

Overview of UK Employment Law



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UK Employment Law - The Basics

UK employment law can be complicated. Individuals can be classified as employees, workers or independent contractors. Whilst independent contractors have no employment rights, workers are offered some (but not all) of the same protections as employees.

Failure to determine an individual's employment status can prove to be very costly for businesses. Many businesses like to "trial" an individual as a contractor initially. If the individual is everything but an employee in name, they should be employed. On the whole, individuals are normally deemed employees and therefore entitled to full employment rights. However, this should not be a cause for concern for businesses because:

- A probationary period is a useful tool in such circumstances to "trial" the individual and can allow for terminating their employment on shorter notice if the employment does not work out.
- Employees need at least 2 years' continuous employment before they can claim unfair dismissal, which provides greater legal flexibility for employers when dismissing staff than many countries in the EU. See our QuickGuide "[Dismissing an Employee fairly](#)".

Contract of Employment

All employees and workers are entitled to a written statement of their terms and conditions of employment which must be provided on or before the first day of commencing employment. For employees, we recommend that a contract of employment is provided to them to protect the business and clearly set out the relationship between the parties.

The contract should include:

- **General** – Names of employer; place of work (working from home has become the norm due to COVID-19 - See our QuickGuides "[Home Working](#)" and "[Remote Working & the Digital Nomad](#)"); job title; hours and days of work, including detail on whether they may be varied and how; details of any probationary period; pension arrangements (see below); and information on any training provided by the employer.

- **Salary** – Salary is usually paid in arrears in 12 equal monthly installments. It is compulsory for tax and national insurance payments to be deducted at source under a Pay As You Earn (PAYE) scheme. Individuals must be paid at least the national minimum wage or national living wage (“minimum wages”). The current national minimum wage rates are as follows:

- Apprentice (for those aged under 19 or aged 19 or over and in the first year of their apprenticeship): £5.28
- Under 18: £5.28 per hour
- Aged 18 – 20: £7.49 per hour
- Aged 21 – 22: £10.18 per hour
- Aged 23 and over: £10.42 per hour (National Living Wage)

In London, there is also the “London Living Wage” (currently £11.95 per hour). This is voluntary for any employers employing staff in London. It is independently set and recognises the higher cost of living in London. [Click here](#) for further information.

Entitlement to any paid leave, including:

- **Sick Leave** – Employees are not legally entitled to receive their salary whilst off sick. However, if the employee is ill for 4 or more days (including weekends), they would be entitled to Statutory Sick Pay. Statutory Sick Pay is currently £109.40 per week, is reviewed on an annual basis, and normally increases in April each year. Please note that many businesses usually continue to pay full salary during sickness absence for a specified amount of days per year on a contractual or discretionary basis.
- **Holidays** – 28 working days holiday must be provided as a legal minimum. Normally the 28 days includes public holidays. In some instances, custom and practice may assume longer holidays (e.g. 30 days per year or 33 days per year).
- **Other Leave** – Other paid leave entitlement such as statutory leave should be referred to in the contract.

Notice Period – Both employees and employers are under an obligation to provide each other with some form of notice period upon terminating the

employment agreement.

Longer periods of notice are often agreed in the contract of employment, particularly for senior employees. If the contract of employment is silent on notice periods there are minimum legal requirements which are:

- Employers notice periods range from 1 week to 12 weeks depending on length of service of the employee.
- Employees are only required to give one week’s notice irrespective of their length of service

However, an employee can argue a reasonable notice period if the contract is silent on the notice period. This can lead to a more costly termination. Therefore, in order to avoid this, businesses should ensure that a notice period is included in the contract of employment.

- **Disciplinary and Grievance procedure** – The business should have a disciplinary procedure (to deal with performance or conduct issues arising) and a grievance procedure (to deal with employee complaints) in place and the rules applying to these are complex and change frequently. The disciplinary and grievance procedures need to be in line with the ACAS Code of practice for disciplinaries and grievances.
- **Other Benefits** – Whilst it is not a legal requirement to provide benefits such as living allowances, private health insurance, and death in service, if you decide to provide such benefits they should be included in the contract. Such benefits are usually taxable so advice should be sought. See our Quick Guide “[Employee Benefits](#)”

Details of incentives such as bonuses or commissions should also be clearly defined.

Share options/incentives should be referred to in the contract but a separate share options plan should be prepared, and tax advice should be sought as there are tax efficient share options/incentives schemes to consider. The most common are EMI share options. See our Quick Guides "[Overview of UK Share option Schemes](#)" and "[Enterprise Management Incentives \(EMI\)](#)".

Other items which might be considered for inclusion

Job description; reporting structure; confidentiality provisions, restrictions following termination and protecting the goodwill of the business should be considered and incorporated.

Further information

Pensions: Businesses are required to have contributing pension schemes. Employers are obliged to automatically enrol their qualifying employees in a qualifying workplace pension scheme and make contributions to their employees' pensions every pay period. There are minimum pension contributions requirements, but many businesses offer enhanced contributions to their staff. See our QuickGuide "[Workplace Pensions – Auto Enrolment](#)".

Claims in the Employment Tribunal: Claims in the UK are common as an ex-employee can issue a claim without having to prove merit. Even if a claim against an employer is unsuccessful, it is rare for the employer to recover the costs they have incurred in defending the claim.

Unfair Dismissal - The most common claim is for unfair dismissal, but an employee needs 2 years' continuous employment to bring an unfair dismissal claim at the Employment Tribunal. In the UK employers must have a statutory or fair reason to dismiss the individual (conduct, capability, redundancy, statutory illegality and "some other substantial reason") and must follow a set statutory fair procedure to terminate employment (or even to discipline an employee). If this is not followed the individual may have a right to issue a claim that they have been unfairly dismissed. The maximum award for unfair dismissal is £93,878 or 52 weeks gross pay if lower.

Discrimination - If an employee succeeds in a discrimination claim (for example, on the grounds of gender, race, age or disability) a Tribunal award is uncapped so can be very expensive. Unlike unfair dismissal claims, the employee does not need to have worked for the employer for a period of time to claim discrimination - discrimination claims can be brought pre-employment (during the recruitment process or from day one of the employment).

Whistleblowing - There has been an increase in whistleblowing complaints in recent years. This is a highly complicated area of law. The employee could be deemed a whistleblower where they report certain types of wrongdoing. The employee can bring a whistleblowing complaint irrespective of their length of service. A Tribunal award for whistleblowing is uncapped so can be very expensive.

Maternity/Adoption/Paternity/Parental leave: Maternity leave of up to 52 weeks is permitted in the UK, 39 weeks of which the employee will be entitled to Statutory Maternity Pay (SMP). SMP consists of 90% of the employee's average weekly wage for the first 6 weeks and then either the prescribed rate or the earning-related rate, whichever is lower, for the remaining 33 weeks. The prescribed rate is currently £172.48 per week and the earnings-related rate is 90% of the employee's normal weekly earnings. Please note that in the UK a pregnant woman can take a whole year off work and then is entitled to return to work in the same/similar role.

Similar rules apply for adoption leave.

Parents who are employees are entitled to 18 weeks, per child, of unpaid parental leave which can be exercised up until a child's 18th birthday.

Paternity leave of up to 2 weeks can be taken at the prescribed rate (currently £156.66 per week) or the earnings-related rate, whichever is lower.

Shared parental leave enables some parents to shared leave in the first year of their child's life or in the first year of adoption.

Insurance: Businesses should also ensure they obtain Employer's Liability Insurance before their first employee commences employment in the UK. See our QuickGuide "[Employer's Liability](#)".

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Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

Paperwork: Having appropriate offer letters, reference checks (including checking the employee is entitled to work in the UK – by seeing a passport or conducting an online right to work check using the government service). A full contract of employment is highly recommended. See our Quick Guides “[Right to work checks](#)”, “[Important Information for Employers](#)” and “[Employee Right To Work Check](#)”. People represent the highest cost to most businesses and carry the highest risk, so please obtain advice to reduce the risk exposure.