BULLET POINTS

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UK EMPLOYMENT LAW FOR EMPLOYERS

WITH TEMPLATES

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UK
Employment Law for Employers

Bullet Points
with templates

keeping it short
and to the bullet point!

UK Employment Law for Employers

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Preamble

This book is written from the point of view of an employer but should be of interest to employees and workers who need to check that they are being treated fairly and in accordance with the law.

The focus is on the law of England and Wales which is the same for both countries. Employment laws in Scotland and Northern Ireland are broadly the same as in England and Wales but may differ occasionally.

Employment law is complex and changes frequently due to political, social and economic pressures, and the law might have changed by the time you read this book.

The publication date is on the title page.

In particular, the Government intends to make major changes to employment law which are likely to take effect from 2026. Probably the most significant proposed change is to allow an employee to make an unfair dismissal claim from their very first day of employment.

The government also says it will consult on the introduction of a single worker status with a view to simplifying the UK's current three-category system (employees, self-employed and workers); meaning that there will be 2 categories only; workers and individuals who are genuinely self-employed.

This book is designed so that the reader can obtain, in isolation, all necessary information applicable to the section(s) which interest them. For example, you might only be interested in the sections relating to recruitment and employment contracts if you are starting a business. So, inevitably, there will be some repetition and overlapping if you read the book from cover to cover.

Disclaimer

Please view this book as a brief guide to employment law. It is not a complete guide. The author makes every reasonable effort to ensure that the information given and the opinions expressed are a reasonably accurate summary of the relevant law at the time of publication. But this book is intended for guidance only and is not intended to constitute and should not be used as a substitute for legal advice on any specific matter.

The templates in the book, as drafted, may not be suitable for your particular business and if you use them in whole or in part you do so at your own risk.

No liability for the accuracy of the content of this book, or the consequences of relying on it, is assumed by the author or by Quaystone Books, the publisher.

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Introduction

Before *diving into the murky waters* of employment law for employers we need to understand that there are 3 categories of individuals who do work for another individual or business entity. The 3 categories are;

- employee;
- worker;
- self-employment.

In this book we are concerned mainly with employment law as it relates to individuals who have the status of an *employee* and individuals who have the status of a *worker*.

Ideally, the correct status should be set out clearly in a written contract to do the work in question. Unfortunately, often the point is not covered in writing, or even if it is covered in a document, employment tribunals and courts can overturn what is written if they decide that what is written does not reflect the true working relationship.

An employee's rights

The Employment Rights Act 1996 (as amended thereafter) sets out an employee's entitlements under employment law, based on what the parties have agreed as being the terms and conditions of the employment.
Employees have more rights than workers.

A worker's rights

Worker's *do not have* the following *statutory* rights which employees have (the list is not complete):

- maternity leave and pay
- paternity leave and pay
- adoption leave and pay
- shared parental leave and pay
- right to attend antenatal appointments;
- the right to request flexible working;
- time off for dependants;
- a redundancy payment;
- notice to terminate.

However, workers do have some statutory rights such as the right to holiday pay and they might qualify for statutory sick pay (SSP) if they pay class 1 National Insurance contributions. Workers also have some other statutory rights.

Single worker status

The government is committed to introducing a single "worker" status for all those who are not genuinely self-employed with effect from 2026 or later. This will mean that all employees will then have the status of *worker*.

Recruitment

Introduction

*Preliminary note:*When we refer to a *worker* we include an *employee* but when we refer to an *employee* we do not include a *worker*, unless otherwise stated.
This section is fairly long because the recruitment of staff is probably the most important stage in the employment process. It is when the employer endeavours to recruit the most suitable candidate for the role on contractual terms which are favourable to both parties and in the interests of the business. It is also a stage during which the employer can *fall foul of the law* and, for example, incur a claim of discrimination or be in breach of immigration law.

Recruitment basics

When recruiting, depending on the type of job, the employer should:

- be aware that an unsuccessful job applicant could make a claim of discrimination against both the employer and any

person responsible for making the decision not to recruit that applicant;
- ensure that the selection procedure is not discriminatory;
- avoid job advertisements which could be discrimination;
- if using an employment agency, ensure that the agency does not discriminate;
- consider whether reasonable adjustments to the selection procedures for a disadvantaged applicant are necessary;
- check the applicant has the legal right to work in the UK;
- check information given by the worker is true;
- check that there are no restrictive covenants which could prevent the worker from working for the employer;
- consider what conditions should be attached to a job offer;
- give the worker a written statement (or an employment contract) on or before their first day at work.

TEMPLATE job offer

Amend, delete or add to the draft as appropriate.
Dear [*name*],

I am writing to make you a conditional offer of employment with us as a [*job title*].

I enclose two copies of an employment contract, for your consideration and approval, which contains the information required by section 1 of the Employment Rights Act 1996 as amended by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018.

If you accept the offer of employment please sign and date the copy of the employment contract and return it to me.

However, please note that this offer of employment is conditional, and we reserve the right to withdraw this offer if any responses to the conditions listed below do not entirely satisfy us.

Before the offer becomes binding we require the following conditions to be satisfied:
that you provide written evidence (such as a copy of your

passport) for us to keep, of your right to work in the United Kingdom;

if you were employed by a competitor of ours you must give us a copy of your employment contract with that employer in order that we may check that there are no restrictive covenants in that employment contract which would prevent you from being employed by us;

that we receive two former employment references one being from your current or last employer (or educational institution if you do not have two previous employers) which entirely satisfy us;

that we receive a full and satisfactory credit check on you;

that we receive satisfactory evidence of your professional qualifications to do the job;

that we receive a medical assessment with which we are satisfied about your fitness for this job;

that we receive satisfactory checks to confirm that you have no criminal convictions which, by their very nature, would prevent us from offering you this employment;

that you pass to the satisfactory level the examinations you are about to take in the following subjects [*list of subjects*];

that you produce a valid UK driving licence;

If you are in employment, we suggest that you do not resign until we have confirmed that we are satisfied with all of the conditions listed above.

In the event that you start employment with us before we have received all the responses to the conditions listed above, and are entirely satisfied with those responses, we reserve the right to terminate your employment without notice or pay in lieu of notice on the basis that an essential condition of your employment has not been satisfied. For the avoidance of doubt, this paragraph in this letter takes precedence over anything to the contrary in the enclosed contract of employment even if the said contract is signed by both parties.

Yours...

Notes on the TEMPLATE

(1) The letter, as drafted, encloses 2 copies of an employment contract. However, there is no legal obligation on an employer to give a written employment contract, as such. The legal obligation on the employer is to give *a written statement of employment particulars* containing mandatory information not later than the beginning of the employment, which means on or before the first day of work.
(2) The letter asks all workers for evidence of their right to work in the UK. An employer should not automatically assume from a person's appearance that they have this right and it might be race discrimination to do so.
(3) If the recruit has worked previously for a competitor the letter asks to see a copy of the employment contract to check that there are no restrictive covenants. Basically, a restrictive covenant is a clause in an employment contract which prevents a worker from working for a competitor for a specific length of time or within a specified geographical area if they leave the employment or set up in business on their own account as a competitor. There is usually also a restriction against dealing with clients or customers of that employer.
(4) The letter asks for references. However, nowadays, many employers will only give a short reference stating the dates of employment and the job title: usually referred to as *a factual reference.*
(5) The letter asks for a medical assessment. However, medical information on a job applicant should be requested only after the employer has decided to offer that person the job or to place them in a pool of candidates from which they propose to recruit. If the employer asks for medical information at an earlier stage then this request could amount to disability discrimination unless the information was requested to check if the employer needed to make reasonable adjustments in the selection process for a disabled worker.
(6) The letter asks for a valid driving licence. However, a

driving licence should be asked for only if necessary for the job. It is unlikely it would be necessary for an office receptionist to drive in the course of their employment. An unnecessary requirement might give rise to a claim of discrimination if, to use the same example, the receptionist could not hold a driving licence because of a medical condition which amounted to a disability.

Employment contracts

The template job-offer letter includes 2 copies of an employment contract; one copy for the worker to keep and one copy to be signed by them and returned to the employer. As we shall see, strictly speaking, there is no legal requirement to give a worker a written employment contract. However, there is a legal requirement to give a worker a written statement as to their terms and conditions of employment, as we will explain later.

An employment contract is like any other contract in law; to be legally binding it must comprise:

- an offer;
- an acceptance of the offer; and
- consideration.

In the context of the law of contracts, *consideration* is a word which refers to anything of value (such as an goods, money, services, or promises of any of these), which one party to a contract provides to the other party to support their side of an agreement or contract. If only one party offers *consideration*, there will be no agreement which is legally enforceable.

To be binding on the parties, an offer of employment by the employer must be unconditional and the acceptance of the offer by the worker must be unconditional.

The consideration on the part of the employer will be the promise of paid employment, and the consideration on the part of the worker will be the promise to work for the employer for money.

Existence of a contract

A contract of employment comes into existence the moment a person accepts an offer of employment made unconditionally. The emphasis is on *unconditionally.* If conditions are attached to an offer, or attached to an acceptance of the offer, there will be no binding contract until the conditions have been met.
The employment contract will exist once offered and accepted unconditionally even though there might be nothing in writing to confirm the contract, or to confirm all of the essential terms of the contract.
However, if the employment contract is not in writing, or only partially in writing, there is always the possibility of a dispute between the employer and the worker as to what terms in the employment contract were agreed.
An employment tribunal, or a court, is likely to find in favour of a worker, where there is uncertainty as to a term in an employment contract.

Written statement of employment particulars

We have said that an employment contract does not need to be in writing.
However, there is a legal obligation on an employer to set out in writing certain mandatory information regarding the terms and conditions under which the worker is employed.
This legal obligation arises under the *Employment Rights Act 1996* with an amendment which came into force in April 2020.
By law an employer must give a worker a written statement setting out their main terms and conditions of employment.
This written statement is not an employment contract but is evidence of what the contractual terms and conditions of employment probably are.
The written statement can be comprised of a main document and, sometimes, one or more documents which are referred to in the main document.
The main document is usually called the *principal statement.*

Principal statement

The *principal statement* must be given to the worker on or before their first day of employment.
Point to note: Since the amendment to the *Employment Rights Act 1996* in April 2020, a written statement must be given to both an employee and a worker. Prior to this date it had to be given only to an employee within 2 months.

Job offer

As stated above, once they have decided to make a job offer, an employer should confirm the terms of the offer in writing. Bearing in mind the legal obligation on an employer to give *a written statement of employment particulars* on or before the first day the worker is at work, the easiest way to confirm the offer is by a brief letter or email to which is attached a proposed written statement of employment particulars (or an employment contract), and, if the employer has one, a copy of its staff handbook which should set out any rules and regulations relevant to the job.
The person offered the job should be asked to counter-sign and return a copy of the offer-letter to confirm they accept the offer of employment on the terms offered, or to confirm their acceptance in writing in some other way, such as by sending an email to the employer.
Points to note:
(1) A contract of employment may come into existence even though the worker fails to confirm their acceptance of the terms, but turns up for work. Sometimes employers forget to make sure all relevant paperwork is completed and signed by the parties.
(2) A written statement of employment particulars (which is not in itself an employment contract) can be converted into an employment contract if both parties agree. Their agreement can be in the form of a clause at the end of the written statement, above their signatures, which reads, for

example: *By signing below you confirm that you accept this written statement as your contract of employment.*

Withdrawing an offer

If the offer of employment is conditional, the offer will become binding on the employer once all conditions have been met. At this point, if the employer withdraws the offer of employment the person offered the job is likely to have an arguable claim for breach of contract.
A claim for breach of contract will probably be based on what the person would have earned during the contractual notice period.

The EHRC Code

The *Equality and Human Rights Commission* (EHRC) has produced the *Employment Statutory Code of Practice* (the Code) which includes recommendations and best practices when employers are recruiting workers.
Question: why is the Code important?
Answer: because employment tribunals take the Code into consideration when deciding claims against employers (or prospective employers), particularly if the claim is linked to recruitment.
Part Two of the Code is called *Code of Practice on Employment* and chapter 16 of Part Two is headed *Avoiding discrimination in recruitment*.
We quote from the *Introduction* to chapter 16 as follows:

> While nothing prevents an employer from hiring the best person for the job, it is unlawful for an employer to discriminate in any of the arrangements made to fill a vacancy, in the terms of employment that are offered or in any decision to refuse someone a job.

An employer could end up in an employment tribunal, facing a discrimination claim, even though the claimant is not their worker.
In addition, the person who is alleged to have discriminated in the recruitment process could face a claim of discrimination. In other words, a discrimination claim can be made against the employer and also against a staff-member whose behaviour is alleged to be discriminatory.
The reason for a discrimination claim could be, for example, asking inappropriate questions at the job interview or using irrelevant selection criteria.

Minimising the risk of claims

An employer cannot stop a disappointed and disgruntled job-applicant making a discrimination claim in an employment tribunal, but the employer can minimise the risk of losing the case.
The best way for an employer to minimise the risk is to:

- know the law against discrimination;
- implement a non-discriminatory recruitment process;
- use paperwork which is non-discriminatory;
- keep written records of the recruitment process;
- keep copies of all relevant documents, including making notes of conversations.

All of the bullet points above are essential.
Basically, the employer needs to keep a *paper trail* of the recruitment process and avoid saying or doing anything which could be interpreted as discriminatory.

A paper trail

The Code say:

> If the employer does not keep records of their decisions, in some circumstances, it could result in an Employment Tribunal drawing an adverse inference of discrimination.

The Code goes on to suggest that the paper trail should include, for example:

- job description;
- person specification;
- selection criteria;
- any written test;
- notes of the short-listing process (including handwritten notes or score sheets);
- interview questions;
- notes of interview;
- minutes of any interview panel discussions or decisions following interviews.

If the employer has a written *recruitment policy* and/or a written *equal opportunities policy*, this should be included.

Training

The Code also suggests that there should be records that show all those involved in the recruitment process had received appropriate training in how to avoid discrimination in the recruitment processes.

The Code recommends that training should be ongoing with periodic refresher training.

Training can be expensive, particularly for a small employer. The cheapest training-method is for the employer to arrange inhouse *mock* interview sessions with managers. In the absence of relevant training for employees, the employer is unlikely to be able to defend a claim of *vicarious liability* for discrimination on the basis that the employer took reasonable steps to prevent discrimination.

Interviews

As the Code states, employers may need to show in an employment tribunal that all employees involved in the process to select recruits had received training on the employer's equality policy and its application to recruitment, including

interviewing techniques to help them:
- recognise when they are making stereotyped assumptions about people;
- apply a scoring method objectively;
- prepare questions based on the person specification, and the information in the application form;
- avoid questions that are not relevant to the job.

Stages in the recruitment process

The employer should be prepared to justify every selection decision, at every stage in the recruitment process, preferably with documentary evidence.
Every stage in the recruitment process should be regarded as equally important.
In most recruitment processes the stages will be as follows:
- identifying the need to recruit;
- implementing a recruitment policy
- identifying job role(s) to be recruited;
- drafting job specifications;
- deciding whether to recruit directly or through an agency;
- drafting the wording of advertisements;
- deciding who will have main role in recruitment process.

The written records should demonstrate that the recruitment process is designed to select recruits based on an objective assessment of their ability to do the job on offer to a required standard, and to make clear that decisions will not be based on prejudicial assumptions, particularly when the applicant has a *protected characteristic*.

Protected characteristics

Chapter 2 of Part one of the Code deals with protected characteristics which are:
- age;
- disability;
- gender reassignment;

- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex (gender); and
- sexual orientation.

Basically, anyone who has one of the characteristics listed above, will be discriminated against according to the law (currently the *Equality Act 2010*) if they are treated adversely (including in employment) because of that characteristic.

Vicarious liability

Vicarious liability means that employers are legally responsible and liable for unlawful acts committed by their workers in the course of their employment.

It is unlawful to discriminate if the person discriminated against has one of the protected characteristics previously listed.

A claim for discrimination or harassment by a job applicant may be brought against the employer and/or any of their workers or recruitment agents who were responsible for the discrimination in question.

The employer may still be liable vicariously even if the act of discrimination was contrary to their instructions.

However, the employer will have a defence to a claim of vicarious liability if the employer can show that it took all reasonable steps to prevent the discriminatory act.

As to what steps were reasonable to prevent discrimination depends on the nature of the allegation, but an employer will be less likely to succeed with this defence if the employer did not arrange some training for employees as to how to avoid discriminatory acts; deliberate or inadvertent.

Vicarious liability on a worker

The employee who discriminates unlawfully might also be held liable in an employment tribunal and may have to pay compensation to the person they discriminated against.

Vicarious liability for agents

The employer may be vicariously liable if it uses an employment agency to carry out its recruitment process and the agency discriminates unlawfully in that process.
The employer might still be liable if the discrimination occurred without the employer's knowledge or approval but was done in the course of its contract with the employer.
However, the employer might not be liable if the discrimination occurred in contravention of the employer's express instructions not to discriminate.

References

The EHRC Code (the Code) recommends that references should not be obtained until after a decision has been made to offer employment to the person in question, in case the references, when received, contain subjective assessments by the referee, which might unfairly influence the employer as to whether to offer employment.
The Code also recommends that an employer should send the referee copies of the job description and person specification, when requesting a reference, to try and limit the information in the reference to matters which are relevant to the job.

Job descriptions

The Code (referred to in the section headed *The EHRC Code*) makes recommendations about the creation of a job description in order to avoid claims that it unlawfully discriminates against people because of a protected characteristic.
Some of the main points are that the job description should:

- be written as plainly as possible;
- use an appropriate job title;
- accurately describe the job;
- only require qualifications or experience reasonably necessary to do the job properly.

For example, if the job description says *the receptionist must hold a driving licence*, this is potential disability discrimination if a candidate for the job cannot hold a driving licence because of a disability and the job role does not include a requirement to drive.

Person specifications

A *person specification* should describe the skills, knowledge, abilities, qualifications, experience and qualities that are considered necessary or desirable in a job applicant in order to perform all the duties in the job description satisfactorily. To minimise the risk of discrimination claims, a job specification should be in line with the job.

Specifying a female in the job description is potentially sex discrimination against males, unless the requirement for a female can be justified, for example, *a woman to work in a lingerie department* is likely to be justified.

A requirement to work full-time could be disadvantageous to women compared to men as more women than men work part-time or job share in order to accommodate childcare responsibilities. This requirement, unless justified objectively by the the job, could amount to *indirect* sex discrimination.

Points to note:

(1) There should be no irrelevant criteria.

(2) The criteria should be objective (devoid of assumptions).

(3) Required qualifications should not be overstated.

(4) Phraseology such as *good health* or *physical fitness* may be discriminatory as being too broad.

Occupational requirements

An *occupational requirement* is relevant when an employer needs an employee with certain protected characteristics, for example, an employee in a synagogue might need to be Jewish: Religion is a protected characteristic.
In the above example, if an occupational requirement did not apply it would be religious discrimination to insist that the employee must be someone of the Jewish faith.
The same point would arise with regard to any other religion or other protected characteristic.
If challenged, the burden of proof is on the employer to show that the particular requirement is justified by the nature of the employment.

Positive action

Positive action is when an employer encourages a group of persons with a protected characteristic to apply for a job vacancy.
For example, an employer might wish to help young persons gain *a foothold on a career ladder*, and restrict advertising the job to media outlets aimed at young people. Age is a protected characteristic.
There is no obligation on any employer to resort to positive action. And it is only *encouragement* that is permitted under positive action.
An employer must give equal opportunity and consideration to an older person who happens to apply for the job which the employer had designated as being appropriate for a younger person.

Advertisements

It is unlawful discrimination to say in a job advertisement that the employer is seeking someone with a particular protected characteristic unless the job is one to which an *occupational*

requirement applies.
For example, it is unlawful to specify that only a woman will be considered for the job (gender is a protected characteristic) unless the job is really only suitable for a woman.

Employment agencies

It is unlawful for employment agencies to discriminate on behalf of a client-advertiser.
Employment agencies must refuse any client-instruction to discriminate.
If an advertisement is discriminatory, the *Equality and Human Rights Commission* (EHRC) may initiate legal proceedings against those responsible for the advertisement.
All forms of job advertisement are covered by the law against discrimination, including:

- e-mails;
- direct mail;
- signs in shop windows;
- notices company notice boards;
- in newspapers;
- on TV;
- on the internet.

Employers will also be liable jointly with the employment agency if they give instructions to it to discriminate.

External advertising

Many employers, particularly public authorities, advertise all posts externally to ensure compliance with the laws relating to equality of opportunity in the workplace, unless there are reasons not to do so, such as the need to give preferential consideration to redundant employees.

The content of advertisements

An advertisement should focus on the essential requirements of the job, to avoid deterring people, who might otherwise have applied, from applying. For example, an office receptionist would probably need to use a computer but, in all probability, would not need to hold a driving licence.
Care must be taken over the wording to avoid any impression that the employer is seeking workers with a certain protected characteristic.
The EHRC Code gives the example of an advertisement for a *waitress* which would be potential sex discrimination against men.
Employers should use words which are inherently neutral, for example, *staff*. The advertisement should not include wording which would dissuade a person with a protected characteristic from applying. For example, *our office is not suitable for wheelchair users*. In this example, an employer would need to have considered whether making any reasonable adjustments to the building would enable wheelchair users to access the office: a failure to make reasonable adjustments is a ground for making a claim of disability discrimination.
Points to note:
(1) Recruiting an employee on the basis of a recommendation is lawful, but could lead to allegations of discrimination.
(2) Workers mainly recruited from one racial group may lead to claims of discrimination.

Job applications

A job application form should be standardised to show that the employer has:

- assessed all job applicants without discriminating;
- made an objective assessment of an applicant's ability to do the job.

The EHRC Code gives an example of a standardised application form as one which asks applicants to provide, say, 400 words

stating how they meet the job description and the person specification: the employer then gives marks for each criterion the applicant meets and the applicant is, or is not, shortlisted, or otherwise considered, based on the marking.
The EHRC takes the view that such a standardised process enables the employer to show that they have assessed all applicants without discriminating.
Employers should provide job application forms in an *easy to read* format or in braille if the job could be done by a person with impaired vision.
Employers should make every reasonable effort to comply with any request for a job application form to be in a more easily understood format, for example, translated into the applicant's first language.
Application forms should say who the information is being provided to.

Contents

A job application form should ask only for the information which is necessary to gauge the applicant's suitability.
Questions on an application form which relate to protected characteristics should include a clear explanation as to why this information is needed, and an assurance that it will be treated in the strictest confidence.

EHRC Code suggestions

The Code suggests that applicants should not be asked to provide photographs, unless essential for selection purposes, for example, for security purposes to confirm that a person who attends for a job interview is the applicant.
An employer can reduce the possibility of discrimination by ensuring that personal information is requested in a section that can be detached from the rest of the application form or requested separately.

Equal opportunities monitoring

Employers may have to monitor the personal characteristics, such a ethnic origin, of job applicants and workers.
It is good practice to ask applicants to give information, which may need to be monitored, in an anonymised document which is separate from the job application form.
Equal opportunities monitoring forms should be separated from job application forms prior to the shortlisting process so that the information provided by applicants has no influence on the selection process.

Interviews

Arrangements for holding job interviews should not place any job applicant with a protected characteristic at a disadvantage. The EHRC Code gives the example of an all-day assessment of job applicants when food provided during the day should take into account any dietary requirements because of religious beliefs or health.
An employer must ensure that interviews to chose a job applicant are fair, consistent and non-discriminatory.
Notes of interviews should be preserved, and will be essential evidence to defend any employment tribunal for discrimination.
Those interviewing should follow the employer's properly drafted Equality Policy.
Questions should be based on the person specification and job description and the information provided in an application form or CV.
Questions that are not relevant to the requirements of the job should not be asked: to do so, increases the risk of a discrimination claim, for example, to ask *do you have children?* even as *small talk* is best avoided.
If irrelevant information is volunteered by the applicant this information should not be noted in the interviewer's notes, for example, to note *no children* could be evidence in a subsequent employment tribunal case that the employer did to want to

employ women with children.
A woman is under no obligation to declare her pregnancy when applying for a job.
If the woman is noticeably pregnant then, at the interview, mention of her pregnancy should be restricted to asking whether she requires any reasonable adjustments to be made so that she is comfortable in her condition.

Feedback

An employer's failure to give feedback, following a request for feedback by an unsuccessful applicant, could imply a reason, which is discriminatory, for not employing that applicant.

Good practice

The EHRC Code recommends that:
- if possible, more than one person should be involved in shortlisting candidates;
- marking, or allocating points, should be consistent and objective;
- persons marking should do so separately;
- selection should be based only on information provided in the application forms;
- the weight given to each item in the person-specification should not be changed during shortlisting.

Reasonable adjustments

Applicants should be asked whether they need any reasonable adjustments (if they have a disability) in advance of the interview.

Psychometric tests

Employers are increasingly using psychometric testing. Such tests should:
- be reasonable and proportionate;

- not involve any invasion of privacy;
- be designed appropriately;
- not be the sole method of assessment;
- take into account any protected characteristic; for example, give a dyslexic applicant extra time to complete the test.

All candidates should take the same test unless there is a health and safety reason why the candidate cannot do so, for example because of pregnancy, or because a reasonable adjustment is required.

The right to work in the UK

Employer need to check that an employee has the legal right to work in the UK.
Failure to carry out such a check means that the employer is liable to criminal prosecution and heavy fines.
However, in order to avoid claims for race discrimination, employers should ask the same questions of all job applicants regarding permission to work in the UK at the relevant stage of the recruitment process and not just those who appear to be of non-British descent.
The EHRC Code (the Code) recommends that eligibility to work in the UK should be checked in the final stages of the selection process rather than at an early stage.
But no employee should be allowed to start work until a proper check as to their right to work in the UK is complete.

Medical questions

Since 2010, other than in very limited circumstances, it has been potential disability discrimination for an employer to ask a person about their health before offering work to that person, or including that person in a pool of candidates for employment.
If justified by the role, an employment offer may be conditional on receipt of a satisfactory report or medical questionnaire.
Employers may need medical evidence to:

- check the job applicant is medically and physically able to do the work;
- include the applicant in the employer's health insurance scheme.

Employers also need to be mindful of data protection when processing sensitive personal data.
Employer must obtain an employee's consent to a medical report pursuant to the *Access to Medical Reports Act 1988*.

Restrictive covenants

Employers should always check that the employee they wish to recruit is not subject to any *restrictive covenant* preventing them from working for a competitor for a certain length of time in a certain geographical area.
This is an especially important consideration when the recruit has sought-after skills or valuable business contacts.
Probably the best way for an employer to check whether any covenants prevent the employment is by asking to see the previous employment contract.
If the employee is subject to restrictive covenants and breaches them by working for the employer, the employer could be the subject of a court claim for inducing a breach of contract.

Data protection

The *Data Protection Act 2018* (DPA) governs the processing by data controllers of personal data relating to *data subjects*. Job applicants are data subjects and provide personal data to employers who, as *data controllers*, process that data.
Employers must have regard to the DPA when recruiting.

ICO Guide

The *Information Commissioner's Office* (ICO) has a *Quick Guide to the Employment Practices Code*, Section 3 of which sets out guidance on an employer's obligation to protect the

personal data of a job applicant.
Excerpts from Section 3 (referred to in the above paragraph) are as follows:

- there should be a balance between an employer's need for information and an applicant's right to respect for their private life;
- collecting information about an applicant covertly is unlikely to be justified;
- the information collected should be used only for recruitment purposes;
- the employer should not collect more personal information than needed;
- collected information should not be disclosed to a third party without the consent the job applicant;
- employers should only ask about criminal convictions if this is justified by the type of job;
- employers should keep collected information for only as long as it needed.

The above is only a few bullet points from the Guide. The guide can be downloaded from the ICO website. Employers must be mindful that information collected on job application forms is sensitive personal data and must be processed in accordance with the provisions of *data protection legislation.* Employers should request information about an applicant's criminal convictions only if the information can be justified in terms of the role offered.
Information on an applicant's racial or ethnic origin, physical or mental health, religion or similar beliefs and sexual life is sensitive personal data under data protection legislation but provided it is anonymised, it will cease to be if the data subject is unidentified.

Employment Contracts

Introduction

Employment law recognises three classes of individuals who do work for another:

- employee;
- self-employed;
- worker.

Some workers are referred to as *limb b)* workers; a term which originates from the *Employment Rights Act 1996*.

The government website says the purpose of *limb b) worker* status is:

> to extend the coverage of certain employment rights to a wider group of individuals than just employees, protecting a larger number of individuals who are in dependent working relationships but are not employees.

Specifically, employment law distinguishes between three types of people:

- those employed under a contract of employment;

- those self-employed people who are in business on their own account and undertake work for their clients or customers;
- an intermediate class of workers who are self-employed but who are not classed as such.

Point to note: HMRC recognises only 2 classes: (1) a worker and (2) a person who is self employed. This means that HMRC classes all employees as workers. Hence, there is a *mismatch* between *employment law* and *tax law*.

Employee

The most often quoted definition of an employee is in the *Employment Rights Act 1996* which says an employee is:

> An individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

A *contract of employment* is defined as:

> A contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

A term in a contract is *express* if it has been agreed orally (spoken) or in writing.
A term in a contract is *implied* if it has not been agreed as such but is deemed to be included as a necessity to make the contract effective in law.

Employee classification

An individual is normally classed as an employee if:

- they work on a regular basis;
- they cannot refuse to work unless the refusal is justified;
- they are entitled to take paid holidays;
- are subject to the employer's disciplinary procedure;
- the employer's grievance procedure is available to them;
- they have to give notice to their employer before taking maternity, paternity or other leave;

- they cannot get someone else to do their job for them;
- the employer can dictate when and where they do their job;
- the employer provides the materials, tools and equipment required for their job.

Other facts might also be relevant.

Employee's rights under employment law

Employees have the following rights (not a complete list):

- a written statement containing mandatory information as to the main terms of their employment;
- the National Minimum Wage;
- paid holidays;
- payslips;
- protection if they are a *whistleblower*;
- protection against discrimination;
- protection from less favourable treatment if they work part time.

If they are eligible, employees are also entitled to the following (not a complete list):

- statutory sick pay (SSP);
- ordinary parental leave;
- shared parental leave and pay;
- maternity, paternity and adoption leave and pay;
- parental bereavement leave and pay;
- time off for dependants;
- time off for public duties;
- redundancy pay after 2 years' continuous service, if their role becomes redundant;
- to claim unfair dismissal or automatically unfair dismissal;
- protection against dismissal or suffering any detriment for taking action over a health and safety issue.

Self employment

Employment law draws a distinction between two different kinds of self-employed people:

- one kind are people who carry on a profession or a business undertaking on their own account and enter into contracts with clients or customers to provide work or services for them;
- the other kind are self-employed people who provide their services as part of a profession or business undertaking carried on by *someone else*.

Often a self employed person is referred to as *a contractor* or as *a self employed independent contractor*.
In general terms, a person is usually self-employed if they are their own boss.
Self-employment is a category which is recognised by HMRC. In fact, as we have stated above, HMRC recognises only 2 categories: an individual who is a worker and an individual who is self employed. And, as far as HMRC is concerned, all employees are workers.
Someone is likely to be self-employed if they:

- set up a business with an office;
- buy equipment necessary for their business;
- advertise for work;
- have business stationary and cards;
- have a website;
- invoice clients or customer;
- do not rely on work from one main customer but have several clients and customers;
- *etc, etc.*

Basically, if most of the above bullets points (and similar) apply, HMRC is more likely to accept that the individual is genuinely self employed.

A worker

Under the *Employment Rights Act 1996* the definition of a worker is:

> an individual who has entered into or works under (or, where the employment has ceased, worked

> under) either
> (a) a contract of employment; or
> (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

To clarify the definition in the previous paragraph, for an individual to be classed as a worker (instead of self employed) there must be:

- a contract to do work;
- the individual must have contracted to work personally: in other words, they will not send somebody else to do the work;
- the work is not for a client or customer of the individual but is done for a business run by *someone else*.

If the work is for a client or customer then the individual is likely to be classed as self employed.

The judgment in the Employment Appeal Tribunal (*Mrs N Sejpal -v- Rodericks Dental Limited - May 2022*) clarifies the law and underlines that determining whether an individual (A) is a worker for another person (B) requires the following to be considered:

> A must have entered into or work under a contract (or possibly, in limited circumstances, some similar agreement) with B; and A must have agreed to personally perform some work or services for B. However, A is excluded from being a worker if A carries on a profession or business undertaking and B is a client or customer of A's by virtue of the contract.

To take an example:

> Alf is an electrician and works for himself. He agrees to install a light in Mrs Brown's bathroom. Almost certainly, Alf will be categorised as self employed under his contract with Mrs Brown. This is because he is carrying on a business as an electrician and Mrs Brown is a client or customer of that business.
>
> The next day, Alf agrees to do a week's work for Fictitious Builders Limited. Under the contract Alf provides his services as an electrician to part of a profession or business undertaking carried on by someone else, namely Fictitious Builders Limited, and it is likely that Alf will be classed as a worker and be entitled to claim holiday pay as well as some other statutory rights.

Also, depending on the wording of the contract with the builders Alf might be classed as a *casual employee* instead of a worker.

The correct analysis and interpretation of the wording of a contract is crucial in determining whether an individual should be classed as self employed or a worker or as an employee.

The contract wording should also reflect the *reality of the working relationship*. For example, if the contract says that the individual has the right to send someone else to do the work (a substitute) the employment tribunal will look at whether or not this right is genuine. A genuine right to send a substitute is likely to make the contract one of self employment, but if there is no such genuine right the individual is likely to be classed as a worker.

You might read elsewhere that certain tests, such as *substitution* or *mutuality of obligation*, should be applied before deciding whether an individual should be classified as a worker. However, in the *Sejpal case* (referred to above) the judge said:

> Determining worker status is not very difficult in the majority of cases, provided a structured

> approach is adopted, and robust common sense applied. The starting point, and constant focus, must be the words of the statutes. Concepts such as *mutuality of obligation*, *irreducible minimum*, *umbrella contracts*, *substitution*, *dominant purpose*, *subordination*, *control*, and *integration* are tools that can sometimes help in applying the statutory test, but are not themselves tests. Some of the concepts will be irrelevant in particular cases, or relevant only to a component of the statutory test. It is not a question of assessing all the concepts, putting the results in a pot, and hoping that the answer will emerge; the statutory test must be applied, according to its purpose.

Basically, it is necessary to ask:

- what does the contract to do the work say?
- has the individual agreed to do the work personally?
- is the individual carrying on a profession or business?
- is the work for a client or customer of the individual's business?
- is the work for a profession or business undertaking carried on by someone else?

In most cases, the answers to the last two bullet points will determine whether the individual should be classed as a worker or as self-employed.

To amplify what we have said above: an individual is likely to be classified as a worker if most of these facts apply:

- they do not have regular work;
- they do not have a guarantee of work;
- they do not have to accept an offer of work;
- they do not have the right to engage a substitute (someone to do the work for them).

In regard to the last bullet point, if they have a right to engage a substitute the individual is likely to be classified as self employed.

Workers rights under employment law

Workers have the following rights (not a complete list):

- a written statement containing mandatory information as to the main terms of their employment;
- the National Minimum Wage;
- paid holidays;
- payslips;
- protection if they are a *whistleblower*;
- protection against discrimination;
- protection from less favourable treatment if they work part time.

Note: Workers are entitled to holiday pay.

Workers are not usually entitled to:

- notice to terminate;
- protection against unfair dismissal;
- flexible working;
- time off for dependants;
- statutory redundancy pay.

However, depending on their National Insurance contributions they might be entitled to statutory sick pay (SSP).

Point to note: The distinction between an employee and a worker is becoming increasingly blurred.

Agency workers

Employers should be aware that after 12 weeks' continuous employment, in the same role, agency workers must get the same terms and conditions as permanent employees, including:

- the right to the same pay;
- the right to the same holiday entitlement;
- the right to the same working patterns and rest breaks;
- time off for antenatal and adoption appointments.

A more detailed exploration of the law relating to agency workers is beyond the scope of this book.

Rights if self employed

Self-employed individuals have a few employment rights such as:

- protection against discrimination;
- the right to safe system of work.

Section 1 Employment Rights Act

Surprisingly, in most cases there is no legal obligation on an employer to give a worker a *written* employment contract. However, *s1 the Employment Rights Act 1996* requires the employer to give a worker a document setting out the main terms and conditions of their employment.

We refer to *The Employment Rights Act* as the *ERA*.

Originally, under the ERA, there was no requirement to give a written statement to a worker (only to an employee). However, the ERA was amended in April 2020 to make it compulsory to give a written statement to a worker as well as to an employee.

Another amendment to the ERA in April 2020 was that *most* of the information required by the ERA to be in a written statement must be given to a worker on or before their first day at work.

Before April 2020, the written statement had to be given to an employee (not to a worker) within 2 months of the first day of work.

The ERA says *not later than the beginning of the employment*, but as mentioned below, some of the required information can still be given within 2 months of the beginning of employment.

A written statement

A written statement is not, in itself, a contract of employment, but is evidence of what the terms and conditions of the employment probably are.

Often a document (which is technically a written statement) is regarded by the parties as a contract of employment. And,

as we shall see, it is easy to insert a clause or term in a written statement whereby the parties confirm that they accept the written statement as a contract of employment.

An employment contract comes into existence from the moment an individual accepts an unconditional offer of employment, even though there may be nothing in writing and/or not all the necessary contractual terms have been discussed and agreed. For example:

> Jack says to Jill "can you do a couple of hours' work for me in my shop on a Saturday morning? I will pay you £12 an hour". Jill says "Ok".

An employment contract has probably arisen as soon as Jill says *ok*, even though the only certain terms are that she will work on a Saturday morning and be paid £12 per hour. The number of hours to be worked is uncertain: did Jack mean two hours or did he mean several hours?

It goes without saying that an uncertain and incomplete employment contract is likely to cause problems. But as we have seen, under the ERA there is a legal requirement to give a worker a document setting out certain basic terms of employment; the idea being to provide some clarity as to the basic terms of the working relationship.

This document has no set-name; but names such as:

- a written statement of employment particulars;
- particulars of employment;
- and other names.

Lawyers sometime call the document a *section one statement* as the legal obligation on the employer to give the document to the worker arises under *section 1 of The Employment Rights Act 1996* as amended in 2020.

We call the document a *written statement*.

In the same way as there is no set-name for a written statement, there is no set-format for a written statement and it can be comprised of a main document and one or more additional documents.

Principal statement

The following information must all be included in the main document, often referred to as the *principal statement*, and given to the worker on or before their first day at work:

- Names of employer and worker;
- Date employment or engagement begins;
- For employees only: date of continuous employment;
- Rate of pay and frequency (weekly, monthly etc.) of payment;
- Hours of work (including normal working hours, days of week and whether hours/days are variable (and, if so, how they vary));
- Entitlement to holidays (including public holidays) and holiday pay;
- Any other benefits (including non-contractual benefits);
- Length of notice of termination required from employer and worker;
- Job title or brief description of work.

If applicable:

- Details of non-permanent employment or engagement (e.g. period of fixed-term contract);
- Any probationary period which starts at the beginning of the engagement, including conditions and duration;
- Place of work and address of employer;
- Any part of any training entitlement which the employer requires the worker to complete;
- Training which the employer requires but does not pay for.

Working abroad

If a worker has to work outside the UK for more than a month, the principal statement must also include:

- how long they will be abroad;
- what currency they will be paid in;
- what additional pay or benefits they will get;
- terms relating to their return to the UK.

Other information

On or before the first day of employment the employer must also provide the worker with information about:

- sick pay and procedures;
- other paid leave (for example, maternity leave and paternity leave).

The employer can choose to include this other information in the principal statement or in a separate document.

Wider written statement

The employer must provide the principal statement (and other information if not included in the principal statement) on or before the first day of employment. The *wider written statement* must be provided within 2 months of the start of employment.

The following information must also be given in the wider written statement:

- pensions and pension schemes;
- collective agreements;
- any other right to non-compulsory training provided by the employer;
- disciplinary and grievance procedures.

Point to note: a *collective agreement* is an agreement which affects the workforce collectively and is made between the employer and a trade union or employee representatives. The agreement is then incorporated into the employment contract of any affected worker.

Changes

Any changes to the information required by a written statement must be given by a notice in writing to affected workers within one month of the change.

Failure to give required information

If the employer fails to give a written statement to a worker, the worker can ask an employment tribunal judge to say what particulars ought to have been given. The judge has no power to penalise the employer for failing to give a written statement unless the worker succeeds with another claim to the employment tribunal (such as a claim of discrimination). If the worker succeeds with another claim the employer may be ordered to pay the worker 2 weeks' pay (subject to the statutory cap) or, if it is just and equitable in the circumstances, 4 weeks' pay (subject to the statutory cap).
The *statutory cap* is the maximum weekly figure which an employment tribunal may award in certain circumstances. It is £700 from April 2024, and normally increases every April.

Automatically unfair dismissal

Dismissing an employee for asking for a written statement, or otherwise endeavouring to exercise their statutory right to a written statement, is an automatically unfair dismissal.
Point to note: Workers cannot claim unfair dismissal.
The employee does not need to have been employed 2 years in order to make a claim to an employment tribunal.
The employer's only defence to such a claim would be to argue that the reason for the dismissal was not because the employee had asked for a written statement.

TEMPLATE written statement

The template, as drafted, may not be entirely suitable for your particular business and if you use it in whole or in part you do so at your own risk.
The template assumes that the individual is an employee who will not be required to work outside the UK.
If the individual is a *worker* the written statement should make this clear by including wording such as:

> You have the status of a worker and are not an employee. This means that you may not have the same terms and conditions, protections, or obligations as someone who works as an employee.

The *notes* should be deleted from the draft before using it. The template assumes that the business has a staff handbook.

Template

From:_____ of_____ ('we' 'us' 'our')
To:_____ of_____('you' 'your').

1 General

1.1 This document sets out the terms and conditions of your employment with us. It includes the written statement of particulars of employment which we are required to give to you under section 1 of the Employment Rights Act 1996 (as amended) and other relevant legislation, and therefore no separate written statement will be provided.
1.2 We reserve the right, after due consultation with you, to change your terms and conditions of employment if the changes are necessary and reasonable for a business reason or any other substantial reason.

> *Note*: although this clause 1.2 reserves the right to change the terms and conditions of employment an employer should be very careful in changing the terms and should take legal advice before attempting to do so.

1.3 This document replaces any previous agreement between us, whether oral or written, given to you at any time.
1.4 Your period of employment is open ended.

> *Note*: If the employment is for a fixed term the date it will end should be stated. If the employment is temporary this should be stated.

1.5 Your current line manager is _____.

2 Continuous employment

> *Note*: clause 2 below refers to the date continuous employment began which usually means the first day of work. However, the date could be earlier if a TUPE transfer applied. When a TUPE transfer applies the period of employment with the previous employer is added to the period of employment with the current employer in order to calculate the period of continuous employment. NB: if you are not familiar with TUPE we have a separate bullet point booklet on the subject.

2.1 Your period of continuous employment with us began on the ____of_____ 20____.
Note: Clause 2.2 below does not apply if the individual is classified as a worker.
2.2 No employment with a previous employer counts as part of your period of continuous employment.
An alternative clause 2.2
2.2 Your employment with [*name of previous employer*] which started on the [*date*] forms part of your period of continuous employment.

3 Job title

3.1 You are employed as a_____.
3.2 Your job duties may be amended by us and you may be required to undertake additional or other duties reasonably within your capability to meet the needs of our business.

4 Pay

4.1 You will be paid for the hours that you work by cheque or credit transfer to your bank account in arrears at the rate of £____ gross each ____ (and proportionately for any lesser period, each pay instalment being deemed to accrue rateably from day to day).

4.2 Overtime is not paid unless the period of overtime, and the hourly rate of overtime pay, has been agreed and authorised in writing by your line manager (or another manager if your line manager is unavailable) before you work the overtime.

5 Place of work

5.1 Your normal place of work will be at_____.
5.2 We may change your place of work and/or may require you to work at other locations within a reasonable distance of your normal place of work either on a temporary or permanent basis.

6 Hours of work

6.1 Your normal working hours are:
____ am to ____pm, Mondays to Fridays.
However, depending on your job duties, it may be necessary to vary your working hours and/or your working days, in which event any variation(s) will be in accordance with a work-rota or shift pattern set by your line manager.
Note: It is necessary to give details of normal hours of work and say whether or not such hours or days may be variable, and if they may be variable how they vary or how that variation is to be determined. It is also necessary to say whether or not breaks are treated as paid working time. In this template, lunch breaks are paid but tea breaks are not paid.
6.2 Your lunch break is ____ minutes. Your lunch break is not working time and is not paid.
6.3 You are authorised to take tea breaks of ____ minutes each morning and ____ minutes each afternoon. Tea breaks are counted as working time and are paid.
6.4 In certain circumstances it may be necessary to change, reduce or increase your normal working hours to ensure that your duties are properly performed.
6.5 From time to time, you may be requested to work overtime, paid or unpaid, and you will be expected to co-operate with

any reasonable request.
6.6 For the avoidance of doubt you are paid only for the hours that you work.

7 Holidays

7.1 The holiday year runs from the ___ of _____ to the ___ of_____ each year.
7.2 Your holiday entitlement will be the statutory holiday entitlement. This is currently 28 days each holiday year if you work 5 days a week.
7.3 If you work part-time, your entitlement is *pro rata* and calculated according to the number of days/hours you work in proportion to our working week.
7.4 The following 8 bank/public holidays are included in your holiday entitlement:
New Years Day,
Good Friday,
Easter Monday,
May Day Bank Holiday,
Monday Spring Bank Holiday,
Monday Late Summer Bank Holiday,
Christmas Day, and
Boxing Day.
7.5 Payment for holidays will be at your normal rate of pay.
7.6 Untaken holiday in a holiday year cannot be carried over to the next holiday year except as permitted by law or with the permission of your line manager.
7.7 All holiday requests must be approved in writing in advance by your line manager.
7.8 You will not be entitled to any other paid leave except as required by law.

8 Other benefits

For the avoidance of doubt, during your employment with us, you will not entitled to any benefits other than those

benefits which are set out herein, or as may be set out in a job-offer letter (if you receive one) or in the staff handbook or in a stand-alone policy document (for example, a maternity policy). If you have a query as to your possible entitlement to a specific benefit or benefits please raise the query in writing with your line manager.

9 Sickness absence

9.1 You are required to contact your line manager (or another manager if your line manager is unavailable) by your normal start time on the first day of sickness absence, stating why you are absent and when you expect to return. If your absence continues, you must keep your line manager updated. Failure to contact us in accordance with this clause, without good reason, may result in an investigation under the disciplinary procedure. Personal contact is required at all times when contacting us: for example, the sending of text messages will not be accepted as notification.
9.2 You must produce (unless there is a good reason why you cannot do so) the following written evidence of absence and ensure that appropriate certificates are provided for the whole of your absence:
(a) a self-certificate form (obtainable from your line manager) for any absence of up to and including 7 calendar days; and/or
(b) a doctor's certificate (known as a 'Fit Note') for absence of more than 7 calendar days.
You should forward the relevant certificates to your line manager as soon as possible: failure to do so may result in sick pay being delayed or withheld and may result in an investigation under the disciplinary procedure.
9.3 We reserves the right to require you to undertake a medical examination by a medical practitioner and/or specialist of our choice and/or to seek a report from your doctor (subject to your rights under the Access to Medical Reports Act 1998).
9.4 For the purposes of the Statutory Sick Pay scheme the

agreed ‘qualifying days’ are Monday to Friday.
9.5 There is no right to contractual sick pay but payments in addition to statutory sick pay may be made at our discretion.
9.6 A Fit Note is not conclusive evidence that an employee is unfit to work and we reserve the right to make appropriate enquiries to ascertain whether an employee is fit enough to do different or lighter duties.

10 Other paid leave

10.1 You might be eligible for statutory leave as follows:
maternity leave;
adoption leave;
paternity leave;
shared parental leave;
time off for dependants.
bereavement leave.
10.2 Whether additional leave (other than statutory leave) is granted, and if so, whether it is paid or unpaid, is always at our discretion.
10.3 Please ask your line manager for the relevant written policy; for example, our maternity policy.

11 Pension

If you are eligible, we will enrol you automatically into our occupational pension scheme in accordance with our obligations under Pensions legislation. If you do not opt out of automatic enrolment, details of the scheme will be provided to you within 2 months of the start of your employment with us.

12 Training

At the beginning of your employment you will be given in-house training appropriate to your job duties and job experience. You will not be contractually entitled to any other training, but if the need for further training arises, this

will be provided to you on terms and conditions to be discussed and agreed with you at the relevant time.

> *Note*: It is necessary for the written statement to say whether any entitlement to training will be provided by the employer; detail any training which the employer requires the employee or worker to complete; and say whether there is any other training which the employer requires the employee (or worker) to complete and which the employer will not pay for.

13 Probationary Period

The first ____ months of your employment is a probationary period. During this period your performance and conduct will be monitored. At the end of the probationary period your appointment may be confirmed in writing or your probationary period extended. If you do not receive any written confirmation before the expiration of your probationary period you should assume that your probationary period is extended pending written confirmation.

> *Note*: It is necessary to give details of any condition relating to probation and its duration. For example, there might be a probationary term which reduces notice to terminate during the probationary period.

14 Termination of employment

14.1 The notice required by either of us to terminate your employment will be the statutory notice which is: one week's notice if you have been continuously employed by us between one month and 2 years; and then one week's notice for each completed year of employment from 2 completed years up to a maximum of 12 weeks' notice.
14.2 We reserve the right in our absolute discretion to pay you basic salary in lieu of notice.

15 Collective agreements

There are no collective agreements relevant to your employment.

> *Note*: *Collective agreements* refer to agreements with employee representatives or a union regarding the general terms and conditions under which individuals are employed by the business. The written statement must say whether a collective agreement is relevant to the employment and, if so, give the details.

16 Grievance procedure

This grievance procedure is not contractual and we reserve the right to change it or to deviate from it for any reason.
If you have a grievance or complaint to do with your work or the people you work with you should, whenever possible, discuss the matter informally with your line manager. You may be able to agree a solution informally between you.
If the matter is serious and/or you wish to raise the matter formally you should set out your grievance(s) in writing to your line manager.
If your grievance is against your line manager and you feel unable to approach him or her you should contact another manager.
The manager who is dealing with your grievance will arrange a meeting with you, normally within 5 days, to discuss your grievance(s).
You have the right to be accompanied by a work colleague of your choice or trade union representative at this meeting if you make a reasonable request.
After the meeting the manager will give you a decision in writing, normally within one working day.
If you are unhappy with the manager's decision and you wish to appeal you should set out the reasons in writing addressed to the manager who will arrange for another manager to hear

your appeal, usually normally within 5 working days.
You have the right to be accompanied by a work colleague of your choice or trade union representative at the appeal-meeting if you make a reasonable request. After the meeting the manager who heard your appeal will give you a decision, normally within one working day.
The appeal decision is final.

17 Disciplinary Procedure

The disciplinary procedure which relates to your employment is set out in the staff handbook. You should receive the staff handbook when you receive this written statement. If for any reason you do not receive the staff handbook please tell your line manager.
As stated in the staff handbook, the disciplinary procedure is not contractual and we reserve the right to change it or to deviate from it for any reason.

18 Policies and procedures

You are required at all times to comply with our rules, policies and procedures in force from time to time, including those contained in the staff handbook.

19 Changes to your terms of employment

We reserve the right to make reasonable changes to any of your terms of employment. You will be notified in writing of any change as soon as practical and in any event within one month of the change.

20 Contract of Employment

By signing below you confirm that you accept this document (plus any additional terms in a job-offer letter) as your contract of employment, and you agree to comply with the work rules set out in the staff handbook. You acknowledge receipt of a

copy of the staff handbook.
Signed _____ (employee or worker)
Dated ___ of _____ 20___
Signed _____ (for employer)
Dated ___ of ___ 20___

> *Note*: As stated above, if the worker signs the written statement then clause 20 converts the written statement into an employment contract.

Extra clauses??

Other clauses, which might be relevant to your particular business, could be for example:

?? Working abroad

??.1 You may be required to travel and work outside of the UK for a total of up to ___ month(s) in any 12-month period.

> *Note*: if the individual is required to work abroad for longer than one month it may be necessary to add the following clauses.

??.1 Whilst you are working outside of the UK, the following will apply:
??.1.2 You may be paid in the currency of the country in which you are working.
??.1.3 In addition to your pay, you will be paid [*details of any additional pay or payments*].
??.1.4 You will be entitled to [*details of any additional benefits, for example use of a company vehicle*].
??.2 The terms and conditions relating to your return to the UK are [*terms and conditions*].

?? Deductions from pay

We reserve the right to deduct from your pay any monies owing by you to us if the said deduction is permitted by law. By signing this document you consent to and authorise us to

make any appropriate deduction(s).

> *Note*: An employer must obtain an authority signed by the worker before making a deduction from pay except as permitted by law.

?? Lay offs and short-time working

If there is a reduction in work, we may temporarily lay you off without pay or reduce your working hours and your pay proportionately on giving you as much notice as is practical. Depending on the circumstances you may have a statutory right to a guarantee payment.

?? Qualifications

Your employment is conditional upon you holding and retaining all the educational, professional and other qualifications which you listed in your job application.

?? References

Your employment is conditional upon receipt of satisfactory references. It is our unfettered decision as to whether a reference is acceptable.

?? 48-hour week opt out

By signing this document you agree that the limit in the Working Time Regulations, which restricts working time to a maximum of 48 hours per week averaged over the applicable reference period (usually 17 weeks), does not apply to you with the result that your weekly working time may exceed the 48 hours‘ average. You may change your mind and withdraw your agreement by giving us 3 months‘ written notice.

?? No breach of former employment contract

You confirm that you will not be in breach of contract with a former employer by accepting our offer of employment and we may ask to see your employment contract with your previous employer to check for any covenants restricting new employment.

?? And other possible clauses

restrictive covenants;
confidentiality;
expenses;
company car;
use of own car;
garden leave (the employee remains employed but is not required to work during their notice period);
intellectual property rights;
restriction on working elsewhere without permission;
anti-bribery;
duty to report wrongdoing;
data protection;
use of the internet;
remuneration review;
company property;
etc, etc.
(the list is not a complete list).

An employment contract

There is an important difference between *a contract of service* and *a contract for services*.
A *contract of service* refers to an employment contract under which the individual who does the work is an *employee*.
A *contract for services* refers to a contract under which the individual who does the work is *self employed*.
Note the word *of* in the first contract and the word *for* in the

second and *service* is plural in the second.
A term in an employment contract is called *express* if it is stated. For example, a term in an employment contract which says *Your normal hours of work are 9am to 5pm* is an express term.
In every employment contract there are also terms which have not been agreed as such, but which are *implied*. For example, it is implied that an worker will make all reasonable efforts to attend work on time.
An employment contract should contain all the terms required by law to be in a written statement (as in the above template), which, to recap, are currently as follows:

- name of employer;
- name of worker;
- address of workplace;
- job title or job description;
- the date employment began;
- if a previous job counts towards a period of continuous employment, the date on which the period started;
- hours;
- pay;
- holidays:
- where the job is not permanent, the period for which the employment is expected to continue or, if it is for a fixed term, the date on which it is to end;
- the length of notice;
- any collective agreements;
- pension;
- sick pay and procedure;
- disciplinary procedure;
- grievance procedure;
- if the worker is to work abroad - the terms.

The written statement must also include (since April 2020) the following:

- the hours and days of the week the worker is required to work;

- whether the hours/days may be varied and how;
- details of entitlements to any paid leave;
- any other benefits not covered elsewhere in the written statement;
- details of any probationary period;
- details of training provided by the employer.

Additional terms (not required by law) could be, for example;

- identity of line manager;
- authority to make deductions from pay;
- lay offs and short-time working.

In the previous section headed *A written statement* we indicated that it is important to remember that this document is not, in itself, an employment contract, but is simply evidence of the terms of employment.

As we have said, an employment contract exists from the moment an individual accepts an offer of employment even though there may be nothing in writing and not all the necessary contractual terms have been mentioned.

> *Imagine the following*: Beth sees a card pinned to a board in the window of a newsagents shop. 'Cleaner required by cleaning company. Full time position £12 per hour. Phone this number and ask for Meg.' Beth phones Meg who tells her "the hours are 8am until 4pm, Monday to Friday: cleaning offices." Beth tells Meg she will take the job and start on Monday. Meg tells her the Business's name is 'Fictitious Cleaners' and the address of its office.

At the end of the phone conversation between Beth and Meg an employment contract has arisen comprising express, implied and statutory terms, as follows;

- express terms which are in writing;
- express terms which are spoken;
- implied terms which have not been mentioned.
- statutory terms which have not been mentioned.

An express term (written or spoken) in an employment contract is one which has been mentioned and agreed.
An implied term in an employment contract is one which has not been mentioned and agreed but which is said to exist in every employment contract.
A statutory term is a term in an employment contract arising from an act of Parliament.
Sometimes, extra terms in an employment contract arise from;
- a collective agreement; and/or
- custom and practice.

A collective agreement is an agreement with representatives of employees, such as a trade union. The collective agreement is then deemed to be included in the employment contracts of any new employees.
By law (s.1 Employments Rights Act 1996), every written statement must say whether a collective agreement applies to the terms of employment.
Custom and practice arises when a particular trade or profession habitually does something in a certain way, and terms relating to that something are then deemed to exist in most, if not all, employment contracts in that trade or profession, including the employment contracts of new employees.
Referring again to the card in the newsagents window and subsequent phone conversation between Beth and Meg, the following terms apply:
the *express* terms in writing on the newsagents' card are;
- £12 per hour;
- job title and duties - cleaner;
- permanent job (the card says 'full-time' position).

the *express* terms which are spoken on the telephone are:
- hours - 8am to 4pm - Mondays to Fridays;
- start date - the following Monday;
- name of employer - Fictitious Cleaners;
- address of employer - its office.

The remaining essential terms will need to be implied or are imposed by statute.

Implied terms

As stated above, the implied terms are any terms which are reasonably necessary to fulfil the employment contract which have not been mentioned and agreed but which are deemed to exist in the employment contract.
Some implied terms are specific to the job in question.
For example, it would be assumed that a lorry driver must have an HGV licence in order to work as a lorry driver, although the need for an HGV licence might not be stated in the specific employment contract.
Conversely, it would not be implied that an office-receptionist would need a driving licence.
Some implied terms are deemed to exist in *every* employment contract, for example, *an implied term of mutual trust and confidence*. The classic definition of this term is:

> there is implied in a contract of employment a term that employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence or trust between employer and employee. There is also a mutual obligation on an employee not to behave in the same sort of way towards their employer.

An alleged breach of the implied term of *mutual trust and confidence* is often used in support of a claim of *constructive* unfair dismissal, when the employee alleges that they resigned because of fundamentally, unreasonable behaviour by their ex-employer.

Statutory terms

A statutory term would be, for example, a term that the employee would be entitled to 28 days' holiday each year if they work a 5-day week, and proportionately less if they work fewer days each week. *Section 1 of the Employment Rights Act 1996* (referred to above) requires a written statement to

include details of holiday entitlement.
However, it would still be a term in the employment contract that the worker was entitled to statutory holiday pay even if the employer fails to give them a written statement saying so.

A written statement is not an employment contract

To recap:
(A) There is no requirement in law for an employment contract to be in writing.
(B) Notwithstanding (A), an unwritten employment contract exists as soon as a worker starts working for an employer (i.e., from day-one).
(C) There is a requirement (s.1 Employment Rights Act 1996) to give a worker a written statement on or before their first day at work.
If the employer gives the written statement to the worker later than day-one the written statement cannot in itself be the employment contract because an *unwritten* employment contract exists already. However, the written statement is evidence of - or gives a clue to - the terms of the unwritten employment contract. And the employer and the worker can agree that the written statement is, in effect, the employment contract. Towards the end of the template it says, *By signing below you confirm that you accept this document (plus any additional terms in a job-offer letter) as your contract of employment.* If the worker signs the written statement it is converted into an employment contract.

Failure to give a written statement

If the employer does not give the worker a written statement, or an employment contract, on day-one, then the terms of the unwritten employment contract will be uncertain.
If there is then a dispute between the employer and the worker as to a particular term of the employment contract;

for example, the worker says they were offered £15 per hour whereas the employer says the offer was £12 per hour, an employment tribunal judge is very likely to award £15 per hour. The reason the judge is likely to find in favour of the worker is that - normally - it is the employer's obligation to make clear in writing the rate of pay.
Another illustration of why it is essential for an employer to make clear the terms of employment from day-one: referring again to the job advertised on the card in the newsagents' window, Meg told Beth that Fictitious Cleaners was the name of her business. She did not say that Fictitious Cleaners is a limited company. So Meg might lose the protection, provided to a director of a limited company, against being sued personally.

Types of employment contracts

Below, we list some types of employment contracts designed to meet different terms and conditions..

A part time employment contract

The Part-Time Workers Regulations state that part-timers should receive the same benefits as those working full-time, *pro rata* to the time worked. For example, the statutory holiday entitlement is 28 days for a full time worker based on a 5-day week. A worker who works a 3-day week will be entitled to three fifth of 28 days amounting to 16.8 days' holiday.

Annualised hours

Under an annualised hours' contract the worker is required to work an agreed number of hours during an agreed period on agreed days; for example, a total of 20 hours normally to be worked as 5 hours on every Friday between the 31st March and 31st August.

Fixed term

A fixed term contract is for a specific period (for example, 6 months) and is deemed to expire on the end date. The contract should include a clause reserving the right to terminate the contract before the expiry date, otherwise, the worker would have a potential claim for 4 months‘ remuneration if the employer terminated the contract 2 months early, or the employer might have a claim if the worker was unable to work the full 6 months.
Point to note: The expiry of a fixed term contract counts as a dismissal.

Temporary cover

A contract to cover a worker who is absent from work for an extended period; for example, on maternity. The contract ends when the absent-worker returns. The cover-worker will be entitled to statutory notice, or contractual notice if longer, before the absent-worker returns.

Homeworker

Workers who work from home on a full time or on a regular basis should be given a contract which reflects the fact that their place of work is their home. For example, the employer should reserve the right to enter the homeworker‘s home, by appointment, to check that the home is a suitable workplace as the employer is still under a duty to ensure a safe system of work.
Other clauses should cover matters such as contributions by the employer towards the homeworker‘s expenses of doing the work; for example, broadband, stationery, etc.
The employer should also require confirmation that is no restriction in a mortgage or lease to prevent the worker from working from home.

Bank contract

A *bank* contract, does not refers to individuals who work in a bank, but refers to a list (or *bank*) of individuals who may be willing to do work as and when the work is offered.
A bank contract is more or less the same as a casual-worker's contract. The individual is not under an obligation to accept an offer of work and the employer is under no obligation to offer work.
The individual can be classed as an employee or as a worker depending on the wording of the contract. Normally, they cease to be a worker or an employee when the period of work ends. Bank contracts are common in the care home industry.

'Zero hours' contract

> *Note*: The Government proposes to ban what it considers to be *exploitative zero-hours contracts which allow employers to only pay staff when they need them.* Probably the ban will come into effect during 2026 but it could be earlier. Basically, new zero-hour contracts are inadvisable.

Zero hour contracts are popular with employers but not so popular with workers or trade unions. They are similar to bank contracts in that the employer is under no duty to offer work, but may be different in that, depending on the contract wording, the worker might be obligated to accept work if offered. The main difference is that the individual remains an employee or worker of the employer even when the employer has not offered them a period of work, although the employer cannot prevent them from working elsewhere.

Other types of employment contracts

- Job share;
- Term time;
- Duration of project.

The above is not a complete list.

Bonuses and commission

We have not included any clauses relating to bonuses and commission because such clauses normally need to be specific to the individual worker.
Normally the difference between a bonus and commission is that a bonus is discretionary whereas commission is contractual. However, sometimes these two words – *bonus* and *commission* – are used incorrectly; for example commission is incorrectly referred to as a bonus and *vice versa*.
Employers should take legal advice as to the wording of these clauses, if applicable.

Staff Handbook

In general, only those clauses which need to be contractual should go into an employment contract; everything else, such as work rules for the efficient day to day running of the business, should go into a staff handbook. The reason is that it is not easy to change a contractual term in an employment contract without the consent of the worker, whereas the contents of a staff handbook should be mostly non contractual and, therefore, easier to change without the consent of workers.

Staff Handbooks

Introduction

A staff handbook may be called many things. For example:
- an employee handbook;
- a staff manual;
- an employee manual.

For the purposes of this book we will call the document *a handbook*.
The law does not require an employer to have a handbook; so why have one?
The answer is because those employment terms which are *non-contractual* can be put in a handbook.
Basically, a handbook should comprise the rules and regulations for the day to day running of the business, whereas, an employment contract should comprise the *contractual* terms and conditions under which an employee works.
A binding contract between two parties may be changed only if both parties agree to the proposed change: this is the basic principle of contract law.

An employment contract (as the name suggests) is a contract like any other.

So, if an employer needs to change a term in an employment contract the worker has to agree to the change otherwise the employer will be in breach of contract (and at risk of claims to an employment tribunal or a court).

A fundamental concept in an employment tribunal is that the parties (employer and worker) should behave fairly towards each other (hence, unfair dismissal claims).

However, in a court (as opposed to in an employment tribunal) the concept of fairness is largely disregarded and mostly what matters is whether there has been a breach of the contract.

A *breach of contract* claim may be made in an employment tribunal, under certain circumstances, and such claims are treated the same way as they would be in a court. The employment judge focuses on the wording of the document in dispute.

Handbooks need to be drafted carefully: the wrong word, a missing word, or a word out of place, can mean that the judge regards a clause in a handbook as contractual when the employer intended that it should be non-contractual.

If it is clear that a term in the handbook is non-contractual, the employer may change that term, within reason, even though the worker objects.

But we emphasise the words *within reason*: an act (or omission to act) by an employer should not impact adversely on an worker unless justified. In other words, an employer has to act fairly towards a worker at all times unless a failure to do so can be justified.

So it makes sense for the employer to keep the contents of an employment contract to the minimum (that is, put into the contract only those matters which the employer is required by law to include), and put everything else in a handbook.

It is difficult to change employment contracts; not so difficult to change handbooks.

To reiterate, the contents of an employment contract are

contractual and the contents of a handbook should be, in so far as is possible, non-contractual.
However, some information in the handbook may be *deemed* to be contractual even if the handbook says that everything in it is non contractual.
For example, a reference in a handbook to an annual pay review, although described as non contractual, might be deemed to have become contractual over time if the employer is in the habit of giving an increase in pay every year.
Also, an employment tribunal can ignore what is written if what is written is not what happens in practice.

Handbook TEMPLATE

It is unlikely that all of the handbook template, as worded, will be suitable for your particular business and you will need to check that specific details in the template are relevant to you, and if not, amend the template accordingly.
For example, if you run a catering business you will need specific clauses relating to food hygiene and food allergies (these clauses are not in the template).
STAFF HANDBOOK
INTRODUCTION
This Handbook is divided into Part A and Part B.
Part A is contractual, that is to say, the matters referred to in Part A form part of your Employment Contract.
The Company reserves the right to review, revise, amend or replace the content of your Employment Contract and this Handbook and introduce new terms and conditions and new policies from time to time or to vary existing terms and conditions and/or policies to reflect the changing needs of the business and to comply with new legislation.
Part B is non-contractual, that is to say, the matters referred to in Part B are policies, procedures and work practices with which you must comply for the efficient day to day running of the business.

Part B does not form part of your Employment Contract and may be replaced, withdrawn or varied by the Company, in whole or in part, at any time.
You are expected to familiarise yourself with both Parts A and B of this Handbook.
If you require clarification regarding any part of this Handbook please ask your line manager.
A reference to your 'line manager' includes any other member of the Company with authority to give you instructions. Failure to follow such instructions without reasonable cause will be a disciplinary matter.
The reference to your 'Employment Contract' is a reference to the document you were given at the commencement of your employment with the Company which sets out the terms and conditions of your employment as required by section 1 of the Employment Rights Act 1996 as amended.
In addition to your Employment Contract you might have been give a letter, which we refer to as a 'Job Offer Letter', setting out any additional terms of employment relevant to your particular employment; not all staff receive a Job Offer letter.
This Handbook should be read in conjunction with any other written terms and conditions of employment you receive.
There may be policies and procedures or work rules with which you must comply in addition to those set out in this Handbook. Your line manager will inform you of these additional policies, procedures or rules.
You will be notified of changes to this Handbook by a general notice to all workers affected by the change.
If practical, you will be given at least a week's notice in writing of any significant changes which may be given by way of an individual notice or a general notice to all workers.
Changes will be deemed to be accepted by you unless you notify your line manager or a senior member of management of any objection you have in writing as soon as possible.
If you have a reasonable objection you can also raise the

matter using the Company's Grievance Procedure.
For the avoidance of doubt, in the event of an inconsistency between what is written in your Employment Contract and what is written in this Handbook it is the Employment Contract which applies.
In your own interests, please retain all documentation issued to you relating to your employment with the Company.
PART A
As stated in the Introduction, Part A is contractual.
1. RIGHT TO WORK IN THE UK
1.1 The Company is required to confirm that all workers have the legal right to work in the United Kingdom before they can start work with the Company.
1.2. You will need to provide the Company with proof of your eligibility to work in the UK. You should bring your passport or birth certificate or work permit (if applicable), or other relevant documentation with you on your first day. A copy of the document or documents will be made by the Company and the copy will be kept in your file in the office. Your employment is subject to your producing the relevant documents.
1.3. If you are unsure about your status, then please ask your line manager who will be able to advise you.
1.4. Your contract of employment will be terminated without notice and with immediate effect if you lose the right to work in the UK.
1.5. It will be your responsibility to ensure that you obtain the required permissions and proof of status that we require in order to comply with UK legislation. If you fail to do this then we will have to terminate your employment immediately.
2. PROBATIONARY PERIOD
Your employment contract will say whether your employment is subject to an initial probationary period, and if so, will say whether there are any probationary conditions and their duration.
3. JOB DUTIES

3.1 Your job title or job description is in your Employment Contract and/or in your Job Offer Letter (if you received a Job Offer Letter) or as subsequently amended in writing.
3.2 You may be asked to undertake other duties that fall within your capabilities.
4. PLACE OF WORK
4.1 Your normal place of work is in your Employment Contract. The Company may move your normal place of work and/or may require you to work at or transfer to other locations from time to time (also see below).
4.2 It is a condition of your employment that you to agree to transfer to wherever the Company feels necessary in the interests of the business. Such transfers are usually by mutual agreement but the Company reserves the right to make the final decision.
4.3 Where the transfer necessitates the removal of your home to a new area of work, relocation expenses may be paid at the Company's discretion.
5. WORKING HOURS
5.1 Your normal working hours are in your Employment Contract.
5.2 The Company reserves the right to re-arrange working hours in order to meet the needs of the business. Your working hours might be changed and you may be required to work in excess of your normal working hours.
5.3 If required, you agree to work in excess of any limit placed on working hours whether by statute or otherwise (provided in the case of a statutory limit that the requirement is lawful).
5.4 Any excess hours worked will be unpaid unless you have a specific entitlement to overtime payments, which will be in your Employment Contract or your Job Offer Letter, if any, or separately agreed in writing with your line manager before you work the overtime.
5.5 The Working Time Regulations specify limits on working hours and set out a worker's entitlements to rests. As an employer, we are required to monitor the hours you work

to ensure you do not work longer than permitted by law. Therefore, we will monitor working hours and keep records of these hours. We may require you to keep a record of your working time and rests to assist in the monitoring process.
5.6 If you have to work during the time you usually take a meal break you may take a meal break as soon as possible thereafter making arrangements for appropriate cover when necessary.
5.7 You must take a minimum rest period of 20 minutes if you have worked continuously for 6 hours. The law entitles you to a daily rest of 11 consecutive hours and a weekly rest of 24 hours. Except where we may lawfully require you to work during all or part of these rests you must take them. If, as a result of your workload, you do not get your full rest entitlements you will be entitled to an equivalent rest period.
6. PAY
6.1 If you are paid monthly, salary payments are usually made in arrears by direct credit transfer on the last of the month into an account of your choice. If the day of the month falls on a Saturday, Sunday, or Public or Bank Holiday, then the money will usually be transferred to your account on the last working day before then.
6.2 Each monthly payment covers a complete calendar month i.e. the period from the first to the last day of the month in which payment is made and your monthly pay is based on one-twelfth of your annual salary.
6.3 Salaries are usually reviewed annually for staff and the review date is normally in January. However, the Company is under no obligation to increase your salary following an annual review.
6.4 We reserve the right at any time, and in any event on termination of employment, to deduct from your pay (including holiday pay, sick pay, maternity pay and any other type of pay) any amounts that you owe. These may include season ticket loans and/or other loans; expenses allowance; holiday taken in excess of entitlement; repayment of training

expenses incurred under a training scheme; or the estimated value of any Company property damaged by you or retained by you without permission when you leave. Your final payment will reflect any adjustments, where applicable. We also reserve the right to deduct from your pay an amount equal to any allowance you receive in the course of performing public service or whilst on jury service.
6.5 Your final payment will normally be made as soon as practical following the termination of your employment.
6.6 Tax, National Insurance Contributions, and any other statutory payments, are deducted from your pay by the Company as applicable. If you need to know the address and reference number of your tax office, please ask your line manager.
6.7 We have a statutory right to make other deductions from your pay, for example, if you owe money to the Company as a result of any overpayment of remuneration or expenses or in order to comply with a court order.
7. LAY-OFFs and SHORT-TIME WORKING
7.1 The Company reserves the right to lay-off any worker without pay where no work is available for whatever reason or to place any worker on short-time working.
7.2 A lay-off is where you are not provided with work by the Company and the situation is expected to be temporary. Short-time working occurs when you are laid off for a number of contractual days each week, or for a number of hours during a working day.
7.3 During any period of lay-off you must keep in contact with the Company and must be available for work if required.
7.4 If the need for a lay-off or short-time working ever occurs you will be notified as soon as possible.
7.5 If you are laid off, you might be entitled to a statutory guarantee payment from the Company limited to a maximum of 5 days in any period of 3 months. The daily amount is subject to an upper limit which is reviewed annually by the Government. On days when a guarantee payment is

not payable, it may be possible for you to claim Jobseekers Allowance through the local Jobcentre Plus office.

8. HOLIDAYS

8.1 The number of days' holiday you are entitled to in each holiday year, which runs from 1st January to 31st December is set out in your Employment Contract.

8.2 If you join the Company part way through the holiday year, your entitlement will be pro-rated within the initial holiday year.

8.3 Holiday periods should, where possible, be agreed at least 4 weeks in advance with your line manager.

8.4 You may not take more than 10 working days' holiday entitlement at one time without the prior approval of your line manager.

8.5 If you resign from the Company or have been given notice of termination, you may be able to take holiday during the notice period provided that the holiday was booked and authorised before the start of the notice period. Other requests to take accrued holiday during the notice period will normally be granted but permission may be refused if business needs or other circumstances make the granting of holiday at that time impracticable.

8.6 Unused holiday entitlement may not be carried forward to the next holiday year and will be forfeited unless your line manager agrees that you may carry it forward. Where this is allowed, it will be for a maximum of one working week and must be taken by the end of March following the end of the holiday year on 31st December or it will be forfeited. However, please see the next paragraph.

8.7 If you are prevented by illness, or by maternity, paternity, adoption, parental or shared parental leave, from taking a period of holiday leave, and return to work with insufficient time to take that holiday leave within the relevant leave year, you will be allowed to take that holiday leave in the following holiday year.

8.8 Should you leave the Company, for whatever reason, your

full entitlement to paid holiday will be calculated on a pro rata basis per completed week of service less any holiday entitlement taken during the holiday year. If the holiday taken exceeds your holiday entitlement, then the Company has the right to deduct payments made in excess of holiday pay entitlement from any money owing to you upon leaving.
8.9 'Pro rata' means, if you work part-time, your minimum annual holiday is calculated according to the number of days or hours you work in proportion to the Company's normal working days or hours.
8.10 Your holiday entitlement is intended to cover all holidays for whatever purpose.
8.11 The Company will make every endeavour to facilitate the observance of religious holidays within this allowance, on the assumption that cover for any religious holiday can be provided if required on a priority basis by those not affected by that particular obligation.
8.12 Salary in lieu of unused holiday entitlement is paid only on the termination of employment.
8.13 Your holiday entitlement in the year in which your employment commences or ceases (permanently or temporarily) is calculated pro rata, to the nearest half day.
8.14 A day's holiday pay will be calculated by dividing your annual salary by the number of working days, which is 260, rather than the number of calendar days.
8.15 Your holiday pay is identifiable as a separate additional sum on your payslip.
8.16 Please request holidays by completing the holiday request form available from your line manager.
8.17 You accrue paid holiday during any period of sick leave and will be allowed to take your holiday entitlement when you return to work or you will be paid holiday pay in lieu if your employment ends.
9. SICKNESS
9.1 Statutory Sick Pay (SSP) rate for the 2024/25 tax year is £116.75 per week. This is paid pro rata for fractions of the

employee's working week. Income tax and NICs is deducted when appropriate. SSP is calculated by dividing the weekly rate by the number of days you would normally work in that week. For working out SSP a week runs from Sunday to Saturday.
9.2 To be eligible for SSP in the 2024/25 tax year, an employee must have average earnings of at least £123 a week.
9.3 An employer cannot pay SSP for the first 3 days of an employee's sickness; it is payable from the fourth day of absence, for a maximum of 28 weeks in any period of incapacity.
9.4 In order that SSP can be paid to you it is vital that you follow the sickness notification and certification procedures in your Employment Contract.
9.5 The sick-pay year, for calculation purposes, starts from the first period of absence in any 52-week period and all payments will include any SSP entitlement or any State Sickness Benefit.
9.6 It is a requirement of all employees who are absent due to injury or accident to notify the Company of any claim made against a third party in respect of the said injury or accident.
9.7 You must ensure the Company is notified of the reason for your absence by your normal start time on the first day of that absence or at the earliest possible opportunity thereafter.
9.8 You must keep in regular contact (daily unless otherwise agreed with your line manager) if the duration of your absence is uncertain.
9.9 If the period of absence is for 7 continuous days or less due to sickness or injury, you must report to your line manager immediately on your return to work and complete a Self-Certification Form available from your line manager.
9.10 Failure to notify the Company on the first day of absence and complete a Self-Certification form (available from your line manager) could result in payment of SSP being withheld.
9.11 In the event of that absence exceeding 7 continuous days due to sickness or injury, you must submit a Fit Note from your doctor as soon as possible. Thereafter, further Fit Notes

must be submitted covering all absence until you resume work. Failure to provide Fit Notes in a timely manner could result in the non-payment of any SSP due.
9.12 Should you fail to complete a Company's Self Certification form, or provide false information, or fail to supply Fit Notes for any absence exceeding 7 continuous days, then you could have disciplinary action taken against you.
9.13 Failure to notify the Company of absence and the reason for that absence in accordance with the above rules will be regarded as unauthorised absence. Persistent or extended unauthorised absence will be considered to be misconduct and may result in disciplinary action.
9.14 If you attend work but then leave due to sickness before 12 noon, this will normally be recorded as one whole day's sickness absence. If you attend work but leave due to sickness after 12 noon, this will normally be recorded as a half day's sickness absence.
9.15 The Company reserves the right to obtain a medical report from your doctor subject to the Access to Medical Reports Act 1988, or to require you to undergo a medical examination by an independent medical examiner (including but not limited to an occupational health advisor), at any time prior to or during your employment. The Company will pay for any medical examination or report. Information as to your statutory rights under the Access to Medical Reports Act 1988 is available from your line manager.
9.16 If you fail to co-operate, without good reason, with a reasonable Company requirement for you to undergo a medical examination, the Company will make an assessment based upon available information. This may lead to suspension with or without pay until evidence of fitness is provided or to termination of employment.
9.17 If you become unwell during the working day, you should ask your line manager if you require permission to go home.
9.18 Under the Health and Safety Regulations the Company has a responsibility to:

9.18.1 record sickness as well as accidents;
9.18.2 advise whether it is sensible to travel home either unaccompanied or using public transport;
9.18.3 advise whether immediate medical attention is required before returning home.
9.19 Your line manager will have an informal discussion with you after each spell of absence. A more formal meeting will be held with you if your absence reaches a level which is considered to be concerning. This will usually be a total of 3 weeks of absence within the last 12 months but may be less if your line manager thinks that it is necessary. The meeting will enable your line manager to gain an understanding of the reasons for your absence and any underlying problems that you are experiencing. You will have the opportunity to discuss any problems you are having that are affecting your attendance. Any issues that come to light as a result of this discussion will be acted on as soon as reasonably possible by your line manager.
9.20 If it is believed that the sickness absence or the overall level of sickness absence is unacceptable then a formal written warning may be issued following a meeting with your line manager. The normal procedures for appeal will apply.
9.21 If you are temporarily unable to carry out a particular job activity because of health problems, but are otherwise fit to work, then it is your responsibility to make yourself available for temporary redeployment, if available, to a position which does not involve that job activity.
10. DEDUCTIONS FROM PAY
10.1 With the exception of statutory deductions e.g. PAYE, National Insurance, Court Orders, pension contributions, holidays taken in excess of entitlement and any deductions specified in your contract of employment, all other deductions from your pay must be authorised by you. Your written contract of employment contains a paragraph which authorises appropriate deductions.
10.2 Examples of deductions that may be made from your pay

are as follows (the list is not exhaustive):
10.2.1 cash and/or stock deficiencies where an investigation has identified that the losses are as a direct result of your failure to follow Company procedures or dishonesty;
10.2.2 any losses sustained in relation to Company property caused through carelessness, negligence or dishonesty;
10.2.3 any damages, expenses or any other monies paid or payable by the Company to any third party for any act or omission for which you may be responsible;
10.2.4 any amounts of remuneration, expenses or any other payments (statutory discretionary, etc) which are overpaid to you whether made by mistake or through any misrepresentation or otherwise;
10.2.5 on termination of employment any holiday pay paid to you in respect of holiday granted in excess of your accrued entitlement;
10.2.6 replacement of any unreturned uniforms or equipment; and
10.2.7 any other sums that you may owe to the Company on termination.
11. WORKERS UNDER 18
11.1 If you are over the minimum school leaving age, but younger than 18, you must not work for more than 8 hours per day or 40 hours per week, with 2 days off per week, in accordance with current employment legislation.
11.2 You must also take a scheduled break of 30 minutes every 4 and a half hours worked, and allow a rest period of 12 hours between each working day.
11.3 Please raise any queries with your line manager.
12. PREGNANCY
All members of staff who are pregnant regardless of their length of service, have the right not to be unreasonably refused time off on full pay for ante-natal care on the advice of a registered GP, midwife or health visitor. Please ask your line manager for the Company's written Maternity Policy for more details.
13. PARENTAL LEAVE

Eligible employees can take unpaid parental leave to look after their child's welfare. Please ask your line manager for the Company's written Parental Leave Policy for more details.

14. TIME OFF FOR DEPENDANTS

14.1 You have a statutory right to unpaid time off to deal with family emergencies involving dependants. For the purpose of the right to time off, a dependant is; the employee's spouse, partner, child or parent, or someone who lives as part of the family e.g. a grandparent, or those who reasonably rely on the assistance of the employee when they are ill or injured (and do not necessarily live as part of the family), or rely on the employee to make arrangements when they are ill or injured.

14.2 It is expected that in most cases the amount of leave will be less than one day or one or 2 days at the most. However, you may be able to take longer periods where the circumstances dictate. The following examples would encompass a family emergency:

14.2.1 provide help when a dependant falls ill, is injured or assaulted;

14.2.2 assist a dependant during the birth of a child;

14.2.3 to make longer term care arrangements for a dependant who is ill or injured;

14.2.4 deal with the death of a dependant;

14.2.5 deal with unexpected disruptions such as a breakdown of care arrangements for a dependant;

14.2.6 deal with an emergency involving the employee's child during school hours.

14.3 You must inform your line manager as soon as possible about your absence and how long you expect to be away from work. There may be occasions when you return to work before it is possible to contact the Company; however, on such occasions you must advise your line manager of the reason for your absence immediately upon your return to work.

15. MATERNITY LEAVE

Please ask your line manager for the Company's written Maternity Policy for more details.

16. PATERNITY LEAVE
Employees whose partner has a child or who adopts a child may be entitled to paternity leave. Please ask your line manager for the Company's written Paternity Policy for more details.
17. ADOPTION LEAVE
If you intend to adopt a child please ask your line manager for the Company's written Adoption Policy for more details.
18. SHARED PARENTAL LEAVE
Please ask your line manager for the Company's written Shared Parental Policy for more details.
19. FLEXIBLE WORKING
All employees have the legal right to request flexible working. Please ask your line manager for the Company's Flexible Working Policy for more details.
20. NOTICE
20.1 The written notice required by either party is stated in your Employment Contract.
20.2 On the termination of your employment you are required to immediately return all property in your possession belonging to the Company, including all documents and any copies, security passes, computer and associated equipment including laptops and mobile phones. You may be asked to confirm that you have done this.
20.3 The Company may terminate your employment summarily (i.e. with immediate effect without notice or payment in lieu of notice) if in its opinion you are guilty of gross misconduct. Examples of gross misconduct are set out in the Disciplinary Procedure.
21. RESIGNATION
21.1 You will normally be expected to work your notice period. However, on occasions, following notice either by the Company or by you, provided you continue to receive your full remuneration and benefits until your employment terminates in accordance with your contract of employment, the Company is entitled during the notice period to:
21.1.1 exclude you from the premises of the Company, or other

third party at which you may be working at the relevant time on behalf of the Company; and/or
21.1.2 require you to carry out specified duties for the Company other than your normal duties; and/or
21.1.3 require you not to communicate in your capacity as a Company employee with clients or customers of the Company, other third parties designated by the Company or Company employees or officers; and/or
21.1.4 require you to refrain from attending internal and external meetings, or forums that may present a conflict or are commercially sensitive in nature.
21.2 We reserve the right to make payment in lieu of notice in relation to all or part of your notice period where you have worked some of your notice.
22. GARDENING LEAVE
22.1 At any time after notice of termination has been given (by either party) we may decide that it is appropriate to place you on 'gardening leave' for the remainder of your contractual notice period.
22.2 Gardening leave normally means that you are employed by the Company but you are not asked to do work. However, the Company reserves the right to vary the terms of any applicable gardening leave depending on the employee's role and the circumstances.
22.3 The detail of the arrangements that could apply to you might be referred to in your contract of employment.
22.4 If you are placed on gardening leave you will continue to be paid salary and be provided with contractual benefits during any period of garden leave in the usual way but you will not be entitled to accrue or receive any bonus or any commission during gardening leave.
23. PILON
Your employment contract reserves the right to make a payment in lieu of notice.
PART B
As stated in the Introduction, Part B is non-contractual.

24. INDUCTION

In so far as it is practical, most new employees will go through an induction with their line manager on joining in order that they understand how the Company operates, their role and responsibilities including health and safety obligations.

25. PERSONAL DETAILS

25.1 If your personal details change, such as your address changes, you must tell your line manager as soon as possible.

25.2 You are required to inform the Company of anything which might impair your ability to perform your duties or your ability to render regular and efficient service. This includes matters which might adversely affect either your or the Company's reputation.

25.3 Examples of matters which would require disclosure are:

25.3.1 conviction of a criminal offence (other than a spent conviction or a minor motoring offence);

25.3.2 the laying of a criminal charge, committal for trial or an arrest; or

25.3.3 any disqualification by law from doing your job.

26. PERSONAL DATA

26.1 As your employer we will need to retain data about you on both paper and electronic files whilst you are employed and for a period of seven years following your employment.

26.2 This data is for internal use and will be processed in line with the principles of the General Data Protection Regulation (GDPR). As far as is reasonable, information processed will be restricted to current, relevant information access which will be restricted to individuals who have a genuine need to process or deal with it.

26.3 Access by individuals external to the Company is only provided where your consent is given or where there is a statutory or legal need to provide it or where you are clearly aware of this use.

26.4 Employees are allowed access to personal data held about them. We reserve the right to charge an administrative fee for providing personal data.

27. BONUSES

27.1 If you are eligible for a performance bonus this will be set out in your Employment Contract or in a Job Offer letter or in a separate document. In any event, the decision as to whether or not to award a bonus, the amount of any award, and the timing and form of the award are at the discretion of the Company. Factors which may be taken into account by the Company in deciding whether or not to award a bonus are also at the discretion of the Company.

27.2 No bonus, even if awarded, will be paid to you if at the date payment of the bonus would normally have been made you are not employed by the Company or if you are under notice to leave the Company whether such notice was given or received by you.

27.3 All bonus payments are subject to tax as part of your earnings and may not qualify as pensionable earnings.

28. EXPENSES

28.1 You will normally be entitled to be reimbursed for all reasonable business expenses (e.g travel and accommodation), providing you obtain authorisation from your line manager before incurring the expenditure, unless this is not possible or not reasonably practical.

28.2 You must show receipts for the expenses you are reclaiming, such as hotel bills.

28.3 Parking charges may be reclaimed, if incurred on the Company's business, on the presentation of a receipt or an expired parking ticket.

28.4 Parking fines will not be paid under any circumstances.

28.5 If driving your vehicle on Company business, or a Company vehicle, it is your duty to ensure that any payments due under the London congestion charging scheme, or other city charging schemes, are paid by the due time so as not to avoid any surcharge or penalty for late payment.

28.6 Falsification of expense claims is likely to be considered as gross misconduct and subject to disciplinary action leading to a possible summary dismissal.

29. LOANS
29.1 The Company may, at its discretion, give you an interest free loan, for example, to enable you to purchase an annual season ticket for travel to and from work. Applications for loans should be made to your line manager.
29.2 Repayment of the loan will be made over an agreed period by equal monthly deductions from your salary.
29.3 If you leave our employment before the loan is repaid the amount outstanding will be deducted from your final salary payment.
30. TRAINING
30.1 The Company recognises that it is essential to train and develop employees at all levels to enable the business to meet its objectives, enable employees to achieve their career aspirations and to reach their full potential.
30.2 Some of the training will be compulsory for all appropriate employees, for example, training related to health and safety issues. However, some training will be optional and offered at the Company's discretion.
30.3 Employees wishing to be supported on professional or technical qualification may seek Company assistance and, if granted, will be subject to an individual Training Agreement. In addition, in such cases should you leave within 12 months of completing the training, the following deductions may be made from your final pay.
Before completion 100% of cost;
Up to 3 months 75% of cost;
3 - 6 months 50% of cost;
6 - 12 months 25% of cost.
31. APPRAISALS
31.1 An appraisal meeting with your line manager is usually held at least once a year. These meetings are designed to give you and your line manager the opportunity to review your performance, to agree objectives and to identify personal development plans. It is also an important opportunity for you to raise any issues and concerns you might have about

your work with your line manager.
31.2 Employees are entitled to see all of their appraisal reports and have the opportunity to sign the completed form and to express their views on the appraisal they have received; in particular whether they feel it is a fair assessment of their work over the reporting period.
31.3 Employees may appeal against their assessment if they think it was unfair to a different manager than the appraiser by using the Grievance Procedure. The Grievance Procedure is referred to in your Employment Contract and also set out below.
32. IMPROVEMENT
If your performance is not up to a standard reasonably required by the Company your line manager will discuss the required improvements with you and agree the improvements required with a timescale for improvement. If you think your line manager in being unreasonable in any way you can raise a formal grievance under the Company's Grievance Procedure which is referred to in your Employment Contract and also set out below.
33. TIMEKEEPING
You should be at work at the times in your Employment Contract and, in addition, agree to be available for work on any day when the Company requires you to work. You are expected to be at work by your scheduled start time. Persistent lateness will not be tolerated and may lead to disciplinary action.
34. SIGNING IN AND OUT
34.1 If you are required to sign in or out you must ensure that you sign in on arrival and sign-out on departure from the premises.
34.2 In the event of failing to sign in or out when required, you must report to your line manager and advise of the exact time of arrival or departure, and the reason for failing to sign in or out.
34.3 You must never sign for another employee, or request or

allow another employee to sign in or out on your behalf.
34.4 If you sign in or out for another employee, or allow another employee to sign for you, you will be liable to disciplinary being taken against you.
34.5 For the avoidance of doubt, a reference to 'signing in and out' includes a reference to 'clocking in and out'.
34.6 Please contact your line manager if you require more information.
35. DRESS CODE
We expect you to present a clean and professional appearance when representing the Company, whether that is in or outside of any of the Company's premises or on Company business. If in doubt please ask your line manager what is considered as appropriate business clothing and appearance for your role.
36. OTHER EMPLOYMENT
36.1 You are not permitted to work in any capacity for a business that carries out work of a similar type to the Company's.
36.2 If you choose to take up additional employment outside your normal working hours, this might be accepted by the Company unless such additional employment is felt to have an adverse affect on:
36.2.1 the performance of your job duties; and/or
36.2.2 your health and safety.
36.3 The Company has a legal obligation to monitor the total number of hours its employees work each week, and it is your responsibility to notify the Company in writing of other employment including the number of hours you work for any other employer. Failure to notify the Company will be considered a disciplinary matter.
36.4 'Other employment' includes, for example, casual or part-time work in your spare time (whether paid or not) and includes directorships, trusteeships, school governorships, local authority councillorships, or acting as a consultant.
37. ABSENCES FROM WORK
37.1 If you wish to leave work during working hours, you must

obtain permission from your line manager.
37.2 When personal circumstances prevent you from attending work, you must notify your line manager by your normal start time or at the earliest possible opportunity to discuss the reasons for the absence. Your line manager may exercise discretion in authorising a specific period of absence with or without pay, or agree to annual holiday being taken at short notice to cover the absence required. Where the circumstances are of a confidential nature they will be kept confidential on a 'need to know' basis.
37.3 Normally leave is paid only when an employee has a contractual or a statutory entitlement to paid leave. However, we recognise that there are occasionally emergencies outside of the control of an employee which necessitate their absence from work; for example, a burst pipe or other hazard posing an imminent threat to your home, where you are the victim of a burglary or other crime, or where severe weather conditions make your journey to work impossible in spite of your best efforts to get in. These examples differ from 'planned' incidents, for example, publicised transport strikes and engineering works when you would be expected to make every effort to plan ahead so that you are able to attend the office even if this is at some inconvenience to you.
37.4 In the case of an emergency each case will be reviewed on an individual basis and you should contact your line manager as soon as possible to discuss the situation. This may result in your having to use part of your leave allowance or make up the time lost if this is a practical option. You must follow the same notification procedure as with sickness absence.
37.5 Unpaid leave may be granted in exceptional circumstances and when all paid holiday entitlement is exhausted. Requests for unpaid leave should be directed to your line manager.
38. MEDICAL APPOINTMENTS
We recognise that you may need to attend certain appointments from time to time. Any appointments should be made outside working hours wherever possible with your line manager's

permission, or at a time to ensure minimum disruption of your work. You must provide advance notice of any such appointments to your line manager, unless this is not possible, and you may be required to provide documentary evidence of the appointment.

39. MEDICAL EXAMINATIONS

39.1 The Company reserves the right, in the event of an employee's absences, either to require an employee to undergo a medical examination by a doctor appointed by the Company or to request the employee's permission to obtain a medical report from the employee's doctor, subject to an employee's legal right under the Access to Medical Reports Act 1988.

39.2 If the employee fails to attend an appointment or does not allow the Company to access relevant medical records, we reserve the right to make a decision based upon the information that we can reasonably obtain.

39.3 If an employee does not attend an arranged medical appointment, without a good reason, the employee will be liable for any costs incurred by the Company as a result of the non-attendance. The employee might also be subject to disciplinary action if there was no good reason for the non-attendance.

40. JURY SERVICE

If you are called for Jury Service you must notify your line manager immediately. You will be asked to provide evidence of attendance at court. You are required to claim from the Court Authorities the full amount of your loss of earnings. As your employer we do not have to pay you whilst you are on jury service. But you can claim for travel and food expenses and for loss of earnings from the Court. You need to ask your line manager to fill out a Certificate of Loss of Earnings to claim for loss of earnings from the Court Authorities. There are limits on the amount that you can claim. The Company is not bound to make up any balance to your basic wages or salary but may do so at its discretion. You should attend work on any days or half days when you are not required by

the Court.

41. ATTENDING COURT

If you are subpoenaed or otherwise compelled by a Court to attend the same points apply as for jury service. However, if your attendance in Court as a witness is on a voluntary basis, you would normally be required to take any day when you are needed in Court as part of your holiday entitlement or as unpaid leave.

42. PUBLIC DUTIES

An employee who is a Justice of the Peace or a member of a Local Authority, Health or Education Body, a statutory Tribunal, a Police Authority, a Board of Prison Visitors or the Environment Agency or a similar Body is allowed to take a reasonable amount of time off unpaid for the purposes of attending meetings or undertaking their duties as a member of such a Body.

43. ARMED FORCES RESERVIST

If you are, or become, a Forces reservist please notify your line manager. A reservist's remuneration and leave is governed by legislation and appropriate information will be given to you at the relevant time.

44. RELIGIOUS HOLIDAYS

Reasonable unpaid leave (or paid if you choose to take it as holiday) will be granted for a religious holiday or festival or to observe your religious beliefs. You should follow the same process for booking any such time off with your line manager as you would for normal holidays.

45. COMPASSIONATE LEAVE

The Company has a Bereavement Policy. If the written policy does not apply in the particular circumstances, compassionate leave may be authorised only at the discretion of your line manager. It is at the Company's discretion as to the amount of leave granted and whether it will be paid, part-paid or unpaid.

46. BAD WEATHER

46.1 In the event of extreme adverse weather conditions, e.g.

heavy snow, flooding, storms etc., you are expected to make every attempt to arrive at work at your normal starting time as long as it is safe to do so.
46.2 If you decide that the weather conditions will prevent you from travelling to work you must normally opt to either: take the day(s) as holiday, or; take the day(s) as authorised unpaid leave of absence, or; if appropriate, work from home. You must telephone your line manager by your normal start time to discuss the situation and the option you wish to take. If your line manager is not available, you must ensure that another suitable member of staff is notified of your absence.
46.3 In the event you decide to travel to work and then subsequently find that the weather conditions prevent you from completing your journey, you must telephone your line manager within 2 hours of your normal starting time, or as soon as possible if it is safe and legal to do so, and inform him or her of the circumstances. In this case, the Company at its discretion, in light of the circumstances, will decide whether or not you will qualify for full pay.
46.4 In any event, your absence or lateness from work due to extreme adverse weather conditions will not be subject to the Company's disciplinary procedure provided you notify the Company in accordance with the above policy.
47. SAFETY AT WORK
47.1 You must comply with all the Company's instructions regarding health and safety procedures. A failure to comply may be regarded as misconduct or gross misconduct depending on how serious the failure is deemed to be.
47.2 Health and safety procedures may change from time to time and you must ensure that you read and understand any notices about changes. If in doubt, please ask your line manager.
47.3 You are reminded that you are responsible for ensuring that you act in a safe and sensible manner whilst at work and failure to do so will lead to disciplinary action by the Company and possibly criminal proceedings under Health and

Safety legislation.
47.4 You must have regard to your own health and safety. For example, if you are required, in the course of your work, to move heavy objects, you should familiarise yourself with the manual handling procedures. If in doubt, do not hesitate to contact your line manager for advice, instructions or assistance before undertaking any hazardous or potentially hazardous tasks.
47.5 If you habitually use display screen equipment as a significant part of your work, you will be provided with a free eye and eyesight test upon request. If the test results in you needing to wear glasses specifically for work on a computer monitor, the Company will contribute towards the cost of a basic pair of glasses or replacement lenses. Details of your entitlement to an eye-test are available from your line manager.
47.6 You must not work if you have taken medication or any other substance which could adversely affect your ability to operate equipment or in any other way inhibit your ability to work safely.
47.7 You must read and comply with all notices, instructions, hazard and warning signs provided from time to time for your information.
47.8 Please bring any problems or worries you may have with your work environment or work station to the attention of your line manager.
47.9 We have a responsibility under the Health & Safety legislation to ensure that people who are not employees of the Company are not exposed to risks to their health and safety while working for the Company as a contractor or visiting our premises. You are expected to do everything possible to assist the Company in complying with this responsibility.
47.10 To sum up, all employees have a legal responsibility under the Health and Safety at Work legislation to pay attention and adhere to the contents of any statutory warning, informatory notices, training and instruction provided and to carry out regular risk assessments of their workplace and work procedures

and point out any potential areas of risk.

48. PROTECTIVE CLOTHING AND EQUIPMENT

When instructed to do so you must wear the protective clothing and equipment provided. Failure to comply with such an instruction may be regarded as an act of misconduct and dealt with through the Company's disciplinary procedure.

49. ACCIDENTS AT WORK

49.1 If you see a situation in which a potential accident could occur or where an injury could be sustained by anyone in your workplace you should report it immediately to your line manager.

49.2 All accidents, injuries, and cases of ill–health caused by, or affecting, your work must be reported to your line manager without delay. If you are injured, no matter how slight your injury may appear, you must always report it to your line manager and ensure that you are seen by a first–aider and that the details of your accident or injury are entered in the Accident Book. Your line manager will tell you where the Accident Book is kept if you do not know. All dangerous occurrences and 'near miss' incidents should also be reported in the same way.

49.3 As an employer, the Company has legal obligations under Health and Safety legislation to ensure the health of our employees at work. We are committed to creating a working environment that minimises the risk to your health. This means ensuring that the demands of your job are reasonable and you are adequately trained and supported to undertake your role. It means doing our best to give you as much control as possible over how your work is planned and carried out and dealing promptly with issues such as unacceptable behaviour by colleagues.

49.4 Ultimately, you have primary responsibility for your own health and wellbeing. It is up to you to take reasonable care of yourself and to let us know about any aspect of work or your working environment which may be affecting your health.

49.5 If you feel that you need additional support or guidance

to maintain your wellbeing at work, you should talk to your line manager. This will allow you to raise concerns about your volume of work, some training that you may need or to discuss any personality issues with colleagues.
49.6 Any discussion regarding your health will be treated in the strictest confidence and information will only be released with your permission. It is in everyone's interest that you raise issues early so that they can be dealt with.
49.7 Every employee involved in an accident at work, whether a road traffic accident or involving Company equipment or an accident occurring on any of the Company's premises, may be required to undertake a test to determine whether alcohol and / or non-medically prescribed drugs are present. If an employee tests positive for alcohol and / or non-medically prescribed drugs then the employee is likely to be be suspended with pay for the rest of the working day, subject to further investigation and appropriate disciplinary action up to and including dismissal.
50. FIRST AID
It is your responsibility to know the location of first aid boxes and the name of anyone trained in first aid. Ask your line manager if you do not have this information.
51. FIRE DRILL
51.1 In the case of fire, you must evacuate the building in accordance with the fire instructions. It is your responsibility to be aware of these instructions and where the nearest fire exit and fire appliances are located.
51.2 Any concerns you may have about fire hazards should also be addressed to your line manager so that appropriate measures can be taken to eliminate the potential danger.
51.3 Attempts to extinguish the fire should only be made if it is safe to do so.
51.4 Assemble at the designated fire assembly point.
52 Do not run, use any lifts in the building, or stop to collect personal belongings.
51.6 Do not re-enter the building until instructed that it is

safe to do so.
52. BOMB ALERTS
52.1 It is not possible to be definite about what to do in the event of a bomb warning but the following general rules should be observed:
52.1.1 do exactly what you are told by the emergency services if they are present;
52.1.2 do whatever is necessary and sensible to reduce the risk of injury, i.e. if there is a known bomb threat and you have not been told to evacuate the building, retire to the safest area within your building. This will normally be away from the risk of broken/flying glass;
52.1.3 if, any dangerous incident takes place at work anyone present must take responsibility for notifying the Company management of the situation as soon as possible;
52.1.4 If you are in the vicinity of an incident away from the office and your whereabouts or safety may be uncertain, please contact the Company as soon as possible;
52.2 the safety of staff and visitors is always paramount. Never jeopardise personal safety in the interest of safeguarding property or information;
52.1.6 if the building is seriously damaged as a result of a major incident which occurs outside normal office hours or at a time when you are not present in the building, you should not return to the building until you have received instructions from the Company.
53. NO SMOKING POLICY
53.1 Smoking is prohibited on and in all Company premises or in any Company vehicles. Failure to comply with this prohibition is likely to lead to disciplinary action up to and including dismissal.
53.2 This policy applies to all persons on our premises.
53.3 If a visitor does not comply with the no-smoking policy they should firstly be asked to extinguish the smoking material. If they continue to smoke they should be asked to leave.
54. ENVIRONMENTAL RESPONSIBILITY

54.1 We are committed to reducing our environmental impact through responsible practices. All employees are responsible for ensuring that these values are maintained at all times. We are particularly concerned about reducing our carbon footprint by minimising greenhouse gas emissions.
54.2 All employees are expected to ensure that energy usage including gas, electricity, oil, water, transport and waste materials are managed to minimise our environmental impact.
55. DRUGS AND ALCOHOL
55.1 The Company forbids the consumption of alcohol or the use or distribution of substances for non-medically prescribed purposes, in any of its premises whilst you are at work for the Company or whilst driving a Company vehicle or another vehicle on Company business. If we believe you are under the influence of alcohol or non-medically prescribed drugs, and not fit to work, we reserve the right to suspend you, pending further investigation. Similarly, if you are found with, or having been using, any such substances during working hours, you may be suspended and subject to disciplinary action, up to and including dismissal for gross misconduct.
55.2 Furthermore, where reasonable suspicion exists that an employee may be under the influence of illegal/non-prescribed drugs or excessive amounts of alcohol, the Company also reserves the right to request that the employee undertakes a test to determine the levels of alcohol and/ or non-medically prescribed drugs present. Failure to agree to a test will be viewed as a breach of contract and the appropriate disciplinary action will be invoked, up to and including dismissal. If the test is positive and the individual is found to be under the influence of drugs or is over the legal alcohol limit to drive a vehicle, the Company may take any action it deems fit, including disciplinary action up to and including dismissal for gross misconduct. Failure to attend or complete a course of counselling, where deemed appropriate, may also be viewed as an act of misconduct.
55.3 Always tell your line manager if you are taking prescribed

medication as this may affect your health and safety and fitness to work. In certain circumstances we may seek permission to obtain a medical report under the Access to Medical Records Act 1988, or to require you to undergo a medical examination by an independent medical examiner. The Company will pay for any medical examination or report.

56. CONFIDENTIALITY

56.1 You acknowledge that in the course of your employment you may have access to and be entrusted with confidential information.

56.2 You shall not during your employment or afterwards, use or exploit or disclose directly or indirectly to any other person by any means any confidential information except that which you shall be permitted to do so:

56.2.1 when necessary in the proper performance of the duties of your employment;

56.2.2 with the written permission of the Company; or

56.2.3 where this is required by law.

56.3 You shall not, during your employment or at any time thereafter make any copy, record, or memorandum (whether or not recorded in writing or on computer disk or tape, data stick or other transportable media) of any confidential information without permission, and any such copy record or memorandum made by you during your employment shall be and remains the property of the Company and accordingly shall be returned by you to the Company on termination of your employment.

56.4 You will not use for your own purposes, or profit or for any purposes other than those of the Company, any confidential information which you may acquire in relation to the Company's and/or its customers or service users.

56.5 The rules concerning disclosure of confidential information apply during and after your employment with the Company.

56.6 Unauthorised access to confidential information may lead to disciplinary action. In the case of computerised information 'hacking' will be considered a dismissible offence.

56.7 'Confidential information' means:

56.7.1 all information which relates to the business or its customers, service users or suppliers is designated by the Company as confidential; and
56.7.2 all information relating to such matters which comes to your knowledge in the course of your employment and which, by reason of its character and/or the manner of its coming to your knowledge, is evidently confidential; and
56.7.3 provided that information shall not be, or shall cease to be, confidential information if and to the extent that it comes to be in the public domain otherwise than as a result of the unauthorised act or default by you.
56.8 Breach of confidentiality may result in disciplinary action being taken and may ultimately result in the termination of your employment.
57. EQUAL OPPORTUNITIES
57.1 The Company is committed to providing a working environment and conditions where all employees are treated equally and on the basis of their merits, abilities and potential, regardless of gender, colour, ethnic or national origin, disability, social-economic background, religious or political beliefs, family circumstances, age, marital status, sexual orientation, gender re-assignment, or other irrelevant distinction.
57.2 Discrimination, in any form, is unacceptable to the Company and will be considered a disciplinary offence, which may be considered gross misconduct warranting summary dismissal.
57.3 All employees have a personal responsibility to adhere to this policy by treating all colleagues and anyone else connected with, or visiting the Company, fairly and impartially.
58. BULLYING and HARASSMENT
58.1 The Company will take all reasonable steps to ensure that the workplace is free from bullying, intimidation, harassment, victimisation and discrimination.
58.2 Bullying and harassment is defined as any physical, verbal or non-verbal behaviour that is unwanted and/or offensive and which creates an intimidating or humiliating working

environment that undermines employee's dignity in or relating to the workplace.
58.3 Anyone found to have bullied or harassed will be subject to disciplinary action for gross misconduct.
58.4 All employees have a responsibility to ensure that their own behaviour does not amount to bullying or harassment.
58.5 Employees should report all incidents of bullying or harassment to their line manager or to a senior member of management.
58.6 You are reminded that any complaint you have can be addressed using the Company's written Grievance Procedure. All such complaints will be dealt with seriously, sensitively and in the strictest confidence.
59. COMPANY PROPERTY
59.1 You are not allowed to take Company property off the Company's premises unless you have permission from your line manager. The Company reserves the right to have access to and/or to retrieve any items of its property on demand.
59.2 Employees are expected to maintain a reasonable level of care and security of Company property in their possession at all times.
59.3 Failure to take appropriate care of Company property and premises may result in a personal liability to replace the item(s) and, in serious instances, disciplinary action.
59.4 When your employment with the Company ends you are required to return, in a good condition, any Company property such as PC equipment, mobile phones, uniforms, documents, manuals, utensils, tools, books etc.
59.5 The Company reserves the right to make an appropriate deduction from any wages or other payments owed by the Company to you in respect of any Company property that you do not return or you do not return in a satisfactory condition.
60. EMPLOYEE'S PROPERTY
60.1 Any personal property brought onto the Company's premises or vehicles are the responsibility of the individual and the Company accepts no liability for any loss or damage.

Employees must safeguard any valuables by keeping them on their person or by locking them away.
60.2 An employee's property or personal belongings will not be covered by the Company's Insurances.
60.3 If an employee is entitled to park in the Company's car park this is at the employee's risk and the Company will not accept liability for the theft of the car or its contents or damage thereto.
61. RIGHT TO SEARCH
61.1 The Company reserves the right to search you and any of your property held on Company premises at any time if there are reasonable grounds to believe that the search will result in the finding of evidence of criminal activity or an activity detrimental to the interests of the Company.
61.2 Any search will be conducted by a senior member of management with your consent in the presence of an agreed witness.
61.3 Where a personal search is necessary, this will be carried out by a person of the same sex as the person being searched.
61.4 Searches will be carried out courteously, sensitively and discreetly. An individual has the right to be searched in a private room.
62 You may refuse to permit the personal search and there is no disciplinary sanction for this. However, as the grounds which give rise to the request to search you may amount to misconduct, we may invoke the disciplinary procedure in relation to those grounds.
61.6 We may at any time invite the police to search Company premises and/or people present on Company premises who are suspected of criminal or other illegal activity.
62. STOCK and CASH
62.1 The Company reserves the right to check stock and cash at any time without notice.
62.2 If any deficiency in cash and/or stock is found the Company reserves the right to require the person or persons whom it has reasonable cause to believe is or are responsible

for making good the deficiency.
62.3 If, after an appropriate investigation, the Company has reasonable cause to believe that the deficiency is due to serious negligence or deliberate action on the part of any employee, disciplinary action will be taken against that employee.
63. EXPENDITURE
You have no authority to commit the company to expenditure unless you have been given prior written authority.
64. SECURITY OF PREMISES
Where premises become insecure (a break-in etc.) key-holders for the premises are required to remain at the premises until the premises can be secured. If necessary the key-holders should organise a rota for covering the premises.
65. CCTV MONITORING
65.1 If the Company's premises are protected by closed circuit television (CCTV) cameras these will be stationed at various points in the Company's premises, including entrances and exits, secure areas of the building and certain storage and/or emergency areas. The cameras may or may not be visible for reasons of security.
65.2 Footage from the cameras will be monitored regularly around the clock to ensure that we are alerted to any suspicious or dangerous activity, including possible breaches of security or the commission of an offence.
65.3 The purpose of CCTV cameras is to prevent, detect and investigate crime and to apprehend and prosecute offenders. It is also used for the health and safety of our staff and visitors and to monitor security on Company premises.
65.4 The relevant provisions of data protection legislation apply to any CCTV data held about you. You can obtain information about this data protection legislation from your line manager.
66. ID PASSES
66.1 If you are issued with a security ID pass, you must wear and display your pass at all times when inside Company premises and present it to any security staff on request. Your

security pass must not be loaned or given to others (whether Company staff or not). If you lose your pass you must report the matter immediately to your line manager. Security passes are the property of the Company and must be returned at the end of your employment or engagement.
66.2 In the interests of security and safety, you should not bring friends or relatives or other of your visitors into staff-only areas without prior approval from your line manager.
67. VISITORS
Visitors may be provided with a badge for identification purposes, in which case, they will be required to wear and display their badges at all times. They will not be permitted in staff-only areas unless accompanied at all times by a member of staff. If you are the visitor's host, you are responsible for ensuring that security and safety are maintained.
68. DATA PROTECTION
68.1 You must at all times act in accordance with any policy or instruction introduced by the Company to ensure compliance with current data protection legislation. Ask your line manager for more information if you need it.
68.2 The aim of the Company is to strike a balance between the right of an employee to respect for his or her private life and the needs of the business. In the interests of the business, you must agree to the following:
68.2.1 the Company processing any personal data relating to you;
68.2.2 the Company processing any sensitive personal data relating to you including, bank details, any self-certification forms or medical certificates supplied to the Company to explain your absence by reason of sickness or injury, any records of sickness absence, any medical reports or health assessments, any details of your trade union membership, if any, or any information relating to any criminal convictions or any criminal charges secured or brought against you; and
68.2.3 the Company collecting and disclosing personal data (including sensitive data) where such processing is necessary

or reasonably required by the Company for the performance of your contact of employment, the conduct of the Company's business or the proper administration and management of the employment relationship (both during and after your employment) or where such processing is required by law.
68.3 For its part the Company will take steps to ensure that it complies with its legal obligations in relation to the processing of your personal data and in particular will put procedures in place to ensure that all your personal data held by the Company is accurate and up to date and is not kept for longer than necessary. Measures will also be taken to safeguard against unauthorised or unlawful processing and accidental loss or destruction or damage to the data.
68.4 If the nature of your job means that you have access to data regarding the Company and/or anyone associated with the Company, including but not limited to other employees and customers, you must not disclose the data to unauthorised persons or use it for purposes other than the legitimate purpose(s) for which it was collected.
68.5 Any unauthorised disclosure or negligence in relation to data protection may result in disciplinary action which could result in dismissal.
68.6 Persons can incur criminal liability if they knowingly or recklessly obtain and/or disclose personal information without authority.
69. COMPUTERS and INTERNET
69.1 There are laws regulating computers and data protection with which the Company must comply. In particular, it is illegal to make copies of software. Software issued to you by the Company is licensed to the Company and is protected by copyright law. You must not make or distribute software that has been copied. It is therefore important that all employees minimise exposure to risk through careless practices with regard to the use of data or inappropriate, or illegal, use of software.
69.2 Employees are responsible for any computer and electronic

equipment supplied by the Company, and the security of software and data stored either on their own system or other systems which they can access remotely.
69.3 You are not permitted to use the Company computer facilities for personal use without permission and computers should only be used by you to perform your job. You are only authorised to use systems and have access to information which is relevant to your job. You should neither seek information or use systems outside of this criteria.
69.4 Any misuse of the Company's computers and internet access will be considered a disciplinary matter. Accessing pornographic or gambling sites, for example, will be considered as gross misconduct likely to result in a summary dismissal.
69.5 You should at all times keep your personal password confidential. When changing your password you should adopt a password which does not use personal data. You should change your password regularly and you must never share or divulge your personal password to any unauthorised person.
69.6 You must immediately inform your line manager if you become aware of any copyright infringements of software or associated materials within the Company or of any other misuse of the Company's computer systems. You are referred to the paragraph giving information on 'whistleblowing'.
69.7 Communications via the internet and by the Company's internal electronic email system are intrinsically insecure and may be intercepted and you should not transmit confidential information via this means. Email should be treated with the same caution as the ordinary written communication; e-mail messages should not be treated as conversations, they are more permanent. You should print off and file important business related e-mails in the same way as you would letters and memos.
69.8 You must not knowingly access, view, download or forward any illegal, inappropriate or in any way offensive material (e.g. pornography, discriminatory jokes, etc.) under any circumstances. You may cause offence when none is

intended. You should check the content of email messages before you sent them to ensure that they may not be construed by recipients as harassment or abuse of any kind. You should also ensure that your message will not be sent dishonestly or in bad faith.

69.9 The Company reserves the right to monitor, and wherever necessary, review the history of communications made via any of its information technology and telecommunications systems. This includes access to the internet via the Company's systems.

69.10 The purpose of this monitoring is to ensure that the Company's systems are used primarily to further the business of the Company, that they are not used for inappropriate and/or unlawful purposes and that system capacity is sufficient for the needs of the business.

69.11 The content of communications will be monitored only where absolutely necessary. However you should be aware that such monitoring may take place and that the content of your communications using the Company's systems cannot therefore be regarded as completely confidential.

69.12 Wherever possible monitoring will be:

69.12.1 done automatically;

69.12.2 limited to the assessment of traffic;

69.12.3 take the form of spot checks or audits rather than be carried out continuously; and

69.12.4 be targeted at areas of highest risk or where a particular problem is indicated.

70. SOCIAL MEDIA

Individual employees, as well as our Company, can be held personally liable for comments made via social media on the internet, such as Facebook or X (formerly Twitter). Any employee using social media or other online communication channels must ensure that they do nothing which could cause a third party to take legal action, such as a claim for defamation, against the Company or any person or business connected with the Company.

71 COMPANY MOBILE TELEPHONES

71.1 If you are provided with a mobile telephone, this is to be used for business calls only. You must not use a mobile phone belonging to the Company for your personal use without the permission of the Company.
71.2 If the mobile telephone is used for private telephone calls, even with permission, the Company may require you to reimburse the cost of these calls.
71.3 You should take care of the mobile telephone and ensure it is secure at all times. In the event that the telephone is stolen you should notify your line manager immediately to report the theft so that steps can be taken to disconnect the telephone, and if possible, wipe data on it.
71.4 The mobile telephone should be immediately returned to the Company if you are requested to do so by your line manager or on the termination of your employment.
72 The use of handheld mobile phones whilst driving is illegal and will be considered a disciplinary matter.
72. PERSONAL TELEPHONE CALLS
72.1 You may only make private telephone calls using your own mobile phone during breaks unless it is an emergency.
72.2 In an emergency, calls will be accepted by the Company and the message(s) passed to you as appropriate.
73. OWN MOTOR VEHICLES ON COMPANY BUSINESS
73.1 In general, private cars should be used only for journeys where public transport is inappropriate.
73.2 If you need to use your own car on Company business, you should only do so with the prior approval of your line manager, and you should ensure that the vehicle is insured for business use, taxed and, where applicable, has an MOT certificate and that you hold a valid driving licence.
73.3 You may not claim the cost of travel between home and your normal place of work.
73.4 Taxis should be used appropriately and only when public transport is unavailable or impractical. You should ask the taxi driver for a receipt and then reclaim your expenses by the usual method.

73.5 Breaking the law when driving on Company business, for example, using a mobile phone in your hand whilst driving, will be considered a disciplinary matter even if you are driving your own car.
73.6 Any travelling expenses incurred in undertaking Company duties in your own vehicle will be reimbursed by the Company, at Inland Revenue approved rates, according to the number of miles travelled, and you must keep an accurate record of such mileage, and if required, justify the route taken.
74. COMPANY MOTOR VEHICLES
74.1 If you are supplied with a Company car the terms will be detailed in a letter to you.
74.2 Due to insurance reasons, only those in the employ of the Company are allowed as passengers in the Company's vans or commercial vehicles whether on public or private roads.
74.3 Whilst a vehicle is allocated to you, it must remain of a clean and tidy appearance on the inside and outside.
74.4 As soon as a vehicle defect is discovered on the vehicle, it must be reported to your line manager or a senior member of management immediately for a decision to be taken as to whether the vehicle is roadworthy.
74.5 It is an offence to drive or send a vehicle on the road with a defect which renders a vehicle as 'unroadworthy' even if unknowingly. As the driver of the vehicle it is your legal duty to ensure that the vehicle you drive is roadworthy. You, as well as the Company, face prosecution by the police if you are driving a vehicle which is unroadworthy.
74.6 In the event that you are allocated a vehicle that you have not used before, please ask your line manager or a senior member of management if there are any specific requirements for the vehicle.
74.7 Never drive a vehicle that you are not confident about using. The Company is conscious of its responsibility both to its employees and other road users.
75. COMMERCIAL VEHICLES
On joining the Company, drivers of commercial vehicles may

be required to attend driver training as part of their induction, and on an ongoing basis for refresher training or development. Failure to attend such training or development could result in disciplinary action being taken which could result in dismissal.

76. 'WHISTLEBLOWING'

76.1 If you have concerns about malpractice in the Company it can be difficult to know what to do or who to tell. The legal term for 'whistleblowing' is making a protected disclosure' which provides a way of informing those in authority inside and outside the Company of your concerns.

76.2 Malpractice might cover criminal activity, breach of legal regulations, endangering somebody's health or safety, environmental damage, abuse of office or position or any attempt by any person to conceal any such matters.

76.3 If you have a concern or reasonable suspicion about malpractice, you should raise this with your line manager or a senior member of the Company. They will discuss your concern with you and, following that discussion, decide how to proceed.

76.4 If you do not wish to contact a member of the Company initially, or if you wish to talk through your concerns with another party, you might want to contact Public Concern at Work, an independent charity providing confidential advice on whistleblowing. Their website is at 'www.pcaw.org.uk' (the web address or name might have changed when you need to make contact but a 'Google' search should find their new website).

76.5 Where requested, reasonable efforts will be made to ensure that your identity is not revealed to those who might be involved in suspected malpractice. Your identity will be revealed only where this is reasonably necessary to investigate or deal with suspected malpractice and, if this happens, all reasonable steps will be taken to ensure that you are not disadvantaged as a result.

76.6 You will be kept informed of any investigation and any action taken in relation to your concern. You will not be

penalised for raising a concern.

77. BRIBERY

77.1 Anyone providing services for or on behalf of the Company, including but not limited to employees, temporary workers, contractors and sub-contractors of the Company are bound by the Bribery Act 2010 which makes bribery a criminal offence.

77.2 The Bribery Act created four offences of bribery: 1) Giving bribes; 2) Receiving bribes; 3) Bribing a foreign public official; and 4) Corporate offence of failing to prevent bribery. You must inform your line manager or a senior member of management if you have reason to believe that bribery is taking place.

78. CONFLICT OF INTERESTS

78.1 You are not allowed to undertake any external work or activity, paid or unpaid, that could be held to be in competition with, or in any way conflict with, the business interest of the Company.

78.2 If you wish to work in any other business, whether on a paid or voluntary basis, you must first obtain the written permission of the Company.

78.3 You should not have any financial interest, or involvement in, any competing business or supplier other than via ownership of shares in companies listed on the Stock Exchange. If your family or friends are involved with competing businesses or supplier agreements where that involvement could be seen as a potential conflict of interest then you must inform the Company in writing. Failure to do so can result in disciplinary action.

78.4 Failure to disclose a potential conflict of interest will be considered a serious disciplinary offence that may be subject to summary dismissal.

79. CRIMINAL CONVICTIONS

79.1 You are required to inform the Company in writing of any Court cases in which you are involved which result in your criminal conviction. You must also tell the Company if you are on the Sex Offenders Register.

79.2 If you are arrested on suspicion of an offence a full investigation will be undertaken as and when the Company deems appropriate. Disciplinary action, which may include dismissal, may be taken if the alleged offence and/or sentence have an impact on your work, or which destroys trust and confidence, causes the Company to lose confidence in your integrity, is unacceptable to colleagues or has the potential to bring the Company into disrepute.
79.3 Failure to notify the Company of any of the above matters may result in disciplinary action being taken against you which could lead to a dismissal.
80. HOME WORKING
80.1 The Company recognises that home working can be beneficial to both employees and the Company. The Company reserves the right to ask you to work from home, or you may make a request to your line manager to work from home, for all or part of the working week.
80.2 Whilst not all jobs are suitable for home working, any request by you will be considered on its merits.
80.3 The employee's ability to request home working is not intended to create any contractual rights for staff over and above the statutory flexible working regime.
80.4 Home working arrangements will usually be withdrawn if the effective and efficient operation of the team, department, and/or division is compromised, and/or:
80.4.1 the role changes;
80.4.2 the ability of the wider Company to fulfil its objectives is compromised;
80.4.3 the performance of a home worker is unsatisfactory; and/or
80.4.4 the Company has cause to believe that 'home working' is not 'going to plan' for whatever reason.
80.5 If home working is agreed, employees have responsibility for ensuring they have a suitable environment at home in which they can focus on work.
80.6 The Company reserves the right to visit and inspect the

employee's home working environment and facilities to check health and safety issues and that the home environment is suitable.
80.7 Home working must not put additional burden on office based colleagues, i.e. not lead to an output from the employee concerned which is reduced in either quality or quantity.
80.8 Employees are required to comply with all Company policies and procedures (eg. those relating to the security of information) whether working at home or on Company premises.
81. NOTICE BOARDS / INTRANET
81.1 It is your duty to read all notices on the Company's notice boards, and to familiarise yourself with the Company's policies as published on the intranet from time to time and to comply with their requirements. Not knowing of any notice or policy will not generally be accepted as an excuse for non-compliance.
81.2 You should not place signs, bills or notices on the Company notice board without the prior written approval of your line manager.
81.3 You should not use the intranet for personal uses without the prior written approval of your line manager.
82. PRESS ENQUIRIES
All media enquiries should be referred to your line manager; no comments should be made, on or off the record, without prior reference and permission.
83. INTELLECTUAL PROPERTY
Any intellectual property created or produced by you during the course of your employment with the Company belongs to the Company and may not be used by you except in the performance of your duties or with the permission of the Company. Such work will remain the property of the Company and you must agree to assign the property rights to the Company, if requested.
84. RETIREMENT
The Company will not require employees to retire simply because of their age.

85. REFERENCES
85.1 The Company does not normally give a reference when an employee leaves other than a 'factual' reference. A factual reference simply states the dates of employment and job title.
85.2 The Company may give a reference which contains more information that a factual reference at its discretion.
86. 'OPEN DOOR' POLICY
The Company operates an 'open door' policy and you should never hesitate to raise with the Company any matter which worries you.
87. TRADE UNIONS
Whilst the Company does not have any formal association with any trade union it recognises that every employee has the right to decide to become a member of a trade union or similar association.
88. RECOUPMENT RELATING TO ABSENCES
If your absence from work is due to negligence or damage caused by a third party and a claim is made in reference to that, we reserve the right to recover payments that we may have made to you as a result of the injury or absence.
89. CHANGES TO HANDBOOK
89.1 As stated in the Introduction, this Staff Handbook may be altered, deleted or added to by the Company as occasion requires or as legislation demands. Such legislative changes as are mandatory on the Company will be deemed to take effect on or before the effective date of the legislation. However, whenever practical and reasonable, the terms of any other proposed alteration or addition will be discussed as appropriate and/ or posted on the notice board and any Company intranet.
89.2 We hope that this Staff Handbook helps you to understand the way in which the Company works and your role within it. But please raise any matter you are not clear about with your line manager, or a senior member of management.
90. REDUNDANCY
The Company is committed to ensuring that if redundancies were to become necessary they would be kept to a minimum

wherever possible. Our priority would be to find alternatives to redundancy. Please refer to the Company's Redundancy Policy if redundancies become relevant. In any event, the redundancy procedure will be explained to all staff if and when it becomes necessary.

Handbook contents

The Introduction to the handbook states:

> Part A is contractual, that is to say, the matters referred to in Part A form part of your Employment Contract. The Company reserves the right to review, revise, amend or replace the content of your Employment Contract and this Staff Handbook and introduce new terms and conditions and new policies from time to time or to vary existing terms and conditions and/or policies to reflect the changing needs of the business and to comply with new legislation.

You should not change the wording of the previous paragraph. The wording is copied from the wording of the handbook in a case called *Bateman & Ors v Asda Stores Ltd*.

Asda's handbook included the following wording:

> The Company reserves the right to review, revise, amend or replace the content of this handbook, and introduce new policies from time to time to reflect the changing needs of the business.

The essential words are *The Company reserves the right to review, revise, amend or replace the content of this Handbook*. In fact, the *Asda* handbook did not include the words *your employment contract*, which Worklaw has added.

Relying on the wording in their handbook, *Asda* varied some terms in employment contracts and employees claimed that *Asda*'s power to vary contracts was limited to non-contractual terms.

However, the Employment Appeal Tribunal ruled that, by

unambiguously including a clause in the handbook stating that it could unilaterally change terms and conditions without the consent of the employees, *Asda* were entitled to do as they did.
A few words of caution: although the employer reserves a right to vary employment contracts unilaterally the employer must not act in such a way as to breach an implied term which is deemed by law to exist in every employment contract, and which is usually called by lawyers *the implied term of trust and confidence* (an analysis of this term is beyond the scope of this book).
Also, the word *unambiguously* is crucial.
Further, an employment tribunal or a court could reach a decision which conflicts with, or overturns the *Asda* case. Sometimes, different judges reach different judgments in cases which are seemingly similar as to their facts.
Words are always open to interpretation depending on their context and background.
There is no certainty that an employment tribunal or a court would find that Worklaw's added wording *the content of your Employment Contract* would entitle an employer *to vary* an employment contract as opposed to a handbook (but it may do).
The general position is that contracts of employment can only be varied by agreement.
Clear and unambiguous language is required to reserve a power to change *unilaterally* a term in a contract.

Statutory rights

Employees have statutory rights concerning the following matters:
- maternity leave;
- parental leave;
- time-off for dependants;
- paternity leave;

- adoption leave;
- shared parental leave;
- flexible working; and
- bereavement.

Worklaw advises that an employee's rights regarding the matters, listed above, should be set out in separate stand-alone policy documents.

Policies

Introduction

As we stated in the previous section, employees (and sometimes workers) have certain statutory rights. For example, a woman who is pregnant has statutory rights which are specific to her pregnancy and the employer needs to ensure that she is given these rights. The easiest way to ensure this is to set out the rights in a stand-alone policy-document and to give the employee a copy of this policy as soon as the employer is told that the employee is pregnant.
Below is a maternity policy as an example of a policy-document. Similar policy-documents will need to be given to eligible staff to inform them of their statutory rights as and when the statutory right in question applies.
A *statutory* right is an entitlement by law.
The policy below is based on the wording on the government website (as are most of the other policy-documents we draft) as the wording of a policy is less likely to be incorrect or challenged if it follows government-website wording.

Maternity Policy - TEMPLATE

1. OVERVIEW

When you take time off to have a baby you might be eligible for:

- Statutory Maternity Leave;
- Statutory Maternity Pay;
- paid time off for antenatal care;
- extra help from the government.

Your employment rights are protected while on Statutory Maternity Leave. This include your right to:

- pay rises;
- build up (accrue) holiday;
- return to work.

2. LEAVE

Statutory Maternity leave is 52 weeks. It is made up of:

- Ordinary Maternity Leave — first 26 weeks;
- Additional Maternity Leave — last 26 weeks.

You do not have to take 52 weeks but you must take 2 weeks' leave after your baby is born (or 4 weeks if you work in a factory).

You might be able to take some of your leave as Shared Parental Leave. If you wish to do so ask your line manager or someone in the Human Resources department for a copy of our Shared Parental Leave Policy.

Usually, the earliest you can start your leave is 11 weeks before the expected week of childbirth.

Leave will also start:

- the day after the birth if the baby is early;
- automatically if you are off work for a pregnancy-related illness in the 4 weeks before the week (Sunday to Saturday) that your baby is due.

If you are unsure, ask your line manager or someone in our Human Resources to check the earliest date your maternity leave can start.

You must give us at least 8 weeks' notice if you want to

change your return to work date, by telling your line manager or Human Resources.

3. PAY

Statutory Maternity Pay (SMP) is paid for up to 39 weeks. You get:

- 90% of your average weekly earnings (before tax) for the first 6 weeks;
- £184.03 (the figures might change) or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks.

SMP is paid in the same way as your wages (for example, monthly or weekly). Tax and National Insurance will be deducted.

If you are unsure, ask your line manager or someone in our Human Resources to check for you how much you could get.

If you take Shared Parental Leave you will get Statutory Shared Parental Pay (ShPP). ShPP is £184.03 a week or 90% of your average weekly earnings (whichever is lower).

SMP usually starts when you take your maternity leave.

SMP starts automatically if you are off work for an illness related to your pregnancy in the 4 weeks before the week (Sunday to Saturday) that your baby is due.

4. ELIGIBILITY

You qualify for Statutory Maternity Leave if:

- you are classed as an employee (not a worker);
- you give us the correct notice.

To be eligible, it does not matter how long you have worked for us, how many hours you work or how much you get paid.

Please note: you cannot get Statutory Maternity Leave if you have a child through surrogacy. Instead, you might be eligible for Statutory Adoption Leave and Pay.

To qualify for SMP you must:

- earn on average at least £123 a week;
- give to us the correct notice and proof you are pregnant;
- have worked for us continuously for at least 26 weeks continuing into the 'qualifying week' which is the 15th week before the expected week of childbirth.

You can still get Statutory Maternity Leave and SMP if your baby:

- is born early;
- is stillborn after the start of your 24th week of pregnancy;
- dies after being born.

If you are not eligible for SMP we will give you form SMP1 explaining why you cannot get SMP within 7 days of making our decision.

You might be eligible for Maternity Allowance if you are not eligible for SMP.

5. HOW TO CLAIM LEAVE

At least 15 weeks before your due date, you must tell us when the baby is due and when you want to start your maternity leave. We will ask you for written confirmation of this information.

We will write to you within 28 days confirming the start and end dates of your maternity leave.

6. HOW TO CLAIM PAY:

We will confirm within 28 days how much SMP you will get and when it will start and stop. If we decide you are not eligible, we will give you form SMP1 within 7 days of making our decision and explain why.

You need to us proof of the pregnancy to get SMP. You do not need it for maternity leave.

Within 21 days of your SMP start date (or as soon as possible if the baby is born early) you must give us either:

- a letter from your doctor or midwife;
- your MATB1 certificate — doctors and midwives will give you this no more than 20 weeks before the due date.

You will not get SMP if you do not give us proof that the baby is due.

7. EXTRA HELP

Depending on your financial circumstances, you may be entitled to help from the government by way of:

- Universal Credit;
- Child Benefit;

- Child Tax Credit;
- Working Tax Credit — this can continue for 39 weeks after you go on maternity leave;
- Income Support — you may get this while you are not working;
- Maternity Allowance (if you are not eligible for SMP).

Other statutory policies

The other statutory policies which an employer may need to give to employees, as applicable, are as follows;

- Time off for dependants;
- Paternity;
- Parental Leave;
- Shared parental leave;
- Adoption;
- Flexible Working;
- Bereavement.

Non statutory policies

Other policies, which are not statutory as such, but which it is sensible for an employer to have available to give to employees, as applicable, are as follows:

- Anti-harassment and bullying;
- Equal opportunities;
- GDPR;
- Lone working;
- Redundancy;
- Training.

The above is not a complete list.

Ancillary policies

There are also ancillary policies which an employer might need in order to amplify the terms and conditions (discretionary or otherwise) on which an employee might be entitled to benefits

or additional remuneration, such as;

- commission;
- bonus;
- sickness (other than statutory sick pay (SSP);
- expenses;
- car;
- health insurance.

The required policies will depend, to a certain extent, on the employer's business.
The above is not a complete list.

Health and Safety

An employer should also have a Health and Safety Policy as recommended by a suitably qualified *health and safety professional*.

Pay

Introduction

An employer has freedom to negotiate pay terms with a prospective employee or worker subject to 2 restrictions;

- the pay must not be below the National Minimum Wage and the National Living Wage (together referred to as the NMW);
- the employer must pay the same wage to a man and a woman doing comparative work otherwise the woman is likely to make an unequal pay claim in an employment tribunal.

To clarify: the minimum wage which must be paid to workers below the age of 21 is called the *National Minimum Wage* and is called the *National Living Wage* for workers aged 21 and older.

The NMW

The amount of the NMW depends on the age of the worker and whether they are classed as an apprentice.

The NWM is the minimum pay per hour almost all workers are entitled to:

NMW rates

From the 1st April 2024 to the 31st March 2025 the NMW hourly rates are:
Age 21 or over (National Living Wage) — £11.44
Age 18 to 20 — £8.60
Under 18 — £6.40
Apprentice — £6.40.
From the 1st April 2025 the rates will be:
Age 21 or over (National Living Wage) — £12.21
Age 18 to 20 — £10.00
Under 18 — £7.55
Apprentice — £7.55.

Who gets the NMW?

Persons classed as *workers* must be at least school-leaving age to get the NMW. The school-leaving age is 16, but the school-leaving date depends on which country in the UK the person resides.
As stated above, persons over 21 receive the National Living Wage.
Workers are entitled to the NMW if they are:

- part-time;
- casual labourers, for example someone hired for one day;
- agency workers;
- workers and homeworkers paid by the number of items they make;
- apprentices;
- trainees or workers on probation;
- disabled workers;
- agricultural workers;
- foreign workers;
- seafarers;

- offshore workers;
- non-family members living in the employer's home who share in the work and leisure activities and are treated as one of the family, for example au pairs.

Apprentices

The government website defines an apprentice as aged 16 or over who combines working with studying to gain skills and knowledge in a specific job. They must be paid at least the NMW. An apprentice can be new or current employee.The apprenticeship must last at least a year and up to 5 years depending on the level the apprentice is studying. There are various regulations which apply to apprenticeships. The main obligations on the employer are to ensure the apprentice:

- works with experienced staff;
- learns job-specific skills;
- gets time off during their working week for apprenticeship training.

Apprentices are entitled to be paid the apprentice-rate if either they are;

- under 19;
- 19 or over and in the first year of their apprenticeship.

Apprentices over 19 who have completed the first year of their apprenticeship are entitled to the correct NMW for their age.

Not entitled to the NMW

The following types of workers are not entitled to the NMW:

- self-employed people running their own business;
- company directors;
- people who are volunteers or voluntary workers;
- workers on a government employment programme;
- members of the armed forces;
- family members of the employer living in the employer's home;
- workers younger than school leaving age (usually 16);

- higher and further education students on work experience or a work placement up to one year;
- people shadowing others at work (for example, interns who do no work);
- workers on government pre-apprenticeships schemes;
- people working on a Jobcentre Plus Work trial for up to 6 weeks;
- share fishermen;
- prisoners;
- people living and working in a religious community.

A person is classed as a volunteer or voluntary worker if they get only certain limited benefits, for example, reasonable travelling expenses or paid-for meals, and are working for a:

- charity;
- voluntary organisation or associated fund-raising body;
- statutory body.

Not included in NMW calculations

Some payments must not be included when the minimum wage is calculated. These are:

- payments for the employer's own use or benefit, for example if the employer has paid for travel to work;
- things the worker bought for the job and is not refunded for, such as tools, uniform, safety equipment;
- tips, service charges and cover charges;
- extra pay for working unsocial hours on a shift.

Included in NMW calculations

Some payments must be included when the NMW is calculated. These are:

- Income Tax and National Insurance contributions;
- wage advances or loans;
- repayment of wage advances or loans;
- repayment of overpaid wages;
- things the worker paid for that are not needed for the job

or paid for voluntarily, such as meals;
- penalty charges for worker's misconduct;
- accommodation provided by an employer above the offset rate.

The *offset rate* is a figure set by the government, as a limit to the monetary value of living accommodation provided to the employee by the employer, that is allowed to count towards the NMW. As at the date this book was published the figure is £9.99 daily or £69.93 weekly. The figures will increase to £10.66 and £74.62 respectively in April 2025.

Criminal offence

It is a criminal offence for employers not to pay a worker the NMW.

HM Revenue and Customs (HMRC) officers have the right to carry out checks at any time and ask to see the employer's payment records. HMRC can also investigate employers if a worker complains to them that they have been underpaid the NMW. If HMRC finds that an employer has not been paying the correct NMW, any arrears have to be paid immediately and the employer will be fined and, probably, named publicly by the government on a list of offenders. Even though the underpayment was inadvertent; possibly because of an error in calculating the applicable hourly rate, the employer will still get fined.

A worker can also bring a claim of *underpayment of wages* in an employment tribunal

Keeping records

It is the employer's responsibility to keep records proving that they are paying the NMW. These records must be kept for at least 6 years if they:

- were created on or after 1st April 2021;
- still had to be kept on 31 March 2021 under the previous rule that records must be kept for 3 years.

The period records must be kept for starts from the last day of the *pay reference period* (see the next section for an explanation of the *pay reference period*) after the one they cover. The records do not have to be kept in any particular form, for example, they can be paper or computer records. But employers must be able to produce records for an individual *pay reference period* in a single document. Most employers use their payroll records as proof of:

- total pay — including pay deductions, allowances and tips;
- total hours worked — including absences and overtime.

Employers may also need to keep records such as:

- agreements about working hours, pay and conditions;
- documents that show why a worker is not entitled to the NMW, if that is the case.

Pay reference period

Pay reference periods are usually set by how often someone is paid, for example, one week, one month or 10 days. A pay reference period cannot be longer than 31 days.
A worker must be paid the NMW, on average, for the time worked in the *pay reference period*.

Disputes

The government website advises that:

> Workers who think their pay is below the correct minimum wage rate should talk to their employer first. If this does not solve the problem, they can ask the employer in writing to see their payment records. The worker can take someone with them and make copies of the records. If an employer owes the worker any arrears they have to pay these back.

The website also suggest that an underpaid worker contacts Acas and/or HMRC.

Other NWM bullet points

Quaystone Books has published a short bullet point book entitled *National Minimum Wage* from which the following miscellaneous bullet points are taken:

- Any employers who pay their workers less frequently than monthly (for example, quarterly) still need to ensure that workers receive the NMW each month.
- Whether a worker has received the NMW will depend on their average hourly rate. The average hourly rate is calculated by taking the total pay earned at the end of the *pay reference period* (PRP) divided by the total number of hours worked at the end of the PRP, for example, if the PRP is one day and the worker receives £42 after working 7 hours during that day the hourly rate of pay would be only £6 and below the NMW.
- The *total number of hours worked* is the total of all paid hours worked by the worker in the PRP.
- Commission counts towards the NMW. If the amount of commission (plus other pay) earned during the PRP is below the NMW rate then the employer must top up the commission (or other pay) to ensure that it is, at least, equal to the NMW.
- Any allowances or payments that are not attributable to the employee's performance, for example, *London weighting*, are not taken into account when calculating the NMW. However, if such payments are consolidated into the standard pay they will count towards the NMW.
- Individuals who are genuinely self-employed are not entitled to receive the NMW.
- It is the person or business who pays an agency-worker who is responsible for ensuring that the agency-worker receives the NMW.
- Normally, directors who own or part-own their business are not entitled to the NMW. However, the employment status of a director is not always clear-cut. Depending on the

type of employment contract they have it is possible for a director, who may even be a shareholder, to be classed as a worker and be entitled to receive the NMW.
- All home-workers are entitled to the NMW unless they are genuinely self-employed.
- An employer should not ask an intern to do anything beyond observing (otherwise called *shadowing*) without paying them the NMW, otherwise there will be a risk of an HMRC investigation and penalties. Something as minor as being asked to file a document in a filing cabinet is likely to be classed as *work* and subject to the NMW.
- The NMW applies to all workers while they are working in the UK, however short the period spent in the UK, and irrespective of the fact that the employer may be based overseas.
- A student doing work that is not part of a recognised course is likely to qualify for NMW.
- Travelling on business during normal working hours is treated as working time. However time spent travelling between home and work will not count.
- Subject to certain exceptions, breaks which are paid are taken into account (and breaks which are not paid are not taken into account) when calculating whether the NMW has been complied with. What amounts to *work* should be determined by the contract and its background. Each case must be analysed on its facts.

Equal pay

In the Introduction to this PAY section we said that an employer has freedom to negotiate pay terms with a employee or worker subject to 2 restrictions. The first restriction relates to the NMW. The second restrictions relates to equal pay; meaning a man and a woman doing like or comparative work must receive the same remuneration, and there must be no discrepancy in pay attributable to their gender, unless

justifiable on limited grounds.
In the section headed RECRUITMENT we saw that the Equality and Human Rights Commission (EHRC) has a code of conduct in regard to discrimination in the workplace.
The following are bullet points taken from the *Equal pay statutory code of practice* (the Code).

- The Code applies to the provisions in the *Equality Act 2010* (the Act).
- The EHRC can investigate an employer it suspects of having unlawfully discriminatory pay practices, and if necessary, take that employer to court;
- The EHRC has a Commission which can provide assistance to individuals taking legal action to enforce their right to equal pay, and may institute or intervene in legal proceedings to support an individual or help interpret and clarify the law.
- Although the Code relates to equal pay between women and men, pay systems may be open to challenge on grounds of race, age or other protected characteristics under the Act. So, a man could claim he is underpaid in comparison to a woman.
- Tribunals and courts considering an equal pay claim are obliged to take into account any part of the Code that appears relevant to the case.
- The Code recognises that small employers are less likely to have a human resources team, and may have fewer written policies and more informal practices than large employers, but small employers are still expected to follow the Code.
- The Act applies to *workers*.
- A woman doing *equal work* with a man in the same employment is entitled to equality in pay and other contractual terms, unless the employer can show that there is a *material reason* for the difference which does not discriminate on the basis of gender.
- The possible defences that an employer may raise in response to an equal pay claim are:

  - the woman and her comparator are not doing equal work;
  - the chosen comparator is not one allowed by law (for example he is not in the same employment);
  - the difference in pay is genuinely due to a material factor, which is not related to the sex of the jobholders.
- Once a woman has shown that she is doing equal work with her male comparator, the equality clause will take effect unless her employer can prove that the difference in pay or other contractual terms is due to a material factor which does not itself discriminate against her either directly or indirectly because of her sex.

The above is just a brief overview of what can be a very technical area of employment law and any employer who is embroiled in an equal pay claim should get legal advice.

We will deal with holiday pay under the section HOLIDAYS and sick pay under the section SICKNESS.

Holidays

Introduction

When we refer to workers we include employees.
Most workers who work full time are entitled to a statutory minimum of 5.6 weeks' paid holiday every holiday year which equates to 28 days.
We emphasise *most* because various categories of workers (for example, seafarers) are excluded from the *Working Time Regulations 1998* (WTR) in whole or in part.
Most workers are entitled to paid statutory annual leave which they *accrue* (build up) from their first day at work, including whether they are on:

- a probationary period
- sick leave
- statutory leave, such as maternity, paternity, adoption or shared parental.

The statutory entitlements are largely derived from the WTR as affected by case-law (judgments of courts or employment tribunals on a certain specific point in law arising from the

regulations or the circumstances of the case in question).
Full time is defined as 5 days a week.
If a worker works part time their entitlement is *pro rata*, for example, if a worker works *part time* 3 days a week their entitlement will be three fifths of that of a full time worker.
Normally, the dates of a holiday year are set by the employer, for example 1st January to the 31st December or 1st April to the 31st March.
Holiday pay is normally based on what the worker earns each week (sometimes the weekly figure is an average).
New regulations came into force in April 2024 which apply to workers who work *irregular hours* and those who work for *part of the year* only.
A contract of employment can give a worker holiday leave and pay in addition to their statutory entitlement, for example, a contract could give the worker 40 days holiday which would then be comprised of 28 days *statutory* leave and 12 days *contractual* holiday pay and leave.
The *statutory* entitlement is a *maximum* of 28 days, which means that if a worker works 6 days a week they do not get any extra statutory holiday (although they might get extra *contractual* holiday).

EU law and UK law

Regulation 13 of the Working Time Regulations 1998, derived from EU law, gives workers the right to 4 weeks holiday leave and pay, and regulation 13A, derived from UK law, gives an additional 1.6 weeks.
Point to note: the additional 1.6 weeks represents the usual 8 public holidays in England and Wales.
There are technical differences between the 2 regulations, particularly in regard to the right to carry over accrued but untaken holiday leave from one holiday year to the next. And the differences became more marked when new regulations (specifically regulation 15B) came into force in April 2024.

However, we shall ignore the differences in order to keep this *Holidays* section simple.

Public holidays

There are normally 8 public holidays each year in England and Wales. There are 9 in Scotland, and 10 in Northern Ireland. Public holidays can be included in the statutory entitlement. Occasionally, there are extra public holidays, for example, for a coronation. Whether a worker is entitled to the extra public holiday depends on the wording of their employment contract. If the employment contract says:

> You are entitled to 20 days' holiday plus public holidays.

Probably, the above wording would entitle the worker to be paid for an extra days' public holiday if there is one in that year.
But if the wording is:

> You are entitled to 20 day's holiday plus 8 public holidays.

Probably the above working would not entitle the worker to be paid for an extra day's public holiday.
There is no statutory right for workers to take public holidays off work. Any right to time off depends on the terms of the worker's contract of employment.
Part-time workers are entitled to be treated in the same way as full time workers, *pro rata*. This means that an employer should provide *part-time* workers with a *pro-rated* public holiday entitlement according to the number of hours that the part-time worker works, irrespective of whether or not they work on the days on which public holidays fall.

Part time workers

Workers who work *part time* are still entitled to 5.6 weeks' statutory paid holiday. The entitlement will be in proportion

(*pro rata*) to the hours they work.
Part-time workers cannot be treated less favourably than full-time workers. For example, if someone works 3 days a week, they're entitled to 16.8 days' paid holiday a year (3 x 5.6).
If an employer gives full-time workers more paid holiday than the statutory minimum (28 days), they must give part-time workers the same extra holiday but *pro rata*.
A worker is entitled to an appropriate proportion (*pro rata*) of a full year's holiday entitlement if their employment contract:
- lasts for less than a year;
- ends part way through a holiday year.

For example, a worker starts employment on 1st January. They work 5 days a week and get the statutory 5.6 weeks' holiday entitlement. Their employment ends after working for 26 weeks. They would have accrued 14 days (half of 28) of holiday at the point their employment ends.
A worker's holiday entitlement might include *part days*. For example, someone might get 11.2 days of holiday because they work 2 days a week. During the first year of employment, employers must round up part days to the nearest half day.

Holiday pay is based on weekly pay

For workers with normal working hours the calculation of a week's pay depends on whether their remuneration varies with the amount of work done.
There are three categories of employee with normal working hours:
- workers whose remuneration for employment in normal working hours does not vary with the amount of work done;
- workers whose remuneration varies with the amount of work done.
- workers whose remuneration varies according to the time spent working.

Generally, a worker who has *normal working hours* will have

their week's pay calculated as the pay they would receive for working those hours. This usually means basic salary, and any guaranteed compulsory overtime. It also includes employer pension contributions.
To calculate holiday pay, a week usually starts on a Sunday and ends on a Saturday.
A worker's holiday pay should be calculated from the last full week that they worked. This can end on or before the first day of the worker's holiday.
Another 7-day period should only be used if that is how the worker's pay is calculated. For example, a worker's pay is calculated by a week ending on a Wednesday; they should treat a week as starting on a Thursday and ending on a Wednesday.
How to calculate someone's holiday pay depends on their working pattern. If a worker's working hours do not vary, their holiday pay will be calculated using their usual pay rate. This is the case whether they work full time or part time.
Holiday pay should include:

- payments linked to doing tasks required in the contract, for example commission;
- payments related to professional or personal status, for example for length of service, seniority or professional qualifications;
- other payments, for example overtime payments, if a worker has regularly been paid these during the last year.

As we said in the introduction, in April 2024 the government brought in new regulations to calculate holiday pay and leave which relate, mainly, to those workers who work irregular hours or those who work for part of the year only. The main change is to permit *rolled-up* holiday pay.

Irregular hours and part-year workers

For *irregular hours* and *part-year* workers, holiday pay is paid at the rate of an hour's pay for each hour of holiday. To take account of the fact that some workers have variable rates of

pay, an hour's pay is calculated as an average, based on the statutory definition of a week's pay divided by the average number of hours worked in a week. These rules apply to holiday years starting on or after 1 April 2024.

It used to be illegal to pay *rolled-up* holiday pay; which is when an employer adds an amount to each week's pay to cover holiday-pay accrued during that week.

However, rolled-up holiday pay is permitted for *irregular hours* workers and *part-year* workers in leave years starting on or after 1st April 2024. New rules came into force on that date and amended the Working Time Regulations to set out a new system of *holiday accrual* for these 2 categories of worker.

The terms "irregular-hours worker" and "part-year worker" are defined in the new regulations which refer to a *holiday* year as a *leave* year.

- A worker is an *irregular hours* worker, in relation to a leave year, if the number of paid hours that they will work in each pay period during the term of their contract in that year is, under the terms of their contract, wholly or mostly variable. In other words, the worker works a different number of hours each week. In effect, this type of employment contract is *casual* or *zero-hours*.
- A worker is a *part-year* worker, in relation to a leave year, if, under the terms of their contract, they are required to work only part of that year and there are periods within that year (during the term of the contract) of at least a week which they are not required to work and for which they are not paid. This includes part-year workers who may have fixed hours. An example is a worker who works only in the summer months.

Point to note: The regulations require that, to be considered a *part-year* worker there must be a period of at least one week *for which the worker is not paid* which means that it would still be possible for a worker to be paid *during* that period so long as there is no expectation of them working in that period and nor are they receiving payment *for* that period.

For leave years starting on or after 1 April 2024, the holiday entitlements of irregular-hours and part-year workers are no longer governed by regulations 13 and 13A of the Working Time Regulations 1998, but instead derive from new regulation 15B.

Holiday pay is calculated in hours rather than weeks, and accrues on the last day of each pay period at the rate of 12.07% of the actual hours worked in that pay period.

Employers can choose from two systems of holiday pay for a holiday to which regulation 15B applies.

Point to note: Regulation 15B is in the regulation which came into force in April 2024 and applies to *irregular-hours* workers and *part-year* workers in place of the regulations which are derived from the *Working Time Regulations*.

Employers can pay holiday pay when the holiday is taken, calculated at the rate of a week's pay for each week's holiday. Alternatively, they may choose to pay *rolled-up* holiday pay which is an uplift of 12.07% to the worker's remuneration for work done in each pay period.

The 12.07% figure is based on the fact that all workers are entitled to 5.6 weeks' leave. This means that a worker's total working weeks in a year is 46.4 (52 weeks in a year minus 5.6 weeks of leave) and 12.07% of 46.4 is 5.6.

Workers on sick or statutory leave

There is also a 52-week averaging system to calculate how much rolled-up holiday pay must be paid to workers for periods of sick leave or statutory leave.

There might be weeks in the 52 weeks where the worker:

- was off sick and only received statutory sick pay (SSP);
- was on statutory leave and received less pay, for example, they were receiving statutory maternity pay;
- received no pay.

Such workers must be allowed to take their holiday, but are not paid at the time they take it. In these cases, the employer

should use an earlier week in its place.
An employer should only count back as far as needed to get 52 weeks of a worker's usual pay. If necessary, they can look at the pay the worker received over the previous 104 weeks, but no further (104 weeks is the maximum).

Included in holiday pay

Holiday pay must include:

- payments linked to doing tasks required in the contract, for example commission;
- payments related to professional or personal status, for example length of service, professional qualifications, or seniority;
- other payments, for example overtime payments, if a worker has regularly been paid these during the last year;
- Employers must include any relevant payments in the full 5.6 weeks' paid holiday (statutory annual leave).
- Workers who are not *irregular hours* or *part-year* workers, in their first year of employment, receive one twelfth of the statutory entitlement on the first day of each month.

Miscellaneous points to note

Point: A leave year (holiday year) begins on the date the employer puts in:

- a written statement; or
- an employment contract; or
- a staff handbook; or
- a stand-alone holiday policy; or
- a collective agreement.

Point: A *collective agreement* is an agreement between the employer and a recognised trade union or elected employee representatives which is then incorporated into the employment contracts of individual workers.
Point: Although a binding employment contract can be oral (spoken), the holidays dates set by the employer will not be

binding on workers unless they are informed of the dates in writing.

Point: If the dates of the leave year are not set out in writing, the default position under the Working Time Regulations 1998 is that the leave year begins on the date the worker's employment commenced and each anniversary of that date (unless the worker was employed before 1st October 1998, in which case it begins on 1st October each year. The reason for the October date is that the Working Time Regulations came into force in 1998.

Point: Holiday accrues during non-working periods, including sick leave.

Point: Under the Working Time Regulations leave accrues at the rate of 1/12 of a full year's entitlement at the beginning of each month. However, the regulations do not make clear whether the reference to the beginning of *a month* is meant to be the first day of a calendar month or a month of employment measured from the worker's start date.

Point: If a worker does not take holiday leave because they are on sick leave any holiday leave carried over must be taken within 18 months of the leave year to which the untaken holiday relates.

Point: After the first year of employment, the whole annual entitlement becomes available at the start of each leave year, subject to anything in the contrary in holiday *rules* set down in writing by the employer.

Point: *Sick leave* is not defined in the regulations.

Point: *Statutory* leave is defined by the regulations as meaning maternity, paternity, or adoption leave, parental leave, shared parental leave, parental bereavement leave and, when it comes into force, neonatal leave.

Point: Under the regulations a worker must give notice if they wish to take a *statutory* holiday. The notice must be given at least twice as many days in advance of the first day as the number of days or part-days to which the notice relates. The notice does not need to be in writing.

Point: An employer may refuse a worker's holiday request by serving a counter-notice. This must be served at least as many calendar days before the date on which the the worker has asked for their holiday leave to start as the number of days which the employer is refusing.
Point: Employers should be aware that the right to carry over untaken holiday leave into the following holiday leave year is complex because of differences between the Working Time Regulations and the new regulations which came into force in April 2024. To keep things simple, employers are advised to allow untaken leave to be carried over unless they have a justifiable reason not to do so in the individual case.
Point: From 1 January 2024, under the amended provisions of the Working Time Regulations, employers must give the worker a reasonable opportunity to take leave, encourage them to do so, and inform them that leave not taken by the end of the leave year will be lost (subject to the advice in the preceding point).

Sickness

Introduction

As we have seen, employers must provide workers with written particulars of any terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay.
This information is required by sec.1 Employment Rights Act 1996 (as amended) and must be given on or before the first day of employment.
The information can either be in:
- the written particulars (referred to in italics above); or
- an employment contract; or
- in some other document which is reasonably accessible to the worker.

The some other document could be, for example:
- a staff handbook; or
- a stand-alone policy; or
- a collective agreement with a trade union.

Sick pay (SSP)

When a worker is unable to be at work, because of illness or for a medical reason, they might be eligible for:
- statutory sick pay (SSP); and/or
- contractual sick pay.

Except for the statutory right to SSP, and any contractual right to sick pay which might be included in an employment contract, a worker does not have a right to be paid sick leave under common law.
Common law is derived from court judgments.
statutory laws are laid down by Parliament.

Statutory sick pay (SSP)

In this book, *sick* or *sickness* is deemed to include any medical reason for not being at work, such as a broken leg or a migraine.

Employees and workers

Both employees and workers if they qualify (including agency workers) are entitled to SSP.
As we have seen, an employee is a person who works under an employment contract. Whether a person is classed as a worker depends on a number of factors, such as:
- they have a contract to do work personally;
- the work is not for their own customer or client.

Sometimes, it is not easy to determine whether a person doing work for another should be classed as self-employed or as a worker. For example, as we have seen, a homeowner employing a self-employed electrician would be a customer or client of the electrician, but if builders employed the same electrician to work short-term on a building site the electrician would probably be classed as their worker and entitled to SSP if sick and they meet the qualifying conditions.

Qualifying conditions

To qualify for SSP a worker must:
- have an employment contract;
- have done some work under the employment contract;
- have been sick for 4 or more days in a row;
- earn an average of at least £123 per week (as at April 2024);
- inform their employer they are sick;
- give the employer proof of their illness when they have been off work for 7 days.

SSP amount

SSP is £116.75 (from April 2024) a week for up to 28 weeks, subject to tax and national insurance contributions, payable by the employer to the worker.
The amount of SSP normally changes every April.

The SSP scheme

We need to define some lawyer's jargon to explain how SSP works.
The *SSP scheme* entitles qualifying workers who are absent from work due to incapacity to receive a minimum weekly payment (currently £116.75).
Incapacity: means an inability to work on a workday due to illness or some other medical reason.
Qualifying days: these are the days on which a worker normally works, for example, Mondays to Fridays.
A period of incapacity for work (a PIW): a PIW is defined as any period of 4 or more consecutive days, each of which is a day of incapacity for work.
A day of incapacity for work: is a day on which the worker is off work because they are sick.
Days on which the worker is not normally required to work are included in the PIW (for example, a Saturday and a Sunday would be included even though the worker does not normally

work at weekends).
To be eligible for SSP, the worker must have a day of incapacity for work which is within a PIW (meaning that they are sick and off work for 4 days in a row).

Qualifying days

SSP is only payable for qualifying days.
SSP is payable from the 4th qualifying day.
If the worker only has one qualifying day in each week, SSP may not be payable until the 4th week of absence.
There must be at least one qualifying day in each week, even if no work would have been done.
The employer and worker may agree which days of the week are the qualifying days and then confirm this in the employment contract or in a written statement.
Where a worker has a variable working pattern, the employer and worker can agree different qualifying days for each week.
Where the employer and worker have not agreed what the qualifying days are, they are determined as follows by SSP regulations.

- If there is no agreement as to which days are qualifying days in a particular week, the qualifying days will be those days which the employer and worker agree are (or were) working days for that week.
- if the employer and worker have agreed that there are no working days in any week, the Wednesday of that week is deemed to be a qualifying day.
- if there is no agreement as to which days are working days in a particular week then every day is deemed to be a qualifying day.
- Days that the employer and worker agree that no workers would be (or were) required to work that week can be excluded (but if there is no such agreement, every day is a qualifying day).
- Any agreement to define qualifying days by reference to

days of incapacity or periods of entitlement to SSP is void under SSP regulations.

- A worker who is incapacitated for the whole of a week (after the waiting days have passed), is entitled to receive the full weekly amount of SSP.
- If they are incapacitated for only part of the week, the SSP is apportioned based on how many qualifying days there are in the week and how many of those are days of incapacity.

Waiting days

SSP is not payable for the first 3 qualifying days in any period of incapacity for work (PIW).
These days are referred to as *waiting days*.
Waiting days may not be the first 3 calendar days of sickness if the worker is incapacitated on non-qualifying days.

A period of incapacity for work (a PIW)

Workers are entitled to up to 28 weeks' SSP in any PIW or in any series of linked PIWs.
PIWs will be linked if they are not more than 56 calendar days (8 weeks) apart.
If a series of linked PIWs runs over 3 years, SSP ceases at 3 years, even if it has not yet been paid for 28 weeks (28 weeks is the maximum period).
If a PIW is not linked to previous PIWs (because it is more than 8 weeks since the last PIW) then SSP entitlement starts afresh, meaning that a sick worker could exhaust their 28 weeks' SSP, return to work for just over 8 weeks, and qualify for a further 28 weeks' SSP if they are sick again.

A day of incapacity for work

Incapacity for work refers to a worker not being fit to do the work they are contracted to do, because of illness or injury or for a medical reason.

For the purposes of SSP, under the legislation, incapacity is defined as:

> A day on which the worker concerned is, or is deemed in accordance with regulations to be, incapable by reason of some specific disease or bodily or mental disablement of doing work which he or she can reasonably be expected to do under that contract.

A day of incapacity must be a whole day on which no work is done.
If the worker has arrived at work and immediately becomes ill before starting work, the day may count as a day of incapacity.
If the worker does any work at all, however briefly, before becoming ill, then the day will not count as a day of incapacity for SSP purposes.
Where a worker works a night shift that spans 2 days, the work is treated for SSP purposes as having been done on the first day. So if the worker becomes ill on the second day (whether during or after the shift), that day can still count as a day of incapacity.
A worker is deemed to have been incapable of work for the whole day if they arrive for work but do no work before they go sick.
But if a worker has done some work, even a minute's work, that day cannot be treated as a day of incapacity for SSP purposes.
Work done in any shift that extends over midnight is treated as being done on the first of the 2 days, no matter how many hours they worked after midnight.

Notification

SSP regulations provides that a worker (or their representative), must inform their employer of any date on which they are unfit for work within 7 calendar days of that date.
If a worker notifies their employer of their sickness absence

more than 7 calendar days after the first day of incapacity, and there was no reasonable excuse for the delay, the employer can withhold payment of SSP for the duration of any such delay.

Point to note: it is not uncommon for employers to require their workers to notify sickness absence, early—for example, 9am—on the first day of absence. However, the employer should consider carefully any reason the worker gives for their failure to comply with a set-time, because the reason could arise from a disability with the attendant risk of a claim of disability discrimination.

Evidence of incapacity

Employers are entitled to ask for reasonable evidence of incapacity after the first 7 days of sickness absence.

What amounts to *reasonable evidence* is for the employer to decide.

Evidence of incapacity is usually given in the form of:

- a fit note from a doctor;
- a self-certification form (the form is usually provided by the employer);
- other medical evidence acceptable to the employer.

Employers cannot withhold SSP for late receipt of evidence of incapacity, but can withhold SSP for late notification of sickness.

If a worker qualifies for SSP, and the employer has no reason to doubt their sickness, the employer can choose to pay the SSP without asking the worker for medical evidence.

Alternatively, in the absence of a fit note or other credible medical evidence of sickness, the employer can require the worker to be examined by a suitable medical specialist engaged by the employer, subject always to the worker's statutory rights under the *Access to Medical Reports Act 1988*.

A fit note

Fit notes were previously called sick notes. Their full title is: Statement of Fitness for Work for social security or statutory sick pay.
Usually the worker's GP provides a fit note.
If the GP does not provide a fit note, the employer can accept some other evidence of sickness, for example, a medical certificate from a doctor abroad, or a certificate from an osteopath. It is for the employer to decide whether to accept medical evidence other than the usual fit note from a GP.
Employers cannot insist on a fit note or doctor's statement for the first 7 days of sickness absence (or for a period of absence of less than 7 days) as a condition of paying SSP, but can insist on this as a condition of payment of contractual sick pay (in excess of SSP).
Fit notes include a section for the doctor to complete to say whether the worker is not fit for work or maybe fit to work taking into account the following advice, with the agreement of the employer:

- a phased return to work;
- altered hours;
- amended duties;
- workplace adaptions.

If the employer does not agree to the advice (and recommended changes), the worker will be deemed as not fit for work and eligible for SSP.
A fit note issued in the first 6 months of incapacity cannot exceed 3 months, otherwise there is no restriction on the length of the period for which fit notes can be issued.

A self-certification form

A self-certification form is—as the name suggests—a form which a worker is required to complete themselves after being absent from work for up to 7 days because of sickness.
On the form the worker should confirm the medical reason

they were absent from work with the dates the medical reason for their absence started and ended.
HMRC has a sample self-certification form on their website (search on the internet for HMRC–form SC2). The SC2 form asks for the following information from the worker:

- name;
- address;
- national insurance number;
- date of birth;
- clock or payroll number;
- about the sickness;
- date sickness began;
- date sickness ended;
- date last worked before the sickness began;
- time finished work of the last day worked;
- whether the sickness was caused by an accident at work or an industrial disease;
- signature;
- date of signature;
- telephone number.

The employer does not have to use the SC2 form and can use a different form which asks for more or less the same information.
If the employer refuses to accept the medical evidence provided by the worker (for example, refuses to accept a medical document from, say, a chiropractor) and refuses to pay SSP, the worker can apply to the *HMRC Statutory Payments Disputes Team* for a decision on whether or not the refusal is justified.

Eligibility

Workers are eligible for SSP if they:

- are working under a contract of employment;
- are incapable (or are deemed incapable by regulations) by reason of disablement, from doing work which they could

reasonably be expected to perform under the contract;
- have average weekly earnings of not less than the Lower Earnings Limit (currently £123) based on the previous 8 weeks.

Disputes as to eligibility

If there is a dispute as to entitlement to SSP, the worker must apply to the *HMRC Statutory Payments Disputes Team* for a decision.
Employment tribunals do not have jurisdiction to decide if a worker is entitled to SSP.
Workers who have more than one contract of employment with the same employer may be entitled to two lots of SSP.
Where a worker has 2 employers, there is not necessarily an entitlement to 2 lots of SSP. What matters, for the purpose of determining whether more than one SSP entitlement arises, is whether earnings are aggregated for NIC purposes between the contracts. Where the earnings between the 2 contracts are aggregated for NIC purposes, a worker is only entitled to one lot of SSP. In such cases, a worker must be incapable of work under both contracts before becoming entitled to SSP.
If a worker has 2 (or more) contracts with the same or different employers, and earnings are not aggregated for NIC purposes, the worker is entitled to 2 (or more) lots of SSP.

Other jobs

A worker may claim SSP while medically unfit for one job, and carrying on working for another employer in a different job for which they are still fit.
Provided the employment contracts are not with the same employer (or associated employers), the worker can claim SSP if incapacitated for work under one employment contract, while still being capable of work under the other employment contract.
A point to note: Not unreasonably, employers are usually

unhappy if their worker is paid SSP by them but is still working elsewhere, and often view this situation as amounting to fraud, whereas it is likely be legal if the worker's declared state of health is genuine.

Deemed incapacity

There may be situations, sometimes referred to as *deemed incapacity*, when a worker is eligible for SSP even though they are not ill or injured. For example, if they have been asked to stay away from work because they have been exposed to an infectious disease and need to be in quarantine.

Persons not eligible

SSP is not payable to:

- workers who have not yet commenced work;
- workers who have already received their full 28 weeks' entitlement to SSP or have been on linked PIWs for more than 3 years;
- workers who earned on average less than the Lower Earnings Limit (currently £123 weekly) based on the previous 8 weeks.

Form SSP1

If a worker is ineligible (or no longer eligible) for SSP, the employer must give them form SSP1.
The form can be downloaded from the internet.
On the form, the employer must say why SSP is not being paid or is coming to an end, and the last date of payment, if applicable.
The worker can then use the form to support a claim for social security benefits.
The employer must send a worker form SSP1:

- within 7 days of them going off sick, if they do not qualify for SSP;

- within 7 days of their SSP ending, if it ends unexpectedly while they are still sick;
- on or before the beginning of the 23rd week, if their SSP is expected to end before their sickness does.

If the worker thinks that they are eligible for SSP, they can appeal to HMRC: the SSP1 form says how to appeal.

Deductions from SSP

SSP is treated like ordinary pay, and is taxable and subject to national insurance contributions (NICs), and any other lawful deductions from pay, such as pension contributions.

Department for Work and Pensions (DWP)

After 28 weeks, any sickness benefit entitlement will be paid directly to the worker from the DWP.

SSP starts

SSP becomes payable after the worker is sick and off work for at least 4 days in a row (including non-working days).
The first 3 days that the worker is sick are known as waiting days and the worker is not paid SSP for these 3 days, unless the worker has been off sick and getting SSP within the previous 8 weeks.
The 4th day that the worker is sick is the first qualifying day.

SSP stops

SSP stops on the earlier of:

- the worker returning to work;
- the fit note expiring without being replaced;
- the employment ending;
- the day before a pregnant employee (not a worker) begins a maternity pay or maternity allowance period;
- the worker using up their SSP allowance (28 weeksâ€™ SSP in any period of incapacity for work (PIW) or series of

linked PIWs; or a series of linked PIWs lasting more than 3 years).
- the worker being in legal custody or imprisoned.

Linked periods of sickness

If the worker has regular periods of sickness, they may count as linked.
To be linked, each period must qualify for SSP by lasting 4 or more days and be 8 weeks or less apart.
The worker is no longer eligible for SSP if they have a continuous series of linked periods that lasts more than 3 years.

Records

Employers must keep records of SSP payments for PAYE purposes and to show they are meeting their SSP obligations should HMRC investigate.

Employer ceases trading

Employers may still have to pay SSP even if they stop trading.

Holidays

Statutory holiday entitlement accrues while the worker is off work sick, no matter how long they are off.
It is permissible for holidays to be taken during the sick leave, but an employer cannot insist that the worker takes a holiday when they are eligible for sick leave.

Other employment types

Some employment types like agency workers, directors and educational workers have different rules for entitlement.

Employment and Support Allowance (ESA)

A worker can apply for *Employment and Support Allowance* (ESA) if they have a disability or health condition that affects how much they can work.

Contractual sick pay

A worker does not have a statutory right to be paid wages (in excess of SSP) when they are off work because of sickness. However, employment contracts can give workers a contractual right to receive wages in addition to SSP.
A right to contractual sick pay, and the terms, should be set out in:

- a statement (under s.1 Employment Rights Act 1996); or
- a contract of employment; or
- a separate sickness policy.

An employer can dismiss an employer before the worker has received their full contractual entitlement to sick pay (providing the dismissal is fair and procedurally correct).

Contractual sick pay clauses

If there are conditions which must be met before a worker qualifies for contractual sick pay (for example, minimum length of service) these conditions should be set out in the employment contract.
The employment contract should also say that any SSP received will count towards the worker's contractual sick pay entitlement.
Some employment contracts require an injured worker, paid contractual sick pay because of the injury, to sue any third party responsible for causing the injury and reimburse the employer from any money recovered from the third party.
A failure to pay contractual sick pay would be an unlawful deductions from wages as well as a breach of the employment contract.
Employment tribunal have jurisdiction to hear a claim of

unlawful deductions whilst the worker is still employed, whereas they have jurisdiction to hear a breach of contract claim (limited to £25,000) only after the employment is terminated.

A sample contractual clause

Worklaw's standard sample contract of employment does not include a right to contractual sick pay, but if it did, then the clause would probably read something like:

> You shall continue to receive your full salary and contractual benefits during any period of absence due to *incapacity* for up to an aggregate of [*number*] weeks in any [*number*]-week period. Such payment shall be inclusive of any statutory sick pay (SSP) due in accordance with applicable legislation. We reserve the right to require you to undergo an appropriate medical examination of your *incapacity* at our expense. For the purposes of this clause *incapacity* is defined as any medical reason, for which the person is blameless, which causes a person to be unfit to do any work for their employer.

Discretionary sick pay

Some employer's say that they will pay sick pay over and above SSP at their discretion. Usually, this type of clause is in a staff handbook (rather than in an employment contract) to make it clear that the clause is discretionary and non-contractual. However, employers must be careful to ensure that the factors which they take into account when deciding to pay discretionary sick pay cannot be said to be discriminatory, and that all workers are treated equally, particularly when, for example, a disabled worker or a pregnant employee is involved.
And, in every employment contract there is an implied term that the employer will act fairly towards its workers. This implied term is usually referred to by lawyers as a term of *trust and confidence*. A failure to exercise a discretion in favour

of an employee when any reasonable employer would have done so is likely to incur a claim that the term of *trust and confidence* has been broken.
Also, if an employer habitually pays wages over and above SSP, even though such payments are expressed to be discretionary, at some point in time such payments may be deemed to have become contractual on the basis of *custom and practice* or on the basis that the workers now have a reasonable expectation that they will be paid wages when sick.

Grievance Procedure

Introduction

Employers must have a written procedure whereby employees (not workers) can air their grievances.
A formal grievance procedure does not apply to a worker, but they can still raise a complaint informally.
If an employer does not have a grievance procedure they are very likely to lose a claim by an employee of constructive unfair dismissal.
A grievance procedure can be simple and straight forward; for example, it could say simply that:

> if the employee has a grievance, and wishes to have the grievance addressed formally, he or she should put details of the grievance in writing and give it to their line manager, or another manager if the grievance is about the line manager.

If possible, a employee should raise a grievance informally.
If the employee wishes to raise a formal grievance this should be done as quickly as is practical.

A grievance should be in writing and give as much detail as is necessary to enable the employer to understand the grievance.
On receipt of the grievance, the employer should arrange a meeting with the employee as soon as practical.
The employer should make such investigation into the cause of the grievance as is reasonable in the circumstances.
Employees have a statutory right to be accompanied by a companion (work colleague or trade union official) at a grievance meeting in the same way as they have a right to be accompanied by a companion at a disciplinary hearing.
This statutory right applies when the grievance is about a duty that is owed by the employer to the employee (for example, a grievance that the employer has not giving the employee a payslip).
Following a grievance meeting the employer should give a decision to the employee in writing and say what action, if any, the employer intends to take to address the grievance.
The written decision should remind the employee that there is a right to appeal against the decision if the employee is unhappy with the outcome.
If the employee wishes to appeal they should set out the ground(s) of appeal in writing as soon as practical.
Any appeal should be heard as soon as practical at a time and place convenient for the employee and any companion.
If practical the appeal should be heard by someone suitable who has not been involved in the grievance procedure.
An employee has a right to be accompanied by a companion at an appeal.

Grievance raised during disciplinary procedure

If the employee raises a grievance during the course of a disciplinary procedure the employer can suspend the procedure in order to deal with the grievance.
If the disciplinary procedure and the grievance procedure are connected it might be possible and sensible to deal with both

at the same time.

Grievance procedure - TEMPLATE

This template is written on the basis that the employer is a limited company with at least one director and has line managers.
Please amend the template as appropriate to reflect the set-up of your particular business.
Template
The object of the grievance procedure is to enable employees who consider they have a grievance or complaint arising from their employment with the Company to have it dealt with at the nearest appropriate level within as short a time as possible.
Anyone wishing to use this procedure can do so freely and without prejudice to his or her position in the Company.
It applies to all employees.
In the first instance all grievances will be dealt with by your line manager who will attempt to deal with the matter after such consultations as are necessary.
Every opportunity will be given for your grievance to be stated and thoroughly discussed.
As appropriate further investigation may take place and action taken.
You may be accompanied by a work colleague or a trade union official of your choice.
If the complaint or grievance relates to your line manager, the grievance can be raised with another manager or a director.
As soon as practical, the person dealing with the grievance will arrange a meeting to investigate the matter.
A decision will be given, normally within 5 working days.
If you remain dissatisfied with the decision you may, within 5 working days, appeal to a director by setting out your grounds of appeal in writing.
The director will make arrangements for a grievance appeal

hearing at which you will have the right to be accompanied by a companion and to make submissions for consideration.
The Director will give a decision on your appeal normally within 5 working days.
The Director's decision on the appeal will be final.

Disciplinary Procedure

Introduction

An unfair disciplinary procedure will almost certainly result in an unfair dismissal.
A formal disciplinary procedure does not apply to a worker.
In order for there to be a fair disciplinary procedure the employer must:

- carry out *a fair investigation* into the alleged misconduct;
- following a fair investigation, if there is a reasonable cause to believe that the alleged misconduct occurred, the employer must hold *a fair disciplinary hearing*;
- following a fair disciplinary hearing any penalty, including a dismissal, must be *a fair penalty* within a band of reasonable responses open to a reasonable employer;
- give the employee *a right of appeal*.

The disciplinary procedure must comply with the Acas *Code of Practice on Disciplinary and Grievance Procedures*, which we shall examine later in this book.

A fair investigation

A merited dismissal can be rendered unfair in the eyes of an employment tribunal by a failure to carry out a fair investigation before embarking on a disciplinary.
The usual legal test is that an employer must hold such investigation into alleged misconduct by an employee as is reasonable in the circumstances, judged objectively by reference to *a band of reasonable responses.*
A band of reasonable responses is a notional range of responses open to a reasonable employer, bearing in mind that one employer could treat certain misconduct as more serious than another employer.
Notwithstanding how serious an employer treats an allegation of misconduct the investigation must be fair and reasonable, which means the all relevant documents should be considered by the employer and written statements taken from all persons who might know anything about the matter under investigation.
As we said at the beginning of this book, a merited dismissal can be rendered unfair in the eyes of an employment tribunal by a failure to carry out a fair investigation.

Who should conduct the investigation?

There are no hard and fast rules as to who should be the investigator; it depends on the nature of the misconduct alleged, what is fair in the circumstances, and on the employer's staffing resources.
Sometimes the employee's line manager is the person best placed to investigate.
Sometimes the best person is someone who does not know the employee under investigation.
But the investigator should not have been a witness, in any way, to the events being investigated, unless this is unavoidable taking into account the employer's resources.
Again, unless unavoidable, the investigator should not be the person who makes a decision at the disciplinary hearing or at

any appeal hearing.
Sometimes, depending upon the employer's resources, an investigator should have had relevant training; for example, equal opportunities training where there is an allegation of sex discrimination.
Sometimes an investigator might need to have certain skills; for example, someone who knows how to operate specific machinery.
The essential point is that the investigator must carry out a fair investigation and ensure that this is self-evident from the paperwork (documents and written statements from witnesses) collated in the investigation.
The employer might need to rely on this paperwork in the event of an employment tribunal claim based on an allegation that the investigation was not thorough enough or otherwise flawed.

An investigation hearing is not a disciplinary hearing

Employees have no statutory (or legal) right to be accompanied by a companion at an *investigation* hearing, whereas they have a statutory right to have a companion at a *disciplinary* hearing.
A *companion* is a work colleague of their choice or a trade union official.
If the employee needs help to respond to the allegations the employer should provide or allow such help unless it is not practical to do so.
And employers should take into account any disability the employee might have when arranging an investigation hearing; for example, making sure an employee with impaired hearing can hear what is being said.
Or if English is not the employee's first language it might be necessary to engage an interpreter.
If the employee admits the misconduct during the investigation

the admission does not mean that the employer can dismiss or impose another penalty without a formal *disciplinary* hearing. To do so is likely to result in a finding by an employment tribunal that the dismissal was unfair.

The evidence required

- The investigator should examine all the evidence which is available.
- Usually, the evidence is relevant documents and written statements taken from witnesses.
- All potential witnesses should be interviewed and written statements taken from them, including from the employee who is alleged to have committed the misconduct.
- When all the evidence has been collated by the investigator he or she should do a written report for the employer.
- The employer should decide, after considering the report, whether there are reasonable grounds to hold a disciplinary hearing.
- The employee can make a reasonable request for specific information or documents or written statements to be gathered.
- The more serious the allegations; the more thorough the investigation needs to be.
- The investigator should keep a full written record of the investigation in case the employee alleges the investigation was unfair or flawed.
- In appropriate circumstances the identity of a witness can be kept anonymous and written statements redacted or anonymised if necessary.
- The investigation should be kept confidential as far as is possible.
- The investigation has to be fair and reasonable otherwise the disciplinary procedure will be deemed unfair.

Suspension of employee

If the alleged misconduct is serious the employer can suspend the employee pending the investigation report, and a decision as to whether to proceed to a disciplinary hearing.

Suspension in writing

Any suspension should be confirmed in writing.
The suspension letter should say how long the suspension is likely to last and whether any restrictions are being imposed during the suspension; for example, that the employee must not contact a particular colleague or visit the workplace.
The suspension letter should identify the person the employee should keep in touch with during the suspension.
The employer should be make clear to the employee that a suspension does not mean that the employer already believes the misconduct allegations to be true.
Suspension is a serious step, which can be particularly upsetting for the employee, so the employer should consider whether suspension is warranted in the circumstances or could be avoided.

Suspension without pay

Unless the employment contract reserves a contractual right to the employer to suspend an employee without pay; a suspension without pay is likely to be breach of contract.
In any event, suspension without pay is usually justified only if the allegation under investigation is particularly serious, for example, an allegation of a serious assault on a work colleague.
Basically, the advice is not to suspend an employee without pay, even if the contract permits this, but to ensure that the investigation and any subsequent disciplinary happen as quickly as possible in the interests of all concerned.
A suspension without pay risks a claim in an employment tribunal of *unlawful deductions from wages.*

Or worse, a suspension without pay could lead to the employee resigning and then making a claim of *constructive dismissal* (if they qualify by 2 years' length of service to make such a claim).

A Fair Disciplinary hearing

An employer should not proceed to a disciplinary hearing unless a fair investigation has disclosed reasonable grounds for believing that the evidence warrants a disciplinary hearing. The time and place for the disciplinary hearing should be agreed with the employee.

Requirement to attend a disciplinary hearing

The instruction to the employee to attend a disciplinary should be in writing and cover the following points:

- remind the employee that they remain suspended pending the disciplinary (if this is the case);
- set out the allegations in as much details as is necessary to make them clear;
- include copies of all relevant documents including written statements taken from witnesses;
- remind the employee that they have a statutory right to have a work colleague of their choice or an accredited trade union official, with them at the disciplinary as their companion;
- include copy of the written disciplinary procedure which will be in the staff handbook or in a stand-alone document, unless the chair person is aware that the employee already has a copy;
- sometimes say that the employee will consider a reasonable request for a person (other than a work-colleague or trade union official) to attend as their companion;
- ask the employee to confirm that the date, time and place for the disciplinary is acceptable to them, and if not, to suggest alternative arrangements;
- ask the employee whether they require copies of other

documents or for written statements to be taken from other any other person;
- ask the employee whether they wish to call a witness and, if so, that they should provide a written statement from that person in good time before the disciplinary;
- ask whether they require any specific arrangements to be made to assist them at the disciplinary (such as an interpreter if the employee's first language is not English);
- identify the person who will be present at the disciplinary to take formal notes, or ask whether the employee has any objection if the hearing is recorded electronically instead of by taking notes;
- set out briefly the possible consequences if the allegations against the employee are believed to be true on the balance of probability, making it clear that no decision will be made until the conclusion of the disciplinary.

The *balance of probability* is the legal test used in civil cases where a judge has to decide what he or she believes are most likely to be the facts, or what happened, based on the evidence they have heard in the case.

Arranging a date for the disciplinary hearing

The employer should not insist on a time and place for the disciplinary hearing unless the employee is being unreasonable. The employer should agree to any reasonable request by the employee to postpone a disciplinary hearing.

If the employee fails to attend the first arranged disciplinary hearing without a good reason the employer should reschedule the disciplinary hearing at least once and not proceed in the absence of the employee on the first occasion.

The employer should not hold any disciplinary hearing in the absence of the employee unless it is clear that there is no good reason for the non-attendance.

If it is clear that, without a good reason, the employee has failed to attend a disciplinary hearing, which has been

rescheduled at least once, the employer could proceed with the disciplinary hearing in the absence of the employee, providing the employee has been warned that the disciplinary hearing will proceed in his or her absence unless he or she has a good reason for not attending.
If the employee's companion cannot attend on the proposed date for the disciplinary hearing, the employee can suggest another date, and the employer should accept the change if it is reasonable.

The employee suffering stress or ill health

It is not unusual for an employee to say they are stressed or suffering from an illness, when asked to attend a disciplinary hearing, in which case the employer should give the employee the benefit of any doubt and agree to postpone the disciplinary hearing until the employee says they are well enough to attend. However, the employer should not allow the disciplinary procedure to 'drag on' and it might be necessary to request a medical report on whether the employee is fit to attend a disciplinary hearing.
As always, the employer has to comply with the *Access to Medical Reports Act 1988* when requesting a medical report. This Act requires to employer to ask the employee to complete a form which sets out the employee's legal rights in regard to the request, and the completed form is then sent to the employee's doctor or medical advisor.

Chair person

The person who chairs the disciplinary hearing, and will make the decision, should not be the same person who investigated, unless there is no one else available.
If possible, the chair person should not have been involved in the matters or events which have caused the disciplinary hearing.
It is permissible to have a suitable qualified external consultant

act as chair person.

Companion

By law, the employee is entitled to have a work colleague of their choice or a trade union official as their companion at a disciplinary hearing (this statutory right does not apply at an investigation meeting).

- The companion can present the employee's case.
- The companion cannot answer questions for the employee.
- The companion can ask questions of witnesses.

Point to note: There is no statutory right for the employee's solicitor to be the companion. Similarly, there is no right for the companion to be a relative or a family friend.

Notetaker

It is good practice for a notetaker to take minutes of the disciplinary hearing for the employer.

Preferably, the notetaker should not have been involved in the matters or events which have caused the disciplinary hearing.

The employee should be allowed to take written notes, or another person should be allowed to take written notes for the employee.

Anyone else present may also make notes of the meeting unless the employee or the chair person raises a reasonable objection.

Any handwritten minutes should be kept and preserved (filed away) even if they are typed up later. The reason is that if the employee objects to the contents of the typed notes they will need to be compared to the original handwritten notes. And sometimes, if there is a tribunal claim, questions are asked at the tribunal hearing as to why the handwritten notes are no longer available to be the subject of cross-examination.

The employee should be sent a copy of the typed or handwritten notes, or both, and be asked to confirm that the notes are an accurate reflection of what was said and done at the meeting. If the employee does not confirm this they should be asked

to identify what they say is inaccurate content and give their version.
As with the paperwork at the investigation stage, the chair person must ensure that it is evident from the notes of the disciplinary meeting and the paperwork used in the meeting that a fair disciplinary procedure was followed before arriving at any decision to dismiss or otherwise penalise the employee. The employer may need to rely of such paperwork in the event of an employment tribunal claim based on an allegation that the disciplinary hearing was flawed.

Electronic recordings

These days it is easy to record conversations covertly by using a concealed mobile phone or perhaps a recording device disguised as a pen.
If either the employer or the employer wishes to make an electronic recording of the disciplinary hearing then this should be done by agreement.
The electronic recording should then be using a suitable recording device so that what is said at the meeting is crystal clear.
A typed transcript of the recording will need to be made in the event of a claim by the employee to an employment tribunal. If there is disagreement, the employer will need to rely on handwritten notes by a notetaker.

> The author once represented an employer at a tribunal hearing when the ex-employee, claiming unfair dismissal, alleged that at the disciplinary hearing 'their boss' shouted threats at them. The 'boss' denied this. The evening before the tribunal hearing the claimant, who did not have a lawyer, sent the author a CD with a covert recording of the disciplinary on which the 'boss' could be heard shouting threats. The judge allowed the CD to be used in evidence despite the last minute disclosure

> of its existence. The employer lost because of the CD and had to pay compensation. It is fair to say that, if the claimant had been represented by a lawyer probably the CD evidence would not have been admissible in evidence because of the late disclosure: the claimant succeeded because they were 'acting in person'. We think the anecdote illustrates that employers need to be circumspect in what they say to an employee at all times. If the 'boot had been on the other foot', and it was the employer who had made a covert recording of the claimant shouting threats and disclosed it late, it is unlikely that the tribunal would have allowed the CD to be used in evidence.

Employers should know that covert electronic recordings may be admissible in evidence at a tribunal hearing.

The Disciplinary Hearing

Both the employer and the employee should give each other advance notice of any witnesses who will attend the disciplinary hearing to give evidence in person and give copies of any written statements by witnesses in advance.

At the beginning of the hearing the chair person should:

- try and put the employee at their ease;
- check that the employee has no objection to anything;
- if the employee does not have a companion at the hearing the chair person should remind the employee that they have a statutory right to be accompanied by a work colleague of their choice or a trade union official;
- check that the employee has received copies of relevant documents including a copy of the disciplinary procedure and had sufficient time to read, understand, and respond to any document;
- explain the reason for any persons present and the agenda for the hearing;

- go through the allegations of misconduct and the evidence in support of the allegations;
- invite the employee, and the employee's companion if there is one, to ask any questions;
- give the employee, and any companion, an opportunity to put the employee's case, and to call witnesses in support of the employee's case;
- allow the witnesses to be asked relevant questions;
- conclude by asking whether there are any additional matters the employee wishes to raise or whether the employee thinks any relevant points have been missed;
- in general, not say anything which could be interpreted as evidence that the chair person has prejudged the disciplinary decision.

Once both the employer and the employer have said what they want to say and witnesses have been heard the chair person should summarise the main points which are relevant.

Further investigation

It may be that during the disciplinary hearing it becomes clear that further investigation is required into some of the points raised. In that event, the chair person should adjourn the disciplinary hearing for appropriate further investigation to take place.

Decision

Some employers give their decision at the end of a disciplinary hearing. However, this is not best practice. Giving the decision straight away could leave the employee with the impression that the decision was prejudged.

At the end of the disciplinary hearing the chair person should say how long reaching a decision is likely to take.

The chair person should then take a suitable time to reflect of what has been said at the disciplinary hearing and consider the documents.

It is usually best to give a decision on the next working day or as soon as practical thereafter.
The chair person should consider all penalties which could be in a range of decisions from soft to hard.
We define *soft* as being a degree or so more than *weak* and *hard* as being a degree or so less than *harsh*.
Weak would not be good for overall discipline, and *harsh* is likely to result in a finding against an employer in an employment tribunal.
If the employee or ex-employee makes a claim to an employment tribunal the function of the tribunal is not to say what it would have done but to say whether what this employer did was within *a band of reasonable responses*.

A fair dismissal

To be fair a dismissal has to satisfy two conditions — (A) and (B).
(A) The reason, or the principal reason for the dismissal, must fall within one or more of 5 categories:
(1) capability;
(2) conduct;
(3) redundancy;
(4) breach of a statutory duty or restriction;
(5) some other substantial reason.
In effect (5) is anything which is not mainly in the first four, and usually referred to as an SOSR dismissal.
(B): The employer must be reasonable in dismissing for the reason(s) in (1) to (5) above.
To be reasonable the decision to dismiss must be within a band of reasonable responses.
To be reasonable the employer must also have been through a fair disciplinary procedure before arriving at the decision to dismiss.

Warnings

If the employee is not working to a reasonable standard the employee should be given at least one warning to improve.
An employer must not use warnings oppressively. For example, an employer must not give an unjustified warning.
A written warning should be clear as to the reasons for the warning and say how long the warning will last.
A warning should last only as long as is reasonable and justified. For example, 6 months for a first written warning; 12 months for a final written warning.

Demotion or other penalties

An employer should consider alternatives to dismissal, for example, demotion.
However, another penalty, such as demotion, could be a breach of the employment contract and instigate a claim to an employment tribunal, or loss of pay could instigate a claim of unlawful deductions from wages.
In general terms, it is wise not to be novel and impose a penalty which differs from one which is the norm in the circumstances.

Letter

The chair person should write to the employee with their decision as soon as possible and without undue delay.
The letter should make clear why the chair person has reached the decision.
Even though the employee will have been given a copy of the disciplinary procedure before the disciplinary hearing, the letter or email with the decision should remind the employee that they have a right of appeal and say to whom any appeal should be addressed with the time frame for lodging an appeal.

Appeals

The appellant (the employee who is appealing) has a right of appeal against any disciplinary decision.
A time limit for the appeal should be stated in the disciplinary procedure; at least 5 working days is often recommended.
If an appeal is made after the time limit, in all probability, it should still be considered.
If possible, an appeal should be dealt with by a person not previously involved.
It should be made clear to the appellant that the grounds of appeal should be set out in full in writing.
Appellants have a right to be accompanied by a companion (work colleague or trade union official) at an appeal hearing.
An appeal may be either a *review* of the disciplinary decision or a *full rehearing*.
It may be wise to hold a full rehearing if the appellant alleges in their appeal that there was a procedural defect in the disciplinary hearing.
It is possible to remedy a procedural defect in a disciplinary hearing if there is a full rehearing on appeal (not if there is only a review), but this is not something which should be relied upon.

Appeal letter from the employer

To avoid any misunderstanding, the person chairing the appeal should make clear to the appellant, in the letter or email inviting them to the appeal, that it will be dealt with as either a review or a full rehearing.
The invitation should remind the appellant that they have a statutory right to bring a companion to the appeal.
The appeal should, if it is to be a full rehearing, in so far as is practical, be a re-run of the disciplinary hearing (with any defect remedied) and the same advice, as under the previous section headed *A fair disciplinary hearing*, will apply.
Even if the appeal is dealt with by way of a review it should be

done in such a way as to avoid giving the impression that the appeal was simply an exercise to rubber-stamp the decision at the disciplinary.

Acas guidelines

There are two Acas books on disciplinary procedures.
The first book is called *Code of Practice 1 - Disciplinary and Grievance Procedures*. For ease of reference we call it *the Code*.
The most recent edition of the Code was published in 2015.
The second book is called *Discipline and Grievance at work - The Acas Guide*. For ease of reference we call it *the Guide*.
The most recent Guide was published in 2020.
The Code and the Guide can be downloaded from the Acas website:

The Code — main bullet points

- The Code is based on the obvious point that the employer and the employee should behave reasonably and fairly towards each other.
- If an employee makes a claim to an employment tribunal of, for example, unfair dismissal, the employment tribunal will take into account what the Code says when reaching a judgment.
- Although a failure by the employer to follow the Code does not mean that the employer is bound to lose a tribunal case, an employment tribunal is more likely to find in favour of the employee.
- If the employment tribunal thinks that the employer *behaved unreasonably* in not following the Code the employment tribunal can increase an award of compensation to the employee by up to 25%.
- *The other side of the coin is that*, an employment tribunal can reduce an award of compensation to the employee by up to 25% if the employee *unreasonably* failed to follow the Code, for example, by not appealing against a dismissal

without a good reason.

- The Code does not apply to dismissals due to redundancy or the non-renewal of fixed term contracts on their expiry.
- Employers and employees should always try to resolve disciplinary and grievance problems informally if an informal resolution is likely to be possible.
- Engaging an independent third party (that is, someone who is not a staff member or, if they are a staff member, were not involved in the matters or events which have caused the problem) might help resolve the problem.
- Employers should keep a written record of any disciplinary problems or grievances by employees, unless the problem or grievance is dealt with informally, for example, by a line manager having a quiet word with an employee over a relatively minor matter, such as taking tea breaks for longer than is allowed.
- Certain matters might need to be dealt with under a different Code, such as under a *Policy Against Bullying*.
- If an employee is under-performing their job duties this could be because of (1) misconduct or (2) inability to do the job or (3) it could be a mixture of (1) and (2).
- If it is clear that the employee is under-performing and that some sort of misconduct (for example, poor time-keeping without a good reason) is the cause, or part of the cause, then it will be a disciplinary matter.
- If it is clear that the employee is under-performing and that some sort of inability (for example, an illness) is the cause, then it will be a matter of following an *Appraisal Procedure* or agenda to try to help the employee improve.
- *A Disciplinary Procedure* and *a Grievance Procedure* should be in writing (this is a requirement by law and not just a recommendation by Acas) and copies given or made easily available for employees (for example, on an intranet if the employees have access to an employer's computer system).
- Managers should be given training or made aware of how best to use a disciplinary procedure.

- When deciding whether an employer has acted fairly and reasonably an employment tribunal will take an employer's resources into account (for example, a sole owner of a business might not be expected to have one person deal with a disciplinary hearing and another person deal with an appeal) but it is not sensible for an employer to ignore the Code simply because they are a small business.
- When disciplinary action is required an employer should act as quickly as is reasonable in the circumstances; an undue delay might result in the disciplinary procedure being deemed to be unfair.
- Employers should be as consistent as is reasonable in the way they use a disciplinary procedure.
- Before embarking on disciplinary action an employer should investigate and give proper consideration of all relevant documents and statements from all available witnesses, to properly establish the relevant facts in as far as is possible.
- If, after a proper investigation, the employer has a reasonable cause to believe that the misconduct has occurred, there should be a fair disciplinary hearing before any disciplinary action is taken.
- Employee have a legal right to have a companion (work colleague or trade union official) at a disciplinary hearing.
- An employee must be allowed to appeal against a disciplinary decision.
- If at all possible, the person who holds the disciplinary should not be the same person who investigated.
- Although an employee has no statutory right to have a companion (work colleague or trade union official) at an investigation meeting, it is a best to allow a companion to attend if the employee asks.
- An investigation meeting should not become a disciplinary hearing even if the evidence at the investigation meeting appears conclusive.
- Any period of suspension prior to a disciplinary hearing should be as brief as possible.

- It should be made clear to the employee that a suspension does not mean that a disciplinary decision has been reached without having held a disciplinary hearing.
- The employee should be invited to any disciplinary hearing in writing; the written invitation should include enough details to enable the employee to fully understand the allegation(s) of misconduct and the evidence.
- The employee should be sent copies of all written evidence as well as any electronic or photographic evidence (for example, an electronic recording) to give the employee enough time to consider and possibly counter this evidence.
- The employee should also be warned of the possible penalty, for example, dismissal, if the disciplinary hearing results in a finding of misconduct.
- The written invitation to a disciplinary hearing should say where and when the hearing will take place, who will be present, and remind the employee that they have a legal right to be accompanied by a companion (work colleague or trade union official).
- The disciplinary hearing should take place as soon as possible after allowing the employee sufficient time to prepare his or her side of the case.
- The employer should agree to change the time and place of the disciplinary hearing if the employee makes a reasonable request to do so.
- There are no rules as to how to hold a disciplinary hearing as long as the employee is given every reasonable opportunity to put their case and make all the points they wish to make.
- *A reasonable opportunity to put their case* includes an opportunity for the employee to ask questions and challenge the employer's points and to produce any evidence or make points in his or her favour.
- If either the employer or employee wishes to ask relevant witnesses to attend and give evidence in person at the disciplinary hearing they should say in advance that they intend to do this.

- Employees have a statutory (*statutory* means *legal*) right to be accompanied by a companion (work colleague or trade union official) when a meeting or hearing with the employer could result in (1) a formal warning or (2) some other disciplinary action (for example, a dismissal or a demotion).
- The statutory right to have a companion is limited to either a work colleague or a trade union official; there is no statutory right to have another person (for example, a solicitor or a relative) as a companion but the employer can allow this.
- If the employee wishes to have a companion they must make a reasonable request.
- The companion is allowed to present the employee's case (for example, speak for the employee).
- The companion is not allowed to answer questions put to the employee.
- The person who held the meeting on behalf of the employer should write to the employee with his or her decision as soon as practical after the hearing.
- An employer should think long and hard before dismissing an employee for a first offence which amounts to *misconduct* as opposed to *gross* misconduct.
- Whether behaviour (or non-behaviour) can be said to be gross misconduct depends, to a large extent, on what an ordinary person, viewing the events objectively, would consider to be gross misconduct.
- If the employer reasonably decides that a written warning is necessary the warning could be a first warning, or a second or even a third warning where there has been a repetition of the misconduct, or, if the conduct is sufficiently serious, the employer could go straight to a final warning; as to what is reasonable with regard to a warning very much depends on the circumstances.
- A written warning should outline the misconduct in question, and detail any necessary improvement required, with an agenda for the improvement, and the probable consequences (for example, a dismissal) if the warning is not effective.

- The employer should make clear how long a warning will remain live; that is to say, be taken into account if there is further misconduct.
- A letter dismissing an employee should make clear why the employee is being dismissed, and make clear the exact date on which the employment ended or will end, and remind the employee that there is a right of appeal.
- Employees should not be dismissed for misconduct without a disciplinary hearing.
- An employer must have a written disciplinary procedure (*section 1 Employment Rights Act 1996*) which should give a list of examples of conduct considered to be gross misconduct, making it clear that other conduct (not listed) might be considered to be gross misconduct.
- An employer can hold a disciplinary hearing in the absence of the employee providing the employer has given the employee every opportunity to attend and the employee fails to attend without good reason.
- An employee who is dismissed or otherwise penalised after a disciplinary hearing has a right of appeal;
- A decision following a disciplinary hearing should be in writing and say that there is a right of appeal and what to do to appeal.
- The employer should ask the employee to set out any ground(s) of appeal in writing.
- An appeal should be heard as soon as practical.
- An appeal should be heard by a more senior manager who was not involved in the investigation or disciplinary hearing (this might not be possible if the employer does not have sufficient personnel).
- Employees have a right to be accompanied by a companion (work colleague or trade union official) at an appeal hearing on the same basis as at a disciplinary hearing.
- The employer should write to the employee with the decision on appeal as soon as possible.

The Guide

The Guide gives more general advice than the Code.
The Guide has some sample documents and templates.
Employment tribunals must have regard to the Code when reaching a judgment, but are not required to have regard to the Guide.

Disciplinary Procedure - TEMPLATE

This template is written on the basis that the employer is a limited company with at least one director and has line managers.
The lists of conduct amounting to misconduct and gross misconduct are only suggestions.
Please amend the template as appropriate to reflect the set-up of your particular business.

DISCIPLINARY PROCEDURE
1. Disciplinary Rules
1.1 The Company requires good standards of discipline from employees, together with satisfactory standards of work. This procedure apply to any misconduct or failure to meet standards of performance or attendance. The procedures are referred to in your employment contract or in the written statement given to you in compliance with section 1 of the Employment Rights Act 1996 as amended. For the avoidance of doubt this disciplinary procedure is not contractual, meaning the Company reserves the right to deviate from the procedure to the extent permitted by law.
1.2 The purpose of the procedure is to be corrective rather than punitive and it should be recognised that the existence of procedures such as these is to help and encourage you to achieve and maintain standards of conduct, attendance and job performance and to ensure consistent and fair treatment for all employees.
1.3 If your standard of work or conduct falls and, after warnings,

remains below the level which is acceptable, you may be dismissed.
1.4 Summary dismissal without notice will take place if an act of gross misconduct is committed. Gross misconduct is any deliberate act by an employee that is detrimental to the good conduct of the Company's business. Examples of misconduct and gross misconduct are listed below.
2 The following is a non-exhaustive list of examples of offences which amount to misconduct falling short of gross misconduct:
unauthorised absence from work;
lateness;
unacceptable performance;
inappropriate standard of dress;
time wasting;
contravention of minor safety regulations;
disruptive behaviour;
unauthorised use of the telephone or email;
1.6 The following is a non-exhaustive list of examples of offences which amount to gross misconduct:
dishonesty;
falsification of Company records;
failure to comply with statutory or regulatory requirements;
serious insubordination;
violent, abusive or intimidating conduct;
deliberate damage to Company property;
sexual, racial or other harassment;
unauthorised use or disclosure of confidential information;
attending work under the influence of alcohol or non-medically prescribed drugs;
reckless or serious misuse of a company vehicle;
rudeness to customers;
any action likely to bring the Company into disrepute;
accepting a gift which could be construed as a bribe;
sleeping on duty;
smoking on company premises or in vehicles;
breach of Health and Safety rules which endanger the health

and safety of others;
refusing to allow a search to be carried out in accordance with Company rules;
failure to disclose correct information on your application form;
conviction for any serious criminal offence while an employee.
2 Disciplinary hearings
2.1 No disciplinary action will be taken until the case has been fully investigated.
2.2 At all stages. you will be advised of the nature of the complaint and will be given the opportunity to state your case before a decision is made.
2.3 You may, if you wish. be accompanied by work colleague or a trade union official of your choice at any disciplinary hearing.
3 Disciplinary procedure
3.1 Except for acts of gross misconduct, the following procedure will normally be adopted.
3.1.1 For minor breaches of discipline, or failure to achieve satisfactory standards, a formal oral warning will be given. normally by your line manager. This will be removed after 6 months in the absence of further offences.
3.1.2 For more serious offences, or in the event of further minor transgressions, a warning will be given in writing. This warning will normally be given either by your line manager or by a more senior manager or a director. This will be removed after 12 months in the absence of further offences.
3.1.3 In the event of further repetition of the misconduct or a failure to comply with a requested improvement, or in the case of misconduct or failure to comply with standards which do not amount to gross misconduct but which warrant a first and final warning, a final written warning will be issued by a senior manager or a director. This warning will specify that the consequences of a failure to comply will normally be dismissal. This will be removed after 12 months in the absence of further offences.

3.1.4 In the event of any further misconduct or failure to achieve satisfactory standards or in the case of misconduct not amounting to gross misconduct but warranting dismissal, dismissal may result.
3.2 In cases of gross misconduct you will normally be dismissed without notice or pay in lieu of notice. If there are mitigating circumstances, alternative disciplinary action may be taken.
4 Rules for suspension of staff
4.1 Suspension will be on full pay and you will be informed in writing of this at the time.
4.2 The suspension will not normally be for more than 5 working days.
5 Appeal
5.1 If you are dissatisfied with any disciplinary decision affecting you, you may appeal to the level of management immediately above that at which the decision was taken within 5 working days of the disciplinary decision.
5.2 If the disciplinary action which is the subject of the appeal is your dismissal the decision to dismiss will stand unless it is reversed on appeal.
5.3 Any appeal must be put in writing, stating the grounds for the appeal. The appeal will be heard by an appropriate senior manager or a director who has not been involved in the initial proceedings. Normally, the Appeal will be by way of a review but may be a rehearing of the disciplinary hearing if the circumstances require this.
5.4 The decision of the manager or director hearing the appeal is final.

Other Bullet Point books

Defending Employment Tribunal Claims
Disability Discrimination
Settlement Agreements
Redundancy
TUPE
Homeworking

About Worklaw

Worklaw specialises in giving help and advice and training to employers on all aspects of UK employment law.

Worklaw is comprised of a group of self-employed independent employment law consultants and human resource managers who all work from home. This means that *Worklaw* can charge much less than its competitors for the same level of service to clients as we do not have office overheads and expensive support staff.

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- human resource management on long or short retainers;
- employment law training and seminars;
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- drafting employment contracts, staff handbooks, etc.

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The font is *Computer Modern* which, despite its name, is designed to resemble a typeface commonly used for body text in the late nineteenth century.
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