's payable for up to 28 weeks for any one period of sickness.

You may be able to recover some SSP by deducting this money from the National Insurance contributions you pay to the Inland Revenue (and from income tax if necessary). Full details on what you can claim back is available in the Inland Revenue booklet *What To Do If Your Employee Is Sick*. Any sick pay you recover has to be recorded on your Inland Revenue P14 and P35 forms at the end of the tax year.

You must keep full records of sick pay for three years. A form for this purpose can be found in the Inland Revenue booklet *What To Do If Your Employee Is Sick*. It is also a good idea to record sick pay paid to an employee in the relevant column on your P11 form.

### Employee Pensions

If you've got five employees or more, you may need to offer employees access to a stakeholder pension scheme. The business is not required to make contributions to an employee's scheme - but you must deduct an employee's contributions from their pay if they ask you to.

You are exempt from having to offer a stakeholder pension scheme, even if you employ five or more people, if:

- They all earn less than the National Insurance lower earnings limit
- You offer access to an occupational pension scheme which all employees can join within a year of starting work
- You offer to pay a contribution of at least 3% of employees' basic pay to a personal pension scheme and to deduct their contributions if requested. The scheme shouldn't penalise members who stop contributing.

If you aren't exempt, you must choose a stakeholder scheme which is registered with the Occupational Pensions Regulatory Authority (OPRA).

You should consult employees about your choice and then write to the scheme provider to say you've formally chosen their scheme. Keep a copy of the letter.

Give employees details of your chosen provider and a contact name. You can give information about the scheme to employees - but you mustn't advise them about its financial benefits.

Employees aren't obliged to sign up to the scheme. Tell staff you can take their contributions from pay through PAYE but that they can pay directly into the scheme if they prefer.

You must deduct the employee's contributions from pay if asked to do so and forward them to the scheme provider. Keep records of the payments.

Employers don't have to make contributions. If you want to, tell staff how much you intend to put in.

## Length Of The Working Week

Rules on working time fix the maximum average working week for most worker at 48 hours. Workers can agree voluntarily to forgo this limit - but you mustn't put pressure on them to do so.

For calculation purposes, hours are averaged over a 17-week period, though this can be extended by agreement. The calculation must add in hours spent on holiday and sick leave which would otherwise have been worked.

Workers can voluntarily agree to waive the 48 hours' limit - but you mustn't force or put pressure on them. You must ask those who do opt out to sign a written agreement. The limits don't apply to employees who have the freedom to choose their own hours of work - typically senior managers - nor to self-employed contractors. But freelance or agency staff who get paid a regular wage or salary do qualify.

Work-related training counts as part of the working week, as do travel as part of a worker's duties and working lunches. But journeys to and from work and lunch breaks don't.

Staff have a right to 11 hours rest between each working day; young workers get 12 hours. You mustn't force staff to work more than six days in every seven, or 12 days in every 14. Young workers should get two days off a week.

You need to keep a record to show you're complying with the 48-hour limit - but you may be able to do this by using records you already keep for pay (a payslip quoting hours worked, for example). You have to keep an up-to-date record of workers who've agreed to work more than 48 hours a week.

## Rest Breaks

Workers have a right to minimum rest breaks during and between shifts, and a set number of days off each week. There are special rules concerning young workers.

Most people who work for you - employees, freelancers, casual or agency workers - are entitled to minimum rest breaks. Workers must have a minimum 20-minute rest break in each shift lasting more than six hours. Young members of staff - who are over the minimum school-leaving age but under 18 - are entitled to at least 30 minutes break for each 4 1/2 hours they work.

In certain specified circumstances, rest breaks, rests between shifts and days off can be accumulated and used later. For example, this may happen during busy peak periods, when an emergency crops up or where someone works a long way from home and wants to work longer hours over a few days to complete a task more quickly.

A young worker's entitlement to breaks can only be changed or not taken in exceptional circumstances. Young workers must not work more than eight hours a day and 40 hours a week.

If you are covered by the Disability Discrimination Act and you have a worker who requires extra work breaks, for example to take medication privately, you may be discriminating by unreasonably refusing.

## Night Work

There are special regulations governing night worker's hours and they must also be offered a free health assessment to check they're up to working at night. Nearly everyone who works for you, including employees, freelancers and agency workers, are covered by these rules.

Night time is defined as a period of at least seven hours between 10pm and 7am. Unless you agree otherwise with your staff, it is defined as the period between 11pm and 6am.

Night workers - people who regularly work at least three hours during night time - shouldn't average more than 8 hours in 24-hour period. This is normally calculated over 17 weeks, though it can be extended by agreement with staff. If a night worker's job involves special hazards or physical or mental strain, there is no averaging - they mustn't work more than eight hours in any one 24-hour period.

You must offer workers a free health assessment before they start working at night and repeat it regularly (typically once a year) after that. This will generally be in the form of a questionnaire, with a medical examination following if you have any doubts about the employee's fitness for night work. You should pay particular attention to young (under 18) workers' suitability for night work - specific regulations on the times at which they are allowed to work became law on April 6, 2003. A sample assessment questionnaire is available from [www.dti.gov.uk/er](http://www.dti.gov.uk/er). You must keep records of these assessments for two years.

### **Paid Annual Leave**

People who work for you must get a minimum of four weeks' paid annual leave a year - though this can include bank holidays.

Most people who work for you, including your employees, freelancers and agency workers, are entitled to a minimum of 4 weeks' paid annual leave, with part-time workers enjoying leave proportionate to the

amount of days they work each week. You are of course free to specify a longer period in your employees' contracts if you wish.

So a full-time worker who works five days a week is entitled to 20 days' annual leave, while a part-timer who works two days a week is entitled to eight days.

The minimum leave period can include bank holidays. There's no automatic right to take bank holidays off.

The leave entitlement starts building up from a worker's first day at work. With your staff's agreement, during their first year of work you can use a system in which they get one twelfth of their annual leave entitlement for each month they work, rounded to the nearest half day.

Holiday pay must be based on the worker's average pay. If, for example, their normal pay includes additional money for working unsocial hours, so must the holiday pay.

You should agree with staff how much notice of leave they should give. If you don't have an agreement, the notice period should be twice the length of the leave requested.

If someone stops working for you, they're entitled to be paid for any leave they haven't taken.

### **Time Off Work Other Than Annual Leave**

There is a range of other circumstances in which employees will be eligible for paid or unpaid time off - including acting as a safety representative, going to antenatal appointments and dealing with an emergency involving a dependant. You must allow staff time off in a number of circumstances.

If an employee is pregnant, she is entitled to time off for any appointments made on the advice of a registered medical practitioner, midwife or health visitor.

You must give time off to employees who are:

- Carrying out duties or receiving training as a safety representative
- Carrying out industrial-relations duties or being trained as an official of a recognised trade union
- Carrying out duties as a pension scheme trustee
- Looking for another job or arranging training for future employment when being made redundant
- Carrying out duties or receiving training as an employee representative for consultation over collective redundancies or business transfers
- Young people doing studying or training leading to a relevant qualification

In the following instances you have to give employees time off but you're not obliged to pay them if you don't want to:

- Taking action to deal with an emergency involving a dependant, such as helping a dependant who falls ill, is injured or assaulted, arranging a dependant's funeral, helping a dependant give birth, dealing with an unexpected breakdown in care arrangements for a dependant or dealing with an incident at a school attended by a child of the employee
- Taking part in certain trade union activities

- A range of public duties, including acting as a magistrate; a member of a local authority, police authority, health authority or NHS trust; a member of a school governing body. If you don't release an employee for jury service, you could be prosecuted for contempt of court

If you are covered by the Disability Discrimination Act and you have a worker who requires time off for reasons related to the disability, for example for treatment or rehabilitation, you may be discriminating by unreasonably refusing.

In other cases, you only have to allow 'reasonable' time off.

### Right To Belong To A Trade Union

You mustn't penalise employees for joining - or refusing to join - a trade union. You mustn't base recruitment decisions on whether or not an employee belongs to a trade union. Staff don't need your permission to belong to a union. You can't dismiss or threaten to dismiss someone for being a member.

You cannot take any other action to prevent, penalise or deter an employee from belonging to a union - such as refusing to promote them. Nor can you make an employee join or stay in a union.

If you employ more than 20 people and refuse to recognise a union for bargaining purposes, you may be required to do so after a ballot or if the majority of the relevant workforce are union members.

## Race And Sex Discrimination

People have the right not to be discriminated against on the grounds of race, sex or marital status. And this doesn't just mean giving all your staff access to the same opportunities - you must also protect them against verbal or physical harassment.

You mustn't discriminate against anyone who works for you (including self-employed contractors) or treat them less favourably because of their: colour; race; nationality; ethnic or national origin; sex; status as a married person.

Apart from yourself, you also have to ensure that other managers or members of staff don't discriminate against their colleagues.

The way you recruit staff mustn't discriminate against anyone because of their race or sex.

You mustn't offer less favourable contractual terms - including those covering pay and benefits nor deny people access to promotion, transfers, training or any other schemes, facilities or services. Under equal-pay laws, you must offer the same level of pay to men and women doing the same or similar work as someone of the opposite sex.

You mustn't dismiss an employee because they are married or because of their sex, race, nationality or ethnic or national origins and any attempt at separating people of a particular race from other staff counts as discrimination.

You must also avoid indirect discrimination - where you apply a seemingly unbiased requirement or practice which members of one sex or a racial group are much less likely to be able to comply with. Examples of indirect discrimination might be creating

new shift patterns which make things hard for working mothers or introducing a uniform banning headgear when some people wear headwear relating to their religious or ethnic background.

Staff have the right not to be subject to racial or sexual harassment - which might include lewd, sexist or racist remarks, graffiti, jokes, verbal abuse or physical assault. Remember that you may be held responsible for any discrimination or harassment practised by your employees, so you must deal with any problems. You mustn't victimise anyone who makes a complaint of discrimination against you.

There are a few limited exceptions to the rules - for example, in jobs such as acting and modelling where someone from a particular racial group or sex may be needed for the purposes of authenticity. Some restaurants where food is served in a particularly authentic setting may also be allowed to recruit from particular racial groups.

Some welfare or social workers may be able to serve the interests of a particular racial group better if they're a member of that group. And in areas such as care work, it may be necessary to appoint someone of a particular sex for reasons of privacy and decency.

It's best to take advice if you intend to apply one of the exceptions. You may also take positive action to help men or women or members of a particular racial group compete on equal terms when looking for work - perhaps by running a training course or offering work experience. You can encourage people to apply for work - but you must always select the best person for the job when recruiting.

## Workers With Disabilities

You mustn't treat staff less favourably on the grounds of their disability unless you can justify such treatment.

Disability is defined as a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day to day activities.

You must be prepared to make 'reasonable adjustments' for disabled people - changes that would assist them to work or continue to work for you. Examples might include:

- Making alterations to your premises
- Giving some of the disabled person's duties to another member of staff
- Buying special equipment
- Changing the person's working hours

In some circumstances you may be justified in refusing such adjustments. This might include when the adjustment would:

- Make no significant difference to the disabled person's ability to do the job
- Not be practical
- Cost more than you could afford, particularly when there is no financial help available to you
- Contravene other legislation, such as health and safety rules

The way you recruit staff (including self-employed contractors) should not discriminate against people with a disability.

You may need to make reasonable adjustments to your recruitment process to make sure people with disabilities are not disadvantaged in their application.

For example, this may mean holding an interview in a room that is more accessible to a wheelchair user, removing a requirement that people phone in to discuss a vacancy or providing special equipment or a sign language interpreter for an interview.

You mustn't offer less favourable contractual terms - including those covering pay and benefits - to staff because they're disabled. Nor can you deny them access to promotion, transfers, training or any other schemes, facilities or services.

You mustn't dismiss staff on the grounds of disability or victimise anyone who makes a complaint of disability discrimination against you.

## Rights Of Part Time Workers

Part time workers are generally entitled to the same treatment as full timers - from the same hourly rates of pay to access to promotion opportunities, pension schemes and training.

You mustn't treat part time workers less favourably than a comparable full timer - anyone working for the same employer doing the same or broadly similar work. The rules cover employees, freelancers or casual workers, but not the genuinely self-employed. However, you may be able to treat a part timer differently from a full timer if you can show that it's necessary and appropriate to achieve a real business aim.

Part time workers should get the same hourly rates of pay as comparable full timers. Overtime rates must be the same, too - but legally you do not need to pay overtime rates until they have exceeded normal full-time hours.

In addition, part time employees enjoy leave proportionate to the amount of days they work each week. So if a full time employee who works five days a week is entitled to 20 day's annual leave, a part timer who works 2 days a week is entitled to eight days.

You must also treat part timers the same as full timers when calculating entitlement to maternity and parental leave and calculating levels of sick pay and maternity pay.

You must give them the same access as full time workers to promotion opportunities and pension schemes.

Part timers mustn't be treated unfavourably if you're selecting position for redundancy.

You shouldn't exclude people from training because they work part time. Where possible, training should be organised when all staff can attend.

You mustn't victimise part timers who've made a complaint of unfair treatment against you.

## Maternity, Paternity And Dependents

### When An Employee Is Pregnant

A pregnant employee automatically qualifies for ordinary maternity leave. Those with a minimum length of service can also take additional, unpaid leave if they wish. You mustn't dismiss a pregnant employee - or single her out for redundancy - for reasons connected with her pregnancy, childbirth or maternity leave. Nor must you treat her unfairly. Regardless of the size of your business or the hours she works, a pregnant employee is entitled to a minimum standard

of treatment - though you can be more generous if you wish.

You must give pregnant women paid time off to attend antenatal care appointments which may include relaxation and parenting classes attended on the advice of a registered medical practitioner, midwife or health visitor. They're also entitled to up to 26 weeks' ordinary maternity leave. Ordinary maternity leave can start any time from the 11th week before the baby is due to be born. The employee must give you three weeks' notice of the leave, where possible.

Many women will be entitled to receive statutory maternity pay during ordinary maternity leave (see 'Pay While On Maternity Leave' page 318).

A woman expecting a baby must notify you by the 15th week before the expected week of childbirth. You'll have to write to her stating when you expect her to return to work if she takes her full maternity leave entitlement. A pregnant employee must give you a certificate giving details of the expected week of childbirth from her doctor or midwife. Keep this as a record.

A pregnant woman keeps all her normal terms and conditions except wages or salary while she's on ordinary maternity leave. Her holiday will continue to build up as normal, for example. If her job becomes redundant during the maternity leave, you must offer any suitable alternative work available. You must also 'seriously consider' any request by the employee to return to work part time. Refusal to offer such an option may amount to indirect sex discrimination.

If a woman has worked for you for 26 weeks by the beginning of the 11th week before the baby is due to be born, she can also take up

to 26 weeks' unpaid additional maternity leave, and the period of unpaid additional leave runs from the end of ordinary maternity leave.

Only some terms and conditions of employment remain during the unpaid additional leave period - relating to compensation in the event of redundancy, notice periods and discipline and grievance procedures, for example.

After additional maternity leave, an employee is entitled to return to the same job. If this job has been made redundant, you must offer any suitable alternative available. But if her job has been made redundant and you've got five employees or fewer, you don't have to re-employ her if it wouldn't be practical to do so and there's no suitable alternative work. However, you may need to prove this to an employment tribunal.

If there's an unavoidable health or safety risk to a new or expectant mother or her baby, and you can't find other suitable work for her, you must suspend her on full pay.

It is illegal for new mothers to return to work within two weeks of giving birth (four weeks for factory workers).

### **Pay While On Maternity Leave**

Many pregnant women also have the right to receive a minimum level of pay during their ordinary maternity leave. You can claim most - or all - of this money back from the Government.

Women who've worked for you for at least 26 weeks into the 15th week before the baby is due and earn more than the lower earnings limit for National Insurance contributions (£79 for the 2004/05 tax

year) will be entitled to receive statutory maternity pay during their ordinary maternity leave. Women are entitled to 26 weeks' statutory maternity pay, and will receive 90% of average weekly earnings for the first six weeks. This is followed by a standard rate of £102.80 per week or 90% of average weekly earnings, whichever is the lower.

Statutory maternity pay is subject to income tax and National Insurance contributions in the same way as normal earnings.

Employers recover statutory maternity pay from the income tax and National Insurance contributions they pay to the Inland Revenue.

If your business's total annual National Insurance contributions are £40,000 or less, you can claim back all statutory maternity pay plus a compensation payment on top from the Inland Revenue. Otherwise you can claim 92% of the payments you make.

You must record maternity payments in the relevant sections of your P11, P14 and P35 tax forms from the Inland Revenue. You can also use for SMP2 to keep a record of statutory maternity payments if you wish. These are available from the Inland Revenue (see References page 322). All records must be kept for three years.

### **Paternity Pay**

Working fathers can take up to two weeks' paid leave following the birth of a baby. Their pay will be set at the same level as statutory maternity pay.

To qualify, an employee must:

- Have or expect to have responsibility for the child's upbringing
- Be the child's biological father or the mother's husband or partner
- Have worked continuously for you for at least 26 weeks by the 15th week before the baby was due and have continued working for you until after the birth
- (When paternity leave is being taken by an adoptive parent) have worked for you for at least 26 weeks by the week in which they were told they had been matched with a child, and have continued working for you until the child was placed with the adopter

You can ask the employee to fill in a self-certificating form as evidence of their entitlement to statutory paternity pay. You can use the Inland Revenue's form *Becoming A Parent (SC3)*.

Fathers can take a block of either one or two whole weeks' leave - but not odd days. Leave must be taken within 56 days of the child's birth or, if the child is born early, in the period from the actual date of birth until 56 days after the expected week of birth.

Employees have the right to return to the same job after taking paternity leave. You must not dismiss an employee or treat him unfairly because he's taken paternity leave. Working fathers are entitled to keep their normal terms and conditions - except those relating to wages or salary - while taking paternity leave.

Most fathers will be entitled to statutory paternity pay - the lower of £102.80 or 90% of the employee's average weekly earnings.

Staff who earn less than the lower earnings limit for National Insurance contributions don't qualify for statutory paternity pay.

You can recover statutory paternity pay from the income tax and National Insurance contributions you pay to the Inland Revenue.

If your business's total annual National Insurance contributions are £40,000 or less, you can claim back all statutory maternity pay plus a compensation payment on top from the Inland Revenue. Otherwise you can claim 92% of the payments you make.

You must record maternity payments in the relevant sections of your P11, P14 and P35 tax forms from the Inland Revenue. You can also use for SMP2 to keep a record of statutory maternity payments if you wish. These are available from the Inland Revenue (see References page 322). All records must be kept for three years.

### **Paid Leave For Adoptive Parents**

Employees who are newly matched with a child for adoption by an adoption agency can take adoption leave if they have worked for you for at least 26 weeks. While they are off work they will also be entitled to a minimum level of statutory adoption pay.

One member of a couple - or an individual - who adopts a child will be entitled to adoption leave and pay. The other member of a couple may qualify for paternity leave and pay.

To qualify for adoption leave, an employee must have worked continuously for you for at least 26 weeks when they've been matched with a child by an adoption agency.

Employees must give you evidence from the adoption agency as proof of their entitlement to adoption leave and pay: for example, a letter on headed paper confirming the matching.

Adoptive parents will be entitled to up to 26 weeks' ordinary adoption leave. Leave can start from the date of the child's placement or from up to 14 days beforehand.

You mustn't dismiss employees or treat them unfairly because they've taken adoption leave. They'll be entitled to keep their normal terms and conditions of employment - except those relating to wages or salary - throughout this period. They'll also be entitled to statutory adoption pay. From April 6, 2003 this will be the lower of £100 a week or 90% of the employee's average weekly earnings - though you can pay more than this if you wish.

Employees with average weekly earnings below the lower earnings limit for National Insurance Contributions don't qualify for statutory adoption pay. Employers can recover statutory adoption pay from the income tax and National Insurance contributions they pay to the Inland Revenue.

If your business's total annual National Insurance contributions are £40,000 or less, you can claim back all statutory adoption pay plus a compensation payment on top. Otherwise you can claim 92% of the payments you make.

You must record statutory adoption payments in the relevant sections of your P11, P14 and P35 forms available from the Inland Revenue; a number of Government explanatory booklets are also available.

All records must be kept for three years.

Parents who take ordinary adoption leave can also take 26 weeks' additional adoption leave. This is unpaid unless the employee's contract states otherwise.

Some terms and conditions of employment remain during this period - relating to compensation in the event of redundancy and notice periods, for example.

### Unpaid Leave For Parents

Parents can take extra, unpaid time off during the first few years of their children's lives. Generally, you agree with your employee how this parental leave is taken.

Mothers and fathers have a right to take unpaid parental leave to look after young and disabled children. Parents can take 13 weeks' unpaid parental leave for each child born or adopted on or after December 15 1999. They can take leave until the child's fifth birthday or until five years after they have adopted a child. They must have completed a year's continuous service with you.

Regulations have also been introduced to help parents with children born before the original starting date of December 15 1999. As a result, parents with children born between December 15 1994 and December 14 1999 can claim 13 weeks' unpaid leave until March 31, 2005. In this case, parents must have completed one year's continuous service with an employer - not necessarily you - between December 15 1998 and January 9 2002. Parents of disabled children born on or after December 15 1994 can take 18 weeks unpaid leave until the child's 18th birthday.

Employees remain employed while on parental leave. Some contractual terms and conditions - such as those relating to notice periods and redundancy - still apply. You must allow staff returning from parental leave of four weeks or less to return to the same job.

With longer periods of leave, you must let them go back to the same job or, if that's impractical, to a job with similar or better terms and conditions.

You can agree how and when leave is to be taken with staff or their representatives, though there's a fallback scheme if there isn't an agreement. Under this, up to four weeks' leave can be taken in one year, in blocks of one week at a time.

You can postpone parental leave if you think an employee's absence would disrupt the business too much - perhaps when work is at a seasonal peak or when an employee's skills are essential to the business at a particular time. You must discuss the postponement with the employee and then give them written notice. The leave can be postponed for a maximum of six months.

## Employees And Flexible Working

**Flexitime, job-sharing and term-time working - all examples of the kind of flexible working patterns parents can request from you from April 2003.**

From April 6, 2003 you have to consider seriously requests to work flexibly from parents of children under six or disabled children under 18. To make a request, parents must have worked continuously for you for at least 26 weeks. Where you may have a clear business reason why the work

pattern cannot be accommodated, you may refuse the request.

Flexible working includes working patterns such as annualised hours, flexitime, job-sharing, shift-working and term-time working. Or it might simply be starting half-an-hour later and making up the time later in the day.

Employees have to make a written application to work flexibly. You are required to meet them within 28 days to discuss their request.

You then have 14 days to write to the employee with your decision. Staff have a further 14 days to appeal if they disagree with it.

If you are covered by the Disability Discrimination Act and a disabled person needs to work different hours for a reason related to their disability, for example to avoid travelling on public transport during rush hour or because their disability means that they work better later in the day, you may be discriminating if you refuse this.

## References

### Employers' Liability (Compulsory Insurance) Act 1969: A Guide for Employers (HSE40)

Contact HSE Books 01787 88 11 65  
[www.hsebooks.co.uk](http://www.hsebooks.co.uk)

### National Minimum Wage (ERF05)

Contact 0870 150 2500  
[www.businesslink.org](http://www.businesslink.org)

### National Minimum Wage

Helpline 0845 600 0678  
 Decision trees to check if staff are eligible for the national minimum wage are available online at [www.tiger.gov.uk](http://www.tiger.gov.uk)

### What To Do If Your Employee Is Sick (E14); Employee's Statement Of Sickness (SC2); Statutory Sick Pay Manual For Employers (CA30)

Contact 0845 7 646 646  
[www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers)

The Occupational Pensions Regulatory Authority (OPRA) offers a decision tree for employers and a register of stakeholder pension providers.

Contact 01273 627600  
[www.stakeholder.opra.gov.uk](http://www.stakeholder.opra.gov.uk)

### Stakeholder Pensions - A Guide For Employers (PME)

Contact 0845 7 646 646  
[www.thepensionsservice.gov.uk](http://www.thepensionsservice.gov.uk)

### Your Guide To The Working Time Regulations (URN 00/633)

Contact 0870 150 2500  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)

### Holiday And Holiday Pay

Contact Acas Publications 08702 42 90 90  
[www.acas.org.uk](http://www.acas.org.uk)

### Time Off Work (ERF12)

Contact 0870 150 2500  
[www.businesslink.org](http://www.businesslink.org)

### Time Off For Public Duties (PL702); Redundancy Entitlement: Statutory Rights (PL808); Time Off For Your Dependants (URN 99/1186)

Contact 0870 150 2500  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)

### Time Off For Trade Union Duties And Activities

Contact Acas Publications 08702 42 90 90  
[www.acas.org.uk](http://www.acas.org.uk)

### Racial Discrimination In Employment (ERF09); Sex Discrimination And Equal Pay (ERF10)

Contact 0870 150 2500  
[www.businesslink.org](http://www.businesslink.org)

### The Commission For Racial Equality's Employment Code Of Practice

Contact 020 7939 0000  
[www.cre.gov.uk](http://www.cre.gov.uk)

### Equal Opportunities Commission

provides a number of publications: Equal Opportunities Is Your Business Too; Code Of Practice - Sex Discrimination; Code Of Practice On Equal Pay  
 Contact 0845 601 5901  
[www.eoc.org.uk](http://www.eoc.org.uk)

### Equality Direct can offer more advice

Contact 0845 600 3444  
[www.equalitydirect.org.uk](http://www.equalitydirect.org.uk)

**Disability Discrimination In Employment (ERF01)**

Contact 0870 150 2500

[www.businesslink.org](http://www.businesslink.org)**The Disability Discrimination Act 1995: What Employers Need To Know**

Contact the Disability Rights

Commission 08457 622 633

[www.drc-gb.org](http://www.drc-gb.org)

**The Employers' Forum On Disability** is an organisation led by businesses which examines the issues of disability in the workplace and generates best-practice advice

Contact 020 7403 3020

[www.employersforum.co.uk](http://www.employersforum.co.uk)**Part-Time Workers (ERF06)**

Contact 0870 150 2500

[www.businesslink.org](http://www.businesslink.org)**Part-Time Workers:****The Law And Best Practice**

Contact 0870 150 2500

[www.dti.gov.uk/er](http://www.dti.gov.uk/er)**Trade Union Membership (ERF13)**

Contact 0870 150 2500

[www.businesslink.org](http://www.businesslink.org)**Union Membership: Rights of Members and Non-Members (PL871)**

Contact 0870 150 2500

[www.dti.gov.uk/er](http://www.dti.gov.uk/er)**Trade Union Recognition And Derecognition**[www.cac.gov.uk](http://www.cac.gov.uk)**Representation At Work**

free online, £3.95 hard copy

Contact 08702 42 90 90

[www.acas.org.uk](http://www.acas.org.uk)**Acas Codes Of Practice: Disclosure Of Information To Trade Unions; Time Off For Trade Union Duties And Activities**

Contact Acas Publications 08702 42 90 90

[www.acas.org.uk](http://www.acas.org.uk)**Maternity Rights (ERF04)**

Contact 0870 150 2500

[www.businesslink.org](http://www.businesslink.org)

**Maternity Rights: A Guide for Employers and Employees (PL958); Maternity Leave Changes: A Basic Summary (PL507); Suspension From Work On Medical or Maternity Grounds (PL705)**

Contact 0870 150 2500

[www.tiger.gov.uk](http://www.tiger.gov.uk)**Acas Flexible Working**

Contact 08702 42 90 90

[www.acas.org.uk](http://www.acas.org.uk)

**What To Do If Your Employee Is Pregnant (E15SD); Pay And Time Off Work For Parents (E15); Information of paying an employee is available with Statutory Maternity Pay Record Sheet (SMP2)**

Contact 0845 7 646 646

[www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers)**Inland Revenue Employers' Helpline**

information and advice on statutory maternity pay

Contact 08457 143 143

**Inland Revenue Employers' Orderline**

provides all relevant forms

Contact 0845 7 646 646

[www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers)

**Paternity Leave And Pay: A Basic Summary (PL514); Working Fathers: Rights To Paternity Leave And Pay (PL517)**  
Contact 0870 150 2500  
[www.tiger.gov.uk](http://www.tiger.gov.uk)

**Statutory Paternity Pay Record Sheet (SPP2); Becoming A Parent: Self-Certificate (SC3)**  
Contact 0845 7 646 646  
[www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers)

**Adoptive Parents: Rights To Leave And Pay - A Basic Summary (PL515)**  
Contact 0870 150 2500  
[www.tiger.gov.uk](http://www.tiger.gov.uk)

**Pay And Time Off Work For Adoptive Parents (E16); Statutory Adoption Pay Record Sheet (SAP2)**  
Contact 0845 7 646 646  
[www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers)

**Parental Leave: A Short Guide For Employers And Employees (PL510). Parental Leave: A Detailed Guide For Employers And Employees (PL509)**  
Contact 0870 150 2500  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)

**Flexible Working: The Right To Request And A Duty To Consider - Guidance For Employers And Employees (PL520)**  
Contact 0870 150 2500  
[www.dti.gov.uk/workingparents](http://www.dti.gov.uk/workingparents)

**Changing Patterns Of Work**  
free on-line, £3.95 hard-copy  
Acas Publications 08702 42 90 90  
[www.acas.org.uk](http://www.acas.org.uk)

**The Acas Helpline** can offer advice  
Contact 08457 47 47 47

# RESOLVING PROBLEMS WITH EMPLOYEES

## Discipline And Grievance Issues

Basic information on disciplinary and grievance issues must be included in your employees' written statement of employment details. There's currently no requirement to have a formal disciplinary or grievance procedure - but putting procedures in place can help you defend any claim an employee might make at an industrial tribunal.

You must include details of disciplinary rules and grievance procedures if you have them in your written statement of terms and conditions. You must explain:

- What your disciplinary rules are (if you have them)
- To whom the employee should apply if they are dissatisfied with a disciplinary decision or want to put right a grievance
- How to apply and what further procedures, if any, will follow

For the first and last of these you can also refer employees to a separate document that they should be able to easily get hold of if these details are not fully contained in the written statement.

Being able to show you've followed a procedure will help your case if an employee makes a claim at an employment tribunal.

You should draw up disciplinary rules to set standards of conduct at work and explain what behaviour is unacceptable. The rules should cover areas such as:

- Timekeeping
- Absence
- Holidays
- Health and safety
- Standards of work
- Personal appearance
- Use of company facilities
- Smoking
- Discrimination

Your disciplinary procedure sets out the action you will take against staff who break these rules. A typical disciplinary procedure will have the following stages:

- Formal oral warning for a minor offence
- Written warning for subsequent minor offences or a more serious offence
- Final written warning for further misconduct
- Dismissal with appropriate notice if there is insufficient improvement in the employee's conduct

Minor breaches of rules should be dealt with informally. Examples of conduct you might deal with using your disciplinary procedure could include persistent lateness or unauthorised absence.

Gross misconduct is an action so serious that you may dismiss an employee for their first offence without notice or pay in lieu of notice. In practice, however, you should generally suspend the employee on full pay and investigate the incident before dismissal.

Examples of offences which are normally regarded as gross misconduct include: theft; fraud; fighting; assault; deliberate damage to company property; being under the influence of alcohol or illegal drugs; serious negligence which causes unacceptable loss, damage or injury; serious acts of insubordination.

An employee accused of misconduct or gross misconduct should be given the chance to have their say at a disciplinary hearing. They have the right to be accompanied by a colleague or trade union representative at any such hearing.

A grievance procedure allows individual workers to raise grievances with management about their employment.

A simple grievance procedure should cover:

- Who an employee should raise a grievance with and how
- Who they should appeal to if they're not satisfied
- Time limits for each stage of the process
- An employee's right to be accompanied by a colleague at a grievance hearing

Disciplinary and grievance procedures should follow the Acas Code of Practice of Disciplinary and Grievance Procedures (see 'References' page 332).

## Monitoring Email And Web Use

You must inform employees if you intend to monitor their web and email use - preferably making it part of their employment contracts. You can only inspect the content of individual emails in a number of restricted circumstances.

There are legal restrictions on how you can monitor employees' use of the Web and email. But this is a complex area which is covered by three laws; The Regulation of Investigatory Powers Act, the Data Protection Act and the Human Rights Act. If in doubt you should seek legal advice.

You must inform employees if you intend to carry out any monitoring of their email and Web use - whether this is of Internet and email traffic or the contents of emails. Include this in their employment contracts or refer to a separate internet policy which mentions it.

In general you can monitor email and Internet traffic, installing software which logs websites visited and emails sent and received together with addresses (but not their contents). You can inspect the content of individual emails without a worker's consent for a number of specific business purposes. These include:

- Recording transactions or other important business communications
- Making sure employees are complying with the law and your internal policies
- Preventing abuse of your telecoms system
- Checking emails when staff are on leave

If you want to monitor communications for other purposes, or are not sure whether you have the right to read an email, you must get permission to do so - from both the sender and the recipient. The law can be complex and you should act carefully or consult a solicitor.

## Valid Reasons For Dismissal

If you're dismissing an employee, you must make sure you're acting fairly and reasonably. There are a number of potentially valid reasons for dismissal - from redundancy to the employee being unable to do the job.

Employees with at least a year's service with you who are under 65 (or the normal retirement age for a person doing that job) have the right not to be unfairly dismissed.

They can complain to an employment tribunal if they think they have been unfairly dismissed. If the reason for dismissal is one of a number which the law regards as 'automatically unfair', an employee can make a tribunal claim regardless of their age or length of service.

For a dismissal to be fair, you must have a valid reason for dismissing the employee. Potentially valid reasons will relate to:

- The employee's ability or qualifications to do the job
- The employee's conduct
- That the employee's position is redundant
- Any legal requirements preventing the employee from continuing to do their job (for example, if a van driver is banned from driving)

- Some other 'substantial' reason not covered by the four reasons above

You must also act reasonably in dismissing the employee (rather than giving them a chance to improve or taking some other form of disciplinary action, for example).

There are no set rules on what's reasonable - it will depend on all the circumstances, including your business's size and administrative resources.

You may be required to prove you have acted reasonably to an employment tribunal if an employee makes a claim. You should be able to show you've acted fairly and consistently and followed a disciplinary procedure in line with the Acas Code Of Practice On Discipline And Grievance Procedures.

Remember that a dismissal also takes place when an employee's limited-term contract expires but isn't renewed.

## Dismissals Which Are Automatically Unfair

Some reasons for dismissal are regarded as automatically unfair. You must not dismiss an employee for reasons that include pregnancy, taking certain actions on health and safety grounds or seeking to assert statutory employment rights.

If you dismiss an employee or select them for redundancy when others in similar circumstances aren't selected it will automatically be unfair, regardless of their age or length of service. If your reasons include one or more of the list below. The list is not exhaustive - the DTI publication, Dismissal - Fair And Unfair provides more detailed examples.

- Pregnancy
- Taking particular kinds of action on health and safety grounds, such as carrying out or proposing to carry out duties as a health and safety representative
- Carrying out or proposing to carry out functions as an employee representative
- Membership or non-membership of a trade union, or taking part in the activities of an independent trade union
- Carrying out or proposing to carry out duties as a trustee of a company pension scheme
- Seeking to assert a wide range of statutory employment rights, including rights under minimum wage, tax credits or working time legislation
- Disclosing certain kinds of wrongdoing in the workplace
- Taking - or trying to take - parental leave or time off for dependants

- Taking lawfully organised industrial action lasting eight weeks or less (or longer if you don't take reasonable steps to resolve the dispute)

## Dismissals Which Are Automatically Unlawful

Some reasons for dismissal are automatically against the law.

It is unlawful to dismiss a worker or select them for redundancy because of their:

- Sex
- Marital status
- Race, nationality or ethnic origins
- Disability

A worker - which can be an employee or any individual that works for you who is not genuinely self-employed - who believes they have been dismissed for such a reason could make a discrimination claim against you.

## Giving Notice Of Dismissal

If you dismiss an employee, they're entitled to a minimum amount of notice - unless it's for gross misconduct.

The minimum amount of notice you must give an employee you're dismissing depends on how long they've been continuously employed. You can include longer periods of notice in your employment contracts if you wish.

You must give one week's notice to staff with at least one month's service. Employees with two years' service must get at least two weeks' notice.

You must then give an extra weeks' notice for each further year of continuous employment with you up to a maximum of 12 weeks' notice for service of 12 years or more.

You're not obliged to give notice if you're dismissing an employee for gross misconduct.

You must pay employees at their normal rate during their notice period. They have the right to a minimum rate of pay if they're on sick leave, holiday or ordinary maternity leave during the period of notice.

If you don't provide work for an employee on a day when you would normally do so because the business isn't working at its normal level, the employee is 'laid off'. But you can't refuse to pay them because work isn't available unless their contract of employment states that you have the right to do so.

Employees may agree to be laid off without pay in particular circumstances - such as where redundancy would be the only alternative. But this does not give you the right to lay them off in future.

Most employees are entitled to a statutory guarantee payment for any complete day of lay-off without pay - but with a limit of five days' payment in any three-month period.

## Written Reasons For Dismissal

There are cases in which you may be obliged to provide written reasons for dismissing an employee.

If an employee who has been continuously employed with you for at least one year asks for the reasons for their dismissal - orally

or in writing - you must provide a written statement of the reasons within 14 days.

If you dismiss a woman who is pregnant or on maternity leave or an employee who is taking adoption leave, you must give them a written statement of your reasons whether they ask for one or not and regardless of their length of service.

## Constructive Dismissal

An employee may be entitled to resign and make an unfair dismissal claim to an employment tribunal if you breach a fundamental term of their employment contract - perhaps by cutting their salary or failing to provide a safe place of work.

An employee may be entitled to resign if you breach a fundamental term of their employment contract. This is known as constructive dismissal. If the employee considers the constructive dismissal unfair and has at least one year's service with you, they may make an unfair dismissal complaint to an employment tribunal. Breaches of contract that may give rise to constructive dismissal claims might include anything which makes it impossible or intolerable for the employee to continue doing the job. Examples include:

- Cutting - or attempting to cut - an employee's wages or salary or other contractual benefits
- Transferring an employee to a different job or location in the absence of any stated or implied contractual right to do so
- Failing to provide a safe place of work
- Subjecting a supervisor or manager to unwarranted criticism or abuse in the presence of colleagues or subordinates

## Handling Redundancy

If there is a change in the way your business operates or you experience a reduction in business, there may no longer be a job for an employee to do, so their position becomes redundant. Redundancy can be one of the most intimidating aspects of running a business, but following established guidelines will ensure you follow the correct path.

Redundancy is when you dismiss an employee because:

- You close your business
- You close the employee's workplace
- There is a diminishing need for the employee to do work of a particular type

Normally the job must have disappeared before you consider redundancy, for example through a decline in business or the introduction of automated equipment. You must take reasonable steps to avoid compulsory redundancies by considering alternatives such as short-time working, early retirement or shedding temporary or contract labour.

Selection should always be objective. If you base it on performance, you'll need to back it up with evidence - perhaps from an existing appraisal system.

People whose jobs are made redundant have the right to be offered suitable alternative employment wherever possible. And most employees who are made redundant have the right not to be unfairly dismissed. Employees with less than one year's service don't have this right, unless the reason for dismissal is automatically unfair (see the sections above, Valid

Reasons For Dismissal and Dismissals which are Automatically Unfair).

Employees who are made redundant have the right to reasonable time off on full pay for job-hunting or to arrange training. There are minimum levels of redundancy pay that employees may be entitled to (see Qualifying For Redundancy Pay below).

If you are making more than 20 employees redundant within a 90-day period, you must consult with employees' representatives (or a trade union that the employees belong to which is recognised to negotiate on their behalf). You must also notify the Department of Trade and Industry by letter or using form HR1.

When the consultation begins, you must give employees, their representatives or the union written details of:

- The reason for the redundancies
- Numbers and types of the employees involved
- The total number of employees of each of these types you employ at the establishment
- How you plan to select the employees to make redundant
- How you'll carry out the redundancies
- How you'll calculate redundancy payments

Consultation with employees or unions does not have to end in agreement, but it must be properly carried out. And while consultation is not a statutory requirement if fewer than 20 employees are to be made redundant, it is advisable as best practice.

ACAS provides comprehensive guidance on handling redundancy that is strongly recommended.

## Qualifying For Redundancy Pay

You are required to pay certain minimum amounts to employees who qualify for redundancy pay when they lose their jobs.

Employees are entitled to statutory redundancy pay if they are made redundant and have at least two years' continuous service since their eighteenth birthday and are under 65 or the normal retiring age for the job.

Payments are based on the length of the employee's continuous service and their weekly pay - though you can pay more if you wish:

- Service is counted up to a maximum of 20 years
- Service between the ages of 18 and 22 counts for half a week's pay
- Every year's continuous service between the ages of 22 and 41 is worth one week's pay
- Every year's continuous service from the age of 41 onwards entitles the redundant employee to 1.5 weeks' pay

A week's pay is based on actual income or average weekly earnings, but is currently capped at £260.

Statutory redundancy pay is free of tax and National Insurance contributions; any additional severance pay can usually be paid tax-free up to a current total of £30,000, though this may depend on the terms of employment contract.

## Sale Or Transfer Of A Business

Employees' rights are protected when the business they work for is sold or given to another member of the owner's family to run. They cannot be fairly dismissed unless you can prove there are good economic, technical or organisational reasons for doing so.

Regulations protect employees' terms and conditions of employment when the business they work for is transferred to a new owner (often known as the transfer of an undertaking). This can be when all or part of a business is sold as a going concern or given member of your family to run.

An employee's period of continuous employment isn't broken by the transfer.

If you're the new owner of a transferred business, you can't pick and choose which employees to take on. You take over the contracts of all employees who were employed in the business immediately before the transfer - and those who would have been employed if they hadn't been unfairly dismissed for a reason connected with the transfer.

If you're transferring your business to someone else, you must let employees who will be affected know and consult their representatives. These can be officials of a recognised trade union or representatives elected by the employees.

Neither the old employer nor the new one can fairly dismiss an employee because of the transfer unless there's an economic, technical or organisational reason that involves making changes to the workforce. You'll need to be able to show that you acted reasonably in using one of these justifications.

You can't change the terms and conditions of transferred employees unless their contracts allow you to do so.

The only contractual rights which aren't transferred relate to occupational pensions. However, if you don't provide very similar overall terms and conditions - including pension arrangements - an employee may have a claim for unfair dismissal. You can also take over any collective agreements made on behalf on employees.

## References

**Producing Disciplinary and Grievance Procedures (ACAS/G02); Discipline At Work Handbook (ACAS/H02)**  
- free online, £4.95 hard copy  
Contact 08702 42 90 90  
[www.acas.org.uk](http://www.acas.org.uk)

**ACAS Code Of Practice On Disciplinary And Grievance Procedures (ACAS/CP01)**  
- free online, £2.95 in hard copy  
Contact 08702 42 90 90

**Dismissal And Notice Periods (ERF02)**  
Contact 0870 150 2500  
[www.businesslink.org](http://www.businesslink.org)

**Dismissal - Fair And Unfair (PL714)**  
Contact 0870 150 2500  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)

**Rights To Notice And Reasons For Dismissal (PL707); Guarantee Payments (PL724)**  
Contact 0870 150 2500  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)

**The ACAS publication Lay-Offs And Short-Time Working** provides more details  
Contact 08702 42 90 90  
[www.acas.org.uk](http://www.acas.org.uk)

**Redundancy Handling (ACAS/B08)**  
Contact 08702 42 90 90  
[www.acas.org.uk](http://www.acas.org.uk)

**Redundancy (ERF09)**  
Contact 0870 150 2500  
[www.businesslink.org](http://www.businesslink.org)

**Redundancy Entitlement: Statutory Rights (PL808)**  
Contact 0870 150 2500  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)

If you make more than 20 people redundant within a 90-day period, you should obtain form HR1 available from the Redundancy Payments Office or your local Jobcentre Plus.  
Redundancy Helpline 0845 145 0004  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)

For more on consultation read: **Redundancy Consultation And Notification (PL833)**  
Contact 0870 150 2500  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)

**Transfer Of An Undertaking (ERF14)**  
Contact 0870 150 2500  
[www.businesslink.org](http://www.businesslink.org)

**Employment Rights On The Transfer Of An Undertaking (PL699)**  
Contact 0870 150 2500  
[www.dti.gov.uk/er](http://www.dti.gov.uk/er)