



What employers need to know when employing people

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Introduction

If you are intending to employ staff you will need to know about the regulations relating to taking on an employee. This publication is intended to help business understand these requirements and to minimise the problems of finding out how to comply with them. In particular, you need to be aware of the law on:

- Equal Opportunities
- Employee Rights
- Minimum Pay
- Working Hours
- Health and Safety
- PAYE (income tax) and National Insurance
- Statutory Sick Pay
- Statutory Maternity Pay.

Equal Opportunities

Race

Jobs, training and promotion must be open to all regardless of colour, race, nationality, ethnic or national origin, sex, marital status or to anyone undergoing or who has undergone gender reassignment.

Discrimination is unlawful in all but a few cases e.g. for genuine occupational qualification and in private households.

Disability

You must not discriminate against disabled people (for example, in recruitment or promotion procedures) and may have to make reasonable adjustments for disabled staff (for example, to their employment conditions or workplace). From 1 October 2004, employers with less than 15 employees were brought under the scope of the Disability Discrimination Act for the first time. For more information see our publication *IP 270:- Disability Discrimination*.

Age

In line with the EU Directive, the Government has introduced legislation to combat age discrimination in employment and vocational training from 1 October 2006.

Sex

Discrimination is unlawful in all but a few cases e.g. where a person's sex is a genuine occupational qualification for a job (for example for reasons of privacy or decency, modelling clothes, acting).

Although not mentioned in the Sex Discrimination Act, discrimination because of pregnancy is regarded as direct sex discrimination and is unlawful.

The Employment Equality (Sex Discrimination) Regulations 2005 have clarified the position that had been laid down in case law that less favourable treatment of women on grounds of pregnancy or maternity leave is unlawful sex discrimination. The new regulations are also designed to help businesses spot indirect sexual discrimination and harassment.

Employee Rights

Terms and Conditions of Employment

If employed for more than one month, you must give your employee (within 2 months) a written statement of main employment particulars. The statement must include main terms and conditions including pay, holidays, details of notice and disciplinary procedures.

Part-Time workers

Part-time employees now have new rights. You must not treat them less favourably than comparable full-timers who work for you. You can treat part-time workers differently only if it is necessary and appropriate to achieve a real business aim (and you might have to prove that in an employment tribunal). The rules apply to all contractual benefits, including:

- Rates of pay
- Access to pension schemes and their benefits
- Access to training and career development
- Holiday entitlement
- Sick and maternity pay
- Selection criteria for promotion, transfer and redundancy.

Holiday entitlement

All employees were entitled to 4 weeks annual holiday, from 23 November 1999. This increased to 24 days from 1 October 2007 and to 28 days from 1 April 2009.

Updated guide to the rights of employees and workers

The BIS has updated its guide *"Individual rights and responsibilities of employees: a guide for employers and employees"* to reflect changes in the employment regulations which came into force in October 2007.

The guide includes the rights that apply to:

- pay;
- dismissal and notice periods;
- parental legislation; other time off;
- anti-discrimination; and
- other statutory employment rights.

More information is available at:
www.bis.gov.uk/policies/employment-matters/rights

ACAS revises discrimination guide

ACAS has revised its discrimination booklet to help businesses understand and tackle discrimination in the workplace. It now contains a sample equality policy and practical checklists for use in preventing discrimination.

To access "Tackling discrimination and promoting equality – good practice guide for employers" visit:
www.acas.org.uk/publications (publication B16).

Check if your staff are legal

An Employer Verification Service has been set up to provide employers with a service to check the entitlement to work for individuals who do not have the relevant documentation when seeking employment and to support employers in complying with immigration laws when employing migrant workers.

The service is available at:
www.businesslink.gov.uk/bdotg/action/layer?topicId=1079133778

Transfer of Undertaking (on Sale or Merger) of a Business

Employees' terms and conditions are preserved when a business or an undertaking (or part of one) transfers to a new employer.

Employers are required to consult either representatives of an appropriate recognised trade union or elected representatives of any employees affected by a transfer.

Fair and Unfair Dismissal

To claim unfair dismissal, employees must generally have completed a year's service but no qualifying service is needed if the dismissal is for certain reasons.

Notice Period

For continuous employment of more than one month but less than two years, one week's notice must be given unless a longer period is stated in the employment contract.

For continuous employment of two years or more, at least two weeks' notice must be given unless a longer period is stated in the employment contract.

After two years' continuous employment, one additional week's notice for each further complete year is required. After 12 years of continuous employment a minimum of 12 weeks notice is required.

Union Membership

Employees have the right to belong or not to belong to a union, and the right not to be refused employment on the grounds of trade union membership or non-membership. Workers also have a statutory right to be accompanied by a fellow worker or a trade union official during disciplinary and grievance hearings.

Notification Obligations		
Under 20 Employees	More than 20, but less than 99 Employees	More than 99 Employees
There is no obligation to notify redundancy	Must give at least 30 days notification	Must give at least 90 days notification

Redundancy

If the employee has at least two years' continuous service and is over 18 years, they have a redundancy entitlement. This varies according to age.

If you are going to make at least 20 employees at one establishment redundant over a period of 90 days or less you must consult either representatives of a recognised independent trade union or other elected representatives of those affected.

Illegal Working

Employers risk prosecution if they employ illegal workers. You can avoid this risk by making simple checks on new employees. Ask to see a P45, P60 or payslip showing a NI Number - or one of a range of other specified documents. You need to keep copies of the documents in most cases.

Since 1 May 2004, employers are required to make changes to the checks they make on potential new employees before they offer them a job. Employers will no longer be able to use the National Insurance number on a document as their only reasonable check. The checks must be completed before an employee starts work for the employer.

Maternity and Parental Leave

Employees expecting babies are entitled to 26 weeks ordinary maternity leave and 26 weeks additional maternity leave.

Employees with at least one year's service are entitled to 13 weeks parental leave for each child aged under 5 on or after 15 December 1999 up until the child's fifth birthday. (Similar rights apply to adoption.)

Employees are entitled to reasonable time off to deal with an emergency involving a dependent.

Stakeholder Pensions

If you have five or more employees you must give them access to a stakeholder pension scheme, unless they are exempt. You must make payroll deductions of an employee's contribution into their stakeholder pension if they ask you to do so.

Employee checks

By law, from 1/5/2004, the following steps must be taken for every new potential employee:

- Employees must check and copy one (or two depending on the nature of the documents) of a list of original documents.
- Employers must carry out reasonable steps when checking all the documents, which have been provided by the potential employee.
- Employers should take a photocopy or take a scan of any documents accepted. For scans they must use only a "Write Once Read Many" software package.

The lists of acceptable documents, and more details on the checks required can be found in the Home Office guidance document: "Changes to the law on preventing illegal working" at: www.ind.homeoffice.gov.uk/sitecontent/newsarticle/2010/275292/03new-guidance-employers

Government gets tough on employers of illegal workers

The Immigration Asylum and Nationality Act came into force in three stages during 2006. Its provisions tackle illegal working through a civil penalties scheme for employers that introduces fines per illegal employee, custodial sentences of up to two-years and unlimited fines for those found knowingly to use or exploit illegal workers.

Further measures to increase fines and checkups on business that employ workers illegally came into force in February 2008. Employers who negligently hire illegal workers could be fined up to £10,000 per illegal employee; and those who knowingly hire one face unlimited fines and a custodial sentence.

Pay and Tax

Equal Pay

Men and women must get the same pay for the same or like work and for work of equal value.

National Minimum Wage

The minimum wage is a legal right which covers almost all workers above compulsory school leaving age. There are different minimum wage rates for different groups of workers as follows:

- The main rate for workers aged 22 and over.
- The accredited training rate for workers aged 22 and over who are receiving accredited training in the first six months of a job with a new employer.
- The development rate for 18-21 year olds.
- The development rate for 16-17 years olds.

Since April 2005, the fair piece rate has been set to 120% of the minimum wage at which point most homeworkers will receive the minimum wage.

For agricultural workers, minimum rates of pay apply set by the Agricultural Wages Board.

For the current rates of minimum wage, please refer to our publication 277- *National_Minimum_Wage*.

PAYE (Pay As You Earn)

When you take on your first employee, you should inform the HM Revenue & Customs (HMRC) New Employer's Helpline on 0845 60 70 143. They will arrange for a PAYE scheme to be set up and send to you a new employer's starter pack.

You must obtain a P45 form for each employee or arrange for a P46 to be completed.

You must also make the necessary PAYE (and national insurance) deductions and submit them monthly to HMRC Accounts Office. (If your average monthly payments for the current year are low, you may be able to pay quarterly – check with us for details).

HMRC will tell you if you have to make Students' Loans deductions.

National Insurance Contributions (NICs)

For employees aged 16 or over, employer and employee NICs become payable once earnings exceed the Earning Threshold – check with us for the latest figures. If you are a registered company, there are special NIC rules for the directors.

Statutory Maternity Pay (SMP)

Maternity Pay: Tell employees how you wish to be told about maternity absence	
If the employee is not entitled to SMP she should claim State Maternity Allowance instead.	If the employee is entitled to SMP.
Issue form SMP1.	Pay SMP and keep records of payment made.

Statutory Sick Pay (SSP)

Sick Period		
Under 4 consecutive days	Four consecutive days or more	
	If the employee is entitled to SSP	If the employee is not entitled to SSP, they may claim Employment and Support Allowance instead.
No SSP action needed.	Pay SSP in the same way as wages and keep records of payments made and dates of sickness absence lasting at least 4 consecutive days.	Issue form SSP1.

Itemised Pay Statements

All employees must be given itemised pay statements showing deductions, tax credits and student loans deductions.

Changes to Statutory Pay and Incapacity Benefit from October 2006

In line with the Age Discrimination legislation that came into force from 1 October 2006, age restrictions relating to Statutory Pay will be abolished.

For SMP & SPP: People under 16 will be entitled to SMP & SPP if they are employed in any qualifying week that commences on or after 1 October 2006 and meet the employment and earnings conditions of entitlement.

For SAP: Although the lower age limit is removed from the legislation, it is not envisaged that SAP will be payable to anyone under the age of 21 as this is the minimum age to adopt and this is not altered by this legislation.

For SSP: Anyone age 65 or over who is sick and unable to work on 1 October 2006 will qualify for SSP – subject to meeting all the other qualifying conditions – even if they are part way through a Period of Incapacity for Work (PIW).

Incapacity Benefit: The 52 week linking rule will be replaced by a 104 week period for all those leaving benefit for work or training (but not following a Personal Capability Assessment disallowance).

Note: that Incapacity Benefit has been replaced by the new Employment and Support Allowance from 27 October 2008 (see next sidebar).

Statutory payment rates: 2010-11

On 13 January 2010, HMRC announced the statutory payment rates for 2010-11.

Changes for 2010-11

Employers may have to pay employees statutory sick pay (SSP), statutory maternity pay (SMP), statutory paternity pay (SPP) or statutory adoption pay (SAP). The following statutory payment rates have been announced for 2010-11. However these rates are still subject to parliamentary approval.

- SSP: £79.15 per week (this remains unchanged from 2009-10);
- SMP: Six weeks at 90% of the employee's average weekly earnings followed by a further 33 weeks at £124.88 per week or 90% of average weekly earnings - whichever is lower;
- SPP: One or two weeks' at £124.88 per week or 90% of average weekly earnings - whichever is lower. If the employee opts to take two weeks' leave, they must be taken together;
- SAP 39 weeks at £124.88 per week or 90% of weekly earnings - whichever is lower.

For employees earning £97 or more per week in 2010-11, the above rate of SSP will apply from 6 April 2010, and for SMP, SPP and SAP the above rates will apply for complete pay weeks commencing on or after 4 April 2010 (the first Sunday in April).

Because the rate of SSP remains unchanged the daily rate table in the 2009-10 edition of the employer helpbook E14 can continue to be used until the 2010-11 edition is published.

The threshold for recovery of SSP under the percentage threshold scheme remains unchanged from last year at 13 per cent.

From 6 April 2010 employers who do not qualify for small employers' relief can recover 92 per cent of the SMP, SAP and SPP paid to their employees.

From 6 April 2010 employers who do qualify for small employers relief can recover 100 per cent of the SMP, SAP and SPP paid to their employees, plus 4.5 per cent compensation for the additional National Insurance Contributions (NICs). These figures are unchanged from last year.

For the 2010-11 tax year, a small employer is an employer who has paid or was liable to pay total gross Class 1 NICs of £45,000 or less in the individual employees qualifying tax year. This is unchanged from last year.

Source:

www.hmrc.gov.uk/payee/employees/statutory-pay/index.htm and Business Link

Working Hours

Limits on Working Time

Employees have rights on average weekly working hours and night-working. They are also entitled to rest periods, breaks and paid annual leave. The law gives adolescent workers extra protection.

If the floor area is less than 280 sq m there are no restrictions on small shops' Sunday opening hours. Larger shops may open for any six continuous hours between 10am and 6pm. Retail employees have statutory rights related to Sunday working.

Driving

There are limitations on driving hours within certain periods.

Insurance and Health & Safety

Insurance

All employers must take out Employer's Liability Insurance and display the certificate issued by the insurer.

Health & Safety

You should check with the Health and Safety Executive (HSE) for your responsibility regarding health and safety of employees. You must also register your business with either the HSE (most factories, workshops etc.) or your local authority (most offices, shops, catering businesses).

Operating Your PAYE Scheme

Operating the Pay As You Earn (PAYE) system has become increasingly complicated in recent years for many employers.

Employers' responsibilities have increased with the introduction of statutory sick pay (SSP) and statutory maternity pay (SMP), with the popularity of lump-sum payments, and with the ever-increasing complexity of the benefit in kind rules.

From 6 April 1996, employers' obligations have increased with the introduction of self-assessment. This requires employers to meet formal deadlines and to provide all employees with forms P60 and with details of the taxable amount of their benefits in kind. As a result, only businesses with a small number of employees will want to ignore the advantages of computerised payroll software.

The PAYE rules are lengthy and complex. They are contained in the 'Income Tax (Employment) Regulations'. A great deal of useful information is contained in HMRC's 'New Employers Starter Pack' (P4) on both Income Tax and National Insurance.

New Employment and Support Allowance

From 27 October 2008 the new Employment and Support Allowance (ESA) replaced the then current state benefits (Incapacity Benefit and Income Support). The change to the benefits system will have some implications for employers with the issue of a new SSP1 form.

The new version SSP1 is easier to complete, as information about periods of sickness and the SSP paid are not required for claims to ESA.

This means that:

- where SSP has been paid and ends on or after 26 October 2008; or
- where there is no entitlement to SSP on or after 27 October 2008

the new version of form SSP1 (10/08) should be completed.

However

- where SSP has been paid and comes to an end on or before 25 October 2008; or
- where there is no entitlement to SSP on or before 26 October 2008

the old version SSP1 (04/07) must be used.

More information is available at

www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/Illoinjured/DG_10018786

If you're thinking of taking somebody on as an employee and you'd like some information before becoming an employer or as soon as you've taken on your first employee, contact HMRC New Employers' Helpline on 0845 60 70 143.

Useful information for employers is available on HMRC Employers Pages on the Internet. www.hmrc.gov.uk/employers/index.htm

Calling HMRC's Helpline

The details you will need to have ready when you first call HMRC's Helpline are:

- **About your business**
 - Business name
 - Trading address
 - Line of business you are in
 - Names and addresses of any business partners
- **About your employees**
 - The date you took on (or will be taking on) your first employee(s).
 - How many employees you will have.
 - The date you intend to pay them for the first time.
 - How often you intend to pay them.
- **About your payroll**
 - The address from which your payroll is run.
 - Name, address and telephone number of anybody who looks after your payroll.
- **Limited companies and limited liability partnerships (LLPs) only**
 - The Registered Office address, Company Registration Number and the date of incorporation.
 - The names, addresses, private telephone numbers and National Insurance numbers of the company directors (Designated Members in the case of LLPs).

Employment Contracts

Written Statements

Employers are legally required to give employees a written statement of certain particulars of their employment within two months of the employee starting work. Although this statement covers what would normally be in a Contract of Employment, it is not actually a contract between the employer and employee.

An employer doesn't have to provide a written contract (a statement of particulars is all that is required) to its employees - even if it does issue a contract, it may not necessarily cover all the details of the employment. Most employees in the UK do not have written contracts.

So far as written statements are concerned, employers are obliged to give one to employees in all cases except the following:

- Where continuous employment is less than one month;
- Mariners, being persons employed as masters or seamen on seagoing British ships having gross registered tonnage of 80 tons or more or skippers or seamen of fishing boats;
- Where an employee is engaged in work wholly or mainly outside Great Britain unless the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer.

Alternatives to a written statement of particulars can take the form of:

- A written contract of employment, which contains all the terms and conditions legally required.
- Notice given to an employee referring him/her to a document, which is accessible during working hours and which contains all the terms and conditions legally required.

Employees will often call the written statement of terms and conditions their "contract of employment" and it may be the only form of written terms that they hold. Although its status is not that of a contract, the terms will be construed as strong evidence of the terms of the contract. There have been cases, however, where terms contained in a written statement were not conclusively found to be terms of the contract and of course these may be overruled by the implication of the parties' conduct in the matter.

Contracts of Employment

The Contract of Employment is one of the most important documents in the employee/employer relationship:

- It establishes the contractual relationship between the employer and employee and provides crucial written evidence in cases taken to an Industrial Tribunal.
- It improves the morale, loyalty and efficiency of a workforce since employees know exactly where they stand.

ACAS launches free online Employment Contract training

ACAS has developed a free online learning package to help businesses and organisations understand and put together contracts of employment in the workplace.

Announcing the package, the ACAS Chief Executive said:

"It makes sense to get the employment contract right at the beginning. This online learning package will help employers to develop appropriate policies and procedures to get it right. Using ACAS good practice will help stop problems developing in the first place."

The course covers topics such as:

- contracts of employment;
- written statements;
- varying a contract of employment;
- understanding contractual issues;
- your employee's rights on pay.

The new online learning package is available at www.acas.org.uk/elearning

Other free online learning packages include discipline and grievance, managing absence, information and consultation and handling redundancies.

- It formally establishes the standards required and expected in the employment relationship.

A written statement of particulars can constitute a written contract if that is the intention of both employer and employee - but an employee's signature on the written statement of particulars doesn't convert that written statement into a contract. The distinction is significant if a contract of employment is written neither party can bring evidence to show that the terms of the contract are inaccurate. However, if the employee has only been given a written statement of particulars then the accuracy of the statement is open to challenge.

Useful Links – The Employers' Gateway

The Government provides plenty of information to help employers to understand their obligations under the law.

Whether you are an employer looking for advice or wish to find out about government policy, the links below should help you find what you need.

Age Discrimination in Employment

www.acas.org.uk/media/pdf/s/3/Age_and_the_Workplace.pdf
Information on Age Discrimination.

Age Positive

www.dwp.gov.uk/age-positive
Good Practice for Employers. Age Positive publications including case studies, research and statistics are available on the DWP website.

Business Practical Advice

www.businesslink.gov.uk
A BIS website aimed at providing practical business advice to small and medium sized businesses.

Connexions

www.connexions.gov.uk
Connexions is the UK Government's strategy to ensure every young person gets the best start in life.

Department for Business, Enterprise and Regulatory Reform

www.bis.gov.uk

BIS brings together functions from the former DTI and the Better Regulation Executive, previously part of the Cabinet Office. BIS's websites offer a range of information for consumers, small businesses, employees, anyone with an interest in the world of work and many others.

Department for Work and Pensions

www.dwp.gov.uk

The DWP was formed on 8 June 2001 following restructuring of the former DfEE and DSS.

Employment Rights & Regulations

www.bis.gov.uk/employment

Regulatory Guidance from the Department for Business, Innovation & Skills.

Employment Service

<http://www.jobcentreonline.com/JCOLFront/Home.aspx>
The official UK Government Employment Service website.

Equality Direct

www.acas.org.uk

This provides a confidential advice service for business on equality issues. It comprises an England-wide telephone advice service on 08457 47 47 47 and supporting Internet website. It aims to give businesses practical, down-to-earth advice to help resolve particular issues or improve employee relations and people management practices more generally.

Foundation Degrees

www.foundationdegree.org.uk

Foundation degrees are a new higher education qualification designed together with employers to meet the demand for highly skilled people who know their subject and can apply it in the workplace.

Illegal Workers

www.ind.homeoffice.gov.uk

This site lists the checks employers must perform on all potential employees in the Home Office guidance document: "Changes to the law on preventing illegal working".

Health and Safety Executive

www.hse.gov.uk

The Health and Safety Executive (HSE) is responsible for health and safety regulation in Great Britain.

Free help for Small Businesses on parent's rights

On 18 March 2005, ACAS launched a free e-learning package to help employers deal with working parents' rights in the workplace.

Women make up almost half of the working population and many workers are also parents and have specific employment rights. Employers need to know what is expected of them and what they need to do to make sure they treat their staff fairly.

ACAS' newest e-learning package offers step by step guidance to help with such topics as:

- maternity rights and pay
- paternity leave and pay
- adoption leave and pay
- parental leave
- time off to help dependants and
- the right to request flexible working.

For more information on the new package visit www.wired-gov.net/WGLaunch.aspx?ARTCL=30616

To access the new e-learning packages, complete the free registration process at: www.acas.org.uk/elearning/index.asp

HMRC - Income Contingent Loans

www.hmrc.gov.uk/manuals/cslmanual/cslm16010.htm

This site contains information on how repayments of student loans are collected and describes the employer's role in the process.

Investors in People

www.investorsinpeople.co.uk

This site explains how to improve business performance and manage people better.

Learning and Skills Council

www.lsc.gov.uk

The Learning and Skills Council has taken on the functions of the Training and Enterprise Council (TEC) network and the funding responsibilities of the Further Education Funding Council.

Minimum Wage

www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/index.htm

This government website provides information on the national minimum wage, and an easy to use "ready-reckoner" to calculate the minimum wage for an employee.

Modern Apprenticeships

www.apprenticeships.org.uk

Modern Apprenticeships are available in over 80 different sectors of industry and commerce.

National Training Awards (NTAs)

www.nationaltrainingawards.com

Winning a National Training Award brings with it prestige, national recognition and high profile publicity.

National Training Organisations (NTOs)

www.sscalliance.org

National Training Organisations (NTOs) are employer-led bodies which are responsible for the development of skills to meet the business needs of employment sectors throughout the UK. There are many industry specific NTO websites. The above link will take you to the Alliance for Sector Skills Councils website from which sector specific sites can be found.

National Vocational Qualifications (NVQs)

www.direct.gov.uk/en/EducationAndLearning/QualificationsExplained/DG_10039029

This website is designed to give you a background to NVQs - why they exist and how they can help individuals and key players in the employment, training and qualifications world.

New Deal

www.direct.gov.uk/en/Employment/Jobseekers/programmesandservices/DG_173717

New Deal was created to help unemployed people into work by closing the gap between the skills employers want and the skills people can offer.

Enterprise Directorate

www.bis.gov.uk/policies/enterprise-and-business-support

The Enterprise Directorate is a BIS agency tasked with responding to the needs of entrepreneurs and small businesses.

Time Off for Study or Training

http://publications.teachernet.gov.uk/eOrderingDownload/TFST_eg2.pdf

Details of certain employees rights to time off for study.

Working in the UK

www.ukba.homeoffice.gov.uk

This website provides information about the rules for foreign nationals who want to work legally in the UK. It also provides information for employers based in Great Britain who want to employ people who are not nationals of a European Economic Area country and are not entitled to work in this country.

Further Information

This guide is for general interest - it is always essential to take advice on specific issues.

We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

If you would like to receive further information about this subject or other publications, please call us – see our contact details on the next page.

Important Notice

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Aaron Wallis hopes that you have found this document useful. We are a specialist sales and marketing recruitment agency with offices in Milton Keynes, London (Victoria), Leeds and Bristol.

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Aaron Wallis Blog: <http://www.aaron-wallis-sales-recruitment.blogspot.com>

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