

Guide to Employment Rights 1

Your rights when you apply for a job:

You should not be discriminated against in a job selection process because of your sex, race, nationality, disability, sexual orientation, religion or because you are a trade union member.

Your rights from your first day at work:

- You should be given a statement showing how much you earn and any deductions that will be made from your pay. (This is not the same as a contract of employment, although a contract of employment can contain this information.)
- You are entitled to 26 weeks maternity leave even if you were pregnant when you started the job.
- You can take unpaid emergency leave for family emergencies.
- You can have time off for medical appointments if you are pregnant.
- You have protection from dismissal on some limited grounds including pregnancy, whistle-blowing and trade union activity.
- You have the right not to be discriminated against for reasons of your sex (including being pregnant), your race (or in the case of EU nationals, your nationality), sexual orientation, religion or any disability, or for being a member of a trade union.
- You have the right to take a trade union representative or fellow worker into a disciplinary or grievance hearing.
- You have the right for your trade union to be recognised by the employer to negotiate your working conditions if the majority of employees want it.
- You have a right to equal pay with members of the opposite sex doing the same or a comparable job to you.

- You have a right not to have deductions (apart from income tax and National Insurance) made from your pay unless you have agreed to them.
- You can claim breach of contract if your employer sacks you without giving you the agreed notice, or breaks some other term in your contract of employment.
- If you are paying National Insurance contributions, you can claim Statutory Sick Pay after you have been off sick for four days in a row.

Your rights after a month:

- You must be given one week's notice of dismissal.
- You must be paid if you are suspended on medical grounds.
- You must be paid wages if you are laid off.

Your rights after two months:

You are entitled to a written statement of your terms of employment, which must include your pay, hours, where you are expected to work, holidays and other benefits such as a pension entitlement. While the written statement is not a contract of employment, it is very important that you have one as it can be used in a court or tribunal if problems do arise.

Your rights after six months:

You can have an additional 26 weeks maternity leave (in addition to the 26 weeks above).

Your rights after one year:

You are entitled to claim unfair dismissal if your employer sacks you without a good reason or without allowing you to go through a proper dismissal procedure. You are also entitled to written reasons for dismissal from your employer.

Your rights after two years:

You can claim redundancy pay if your job has ended and no one has been taken on to do it. The amount depends on your age, your pay and your length of service.

Guide to Employment Rights 2

What is fair dismissal?

A fair dismissal is one that takes place because of:

1. your conduct;
2. your capability or qualifications for the job;
3. redundancy;
4. a legal requirement that prevents the employment being continued (e.g. you are employed as a driver but no longer hold a driving license);
5. some other substantial reason that would justify the dismissal.

What is an unfair dismissal?

In law dismissals occur when:

- employment is terminated by an employer: such as a dismissal may be with or without notice, the latter being a 'summary dismissal' because of, for example, gross misconduct;
- a fixed term contract expires and is not renewed;
- an employee leaves with, or without giving notice, and the behaviour of the employer constitutes such a fundamental breach of the contract of employment that the employee is entitled to respond by resigning, i.e. a constructive dismissal.

The onus of proof is on the employer to show that the reason (or main reason where there is more than one) is one of the following:

- capability or qualifications;
- conduct;
- redundancy;
- a statutory requirement (e.g. holding a driving licence);
- some other substantial reason.

There is no longer any requirement to work a minimum number of hours per week to enjoy legal protection against unfair dismissal. All an employee needs to show is that he/she has a twelve months' continuous service with their employer.

This one year's qualifying period is **not** required for dismissals on grounds of sex, race, sexual orientation, religion or belief, and disability or for any of the following reasons which would make the dismissal automatically unfair:

- membership of or activities connected to an independent trade union;
- taking legitimate steps to ensure the observance of health and safety work place requirements;
- carrying out the functions of an elected employee representative or candidate for election or taking part in an election;
- carrying out the functions of an occupational pension scheme trustee;
- disclosures of wrong doing under the Public Interest Disclosure Act of 1998 due to pregnancy or childbirth;
- asserting a statutory right;
- refusing to work on a Sunday if working in retail or betting (unless part of your existing contract);
- seeking entitlements under the National Minimum Wage Act 1998;
- the employer's failure to properly follow the statutory disciplinary procedure.

Employees are eligible to apply to an employment tribunal claiming unfair dismissal up to the age of 65, or other normal retirement age applied by the organisation. There is no upper age limit if the reason for the dismissal is related to sex, race, disability or those categories where dismissal would be automatically unfair.

Redundancy.

Those being made redundant have legal rights:

- to be told and consulted in advance, in order to discuss alternatives;
- to be given reasons for the redundancy;
- to be selected according to an objectively fair process, if more than one person is affected by the change and to know the basis of the selection system;
- to try out an alternative offer of suitable work for four weeks;
- to take reasonable time off , with pay, to look for alternative work or training.

If you have at least two years' service and are between 18 and 65 years of age, you are entitled to a redundancy payment.

The statutory scheme entitles you to the following:

- half a week's pay for every year of service between 18 and 21;
- one week's pay for every year of service between 22 and 40;
- one and a half week's pay for every year of service between 41 and 64.

There is a limit to a week's pay for statutory redundancy purposes and a limit of 20 years' entitlement.

Statutory Sick Pay (SSP).

What is SSP?

It is paid to employees who are unable to work because of sickness. It is paid by your employer for up to a maximum of 28 weeks. It is not paid for specific illness or treatment but to all employees, who are incapable for work and who satisfy the conditions for payment.

Who can get SSP?

You must have worked for your employer under a contract of service. Even if it is your first day of work with a new employer and you become sick part way through the day you may be entitled to SSP.

Eligibility for SSP:

- Aged between 16 or over and under 65 (these age limits will be removed from 1 October 2006).
- Sick for at least 4 or more days in a row (including weekends and bank holidays). This is known as a Period of Incapacity for Work.
- Earn, before tax and National Insurance an average of £84.00 a week. This is called the Lower Earnings Limit for National Insurance Contributions (NIC). The amount you need to earn is lower than the amount when you have to start paying NIC's.

Your earnings are averaged, over an 8 week period before your sickness began. This period may vary slightly depending on whether you are paid weekly or monthly paid, or at other intervals. If you have just started your job the calculation may be different, contact your employer for more information.

Working Part-Time.

Part-time workers are generally entitled to the same legal rights at work as full-time workers. If you are an employee, your contract of employment is likely to provide you with additional contractual rights better than the legal minimum. The law aims to ensure these rights are the same for both full-time and part-time workers. These may include:

- Contractual maternity and parental leave;
- Career breaks;
- Redundancy selection criteria.

Most of the contractual terms will be “pro-rata” to the hours you work.

If you are being treated less favourably because you work part-time, and your employer will not change your terms and conditions to bring them into line with full time colleagues, then you can take a case to an Employment Tribunal.

Almost any

term or condition of your job is covered by the new law, not just pay.

You are covered:

- regardless of the hours you work
- even if you are temporary
- from the day you start work whether you are a worker or an employee

The new law does not decide whether you are a part-time worker by setting a minimum or maximum number of hours you need to work. As long as there are workers doing a similar job, working longer hours than you, and getting better treatment then you can bring a case. You are also covered even if you are a temporary worker, working part-time.

Guide to Employment Rights 3

SUMMARY OF RESTRICTIONS RELATING TO THE EMPLOYMENT OF CHILDREN

A. LEGAL FRAMEWORK:

- Sections 18 & 20 of the Children and Young Persons Act 1933 as amended;
- The Children (Protection at Work) Regulations 1998;
- EC Directive 9433/EC on the protection of young people at work.
- Sections 559 (1) and 559 (2) of the Education Act 1996.

B. NO CHILD UNDER THE AGE OF 13 CAN BE EMPLOYED.

C. PROHIBITED EMPLOYMENT:

No child of any age may be employed -

- a. in a cinema theatre, discotheque, dance hail or night club, except in connection with a performance given entirely by children;
- b. to sell or deliver alcohol;
- c. to deliver milk;
- d. to deliver fuel oils;
- e. in a commercial kitchen;
- f. to collect or sort refuse;
- g. in any work which is more than three metres above ground level or, in the case of internal work three metres above floor level;
- h. in employment involving harmful exposure to physical, biological and chemical agents;
- i. to collect money or to sell or canvass door to door, except under the supervision of an adult;
- j. in work involving exposure to adult material or in situations which are for this reason otherwise unsuitable for children;
- k. in telephone sales and canvassing;
- l. in any slaughterhouse or in that part of any butcher's shop or other premises connected with the killing of livestock, butchery, or the preparation of carcasses or meat for sale which for the avoidance of doubt includes the dicing and slicing of uncooked meat and similar devices;
- m. as an attendant or assistant in a fairground or amusement arcade or in any other premises used for the purpose of public amusement by means of automatic machines, games of chance or skill or similar devices;
- n. in the personal care of residents of any residential care home or nursing home unless under the supervision of a responsible adult.

D. PERMITTED EMPLOYMENT OF CHILDREN AGED 13:

A child aged 13 may not be employed except in light work in one or more of the following specified categories

- a. agricultural or horticultural work;
- b. delivery of newspapers, journals and other printed material;
- c. shop work, including shelf stacking;
- d. hairdressing salons;
- e. office work;
- f. car washing by hand in a private residential setting;
- g. in a cafe or restaurant;
- h. in riding stables; and
- i. domestic work in hotels and other establishments offering accommodation.

E. RESTRICTIONS ON HOURS:

- a. On a school day no child shall be employed for more than 2 hours. A child may work either for one hour between 7:00AM and 8:00AM and one hour after school or 2 hours between close of school and 7:00PM;
- b. On Saturdays and non-school weekdays no child under the age of 15 years may be employed for more than 5 hours (at 15 years no more than 8 hours) and not before 7:00AM or after 7:00PM;
- c. In the school holidays (Monday to Friday) no child under the age of 15 shall be employed for more than 25 hours a week (at 15 years no more than 35 years) and not before 7:00AM or after 7:00PM.
- d. On Sundays no child shall be employed for more than 2 hours and not before 7:00AM or after 7:00PM.
- e. A child must produce his employment permit for inspection when required to do so by an authorised officer of the authority or by a police officer.

F. OTHER RESTRICTIONS:

- a. No child shall be employed for more than 4 hours in any day without a rest break of 1 hour.
- b. No child shall be employed at any time in a year unless at that time he/she has had, or could still have, during a period of a year in which he/she is not required to attend school, at least two consecutive weeks without employment.
(NB: "year", means a period of twelve months beginning with 1st January).
- c. No child may be employed in any work out of doors unless wearing suitable clothes and shoes.

If you have any queries in connection with your legal responsibilities with regard to the employment of children or if you require any further advice or assistance, please contact:

**Education Welfare Service, East Riding of Yorkshire Council
Tel: 01482 392 146**

**Education Welfare Service, Hull City Council
Tel: 01482 318 380**

**Education Welfare Service, North Lincolnshire Council
Tel: 01724 297 235**

**Education Welfare Service, North East Lincolnshire Council
Tel 01472 323 208**

Guide to Employment Rights 4

National Minimum Wage

What is the National Minimum Wage?

The National Minimum Wage (NMW) is a minimum amount per hour which most workers in the UK are entitled to be paid. With a few exceptions, it applies to all workers over the compulsory school leaving age. The rate is reviewed every year. Any changes take place in October.

All employers have to pay the NMW to workers who are eligible for it – there are no exceptions for different types or size of employer. Where you work in the UK makes no difference to the level of NMW you should receive.

Current NMW rates:

There are different levels of NMW, which depend on your age.

The rates as from 1st October 2008 are:

- adults (which means people aged 22 and over) receive the full rate of **£5.73** an hour;
- workers aged 18 to 21 inclusive, receive a rate of **£4.77** an hour (often known as the developmental rate);
- young people receive **£3.53** an hour (often known as the youth rate).

A young worker is someone who is older than school leaving age and younger than 18. You are under school leaving age until the end of summer term of the school year in which you turn 16.

Pay and Work Rights helpline:

Confidential help and advice on the NMW

0800 917 2368