INDIVIDUAL RIGHTS OF EMPLOYEES: A guide for employers and employees (Revision 11) – recent changes to employment law which affect the text of this booklet as at November 2005

Please note this amendment slip is only available with Individual rights of employees, URN 04/1816 (and should only be read in conjunction with this publication), which can be ordered from the DTI Publications Orderline on 0845 015 0010 or by email at: publications@dti.gsi.gov.uk For further information on employment rights call the Acas Helpline on 08457 47 47 47.

Pay – National Minimum Wage (NMW) (page 13) changes from 1 October 2005:
• the main NMW rate for those aged 22 or over was raised to £5.05 an hour from £4.85;
• the development rate for those aged 18-21 inclusive (and for older people receiving accredited training for up to 6 months after starting a new job with a new employer) was raised to £4.25 an hour, from £4.10;
• the rate for under 18 year olds (who are above the age of compulsory schooling) is £3 an hour.
For further information on the National Minimum Wage (NMW) contact the NMW Helpline on 0845 6000 678.

Dismissal and notice periods – Unfair dismissal (pages 22-26). The following are now automatically unfair reasons for dismissal:
• grounds related to the European Public Limited-Liability Company Regulations 2004;
• grounds related to the Information and Consultation of Employees Regulations 2004 for undertakings with 150 employees (from 6 April 2007 for undertakings with 100 employees and from 6 April 2008 for undertakings with 50 employees);
• grounds related to jury service;
• grounds related to making a statutory request for flexible working;
• failure to accept an unlawful inducement to give up trade union (TU) rights or to disapply collective agreements, or an offer to induce an employee to become a TU member;
• refusal to make (or to have deducted from wages) a payment in lieu of TU membership.

In addition, the maximum period of lawfully organised industrial action which will make dismissal of an employee during that period unfair has been increased from 8 weeks to 12 weeks.

Protections relating to asserting a statutory right have been created under the Information and Consultation of Employees Regulations 2004 and the European Public Limited-Liability Company Regulations 2004. The last of these also provide for reasonable time off with pay for certain representatives.

Dismissal and notice periods – Dismissal relating to jury service
Employees will be protected from dismissal if the reason is that they have been summoned for jury service or have been absent from work on jury service. There is no qualifying period of service or upper age limit for complaints of dismissal for these reasons. This protection will not apply if the employer shows that the employee’s absence will cause substantial injury to his business and makes this known to the employee, who nevertheless unreasonably refuses, or fails, to apply to be excused from jury service or to have his jury service deferred. Certain protections against detriment also apply.

Anti-discrimination – Sex and race (pages 47-48)
From October 2005, there are a small number of changes to the Sex Discrimination Act 1975 to help clarify the law. These include making explicit the fact that discrimination on the grounds of pregnancy and maternity leave, and sexual harassment and harassment on the grounds of sex are unlawful. An explanation of the changes can be found on the DTI Women and Equality Unit website: www.womenandequalityunit.gov.uk/legislation/index.htm
For more information, call the Equal Opportunities Helpline on 0845 601 5901.

Anti-discrimination – Disability (pages 50-52)
Under the Disability Discrimination Act 1995, someone is considered disabled if they have a “physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day to day activities.” From 5 December 2005, the definition will be widened to provide protection for people with cancer, HIV and multiple sclerosis, effectively from the point of diagnosis. The requirement that a mental illness must be “clinically well-recognised” in order to qualify as a mental impairment will also be removed.

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EMPLOYMENT LEGISLATION

INDIVIDUAL RIGHTS OF EMPLOYEES: A GUIDE FOR EMPLOYERS AND EMPLOYEES - PL 716 (REV 11)

Preface

This guide outlines employees' individual rights and the corresponding obligations for employers. It is written in general terms and is not a complete or authoritative statement of the law. You should be alert to the possibility that developments in case law may affect these rights.

Except where the document says that a right applies to wider groups of workers, it applies only to employees.

The precise definition of who is an employee and who is a worker differs slightly from one area of legislation to another; but in general an 'employee' is someone who works for an employer under the terms of a contract of employment, whether it is written down, agreed orally or implied by the nature of the relationship. Many casual workers are likely to be employees with short-term contracts.

A 'worker' is any individual person who works for an employer, whether under a contract of employment or not, who provides a personal service e.g. a casual worker, agency worker, or some freelance workers. For the most part, genuinely self-employed people or businesses to whom an employer subcontracts are not defined as workers.

All employees are workers, but not all workers are employees. Many rules, regulations and rights apply only to employees, but a number apply to all workers. Where 'workers' are referred to, remember that it is not just employees that have to be considered in relation to these rules and regulations - anyone who works for an employer that isn't self-employed or employed by someone else is entitled to these rights.

Most of the provisions covered by this document were consolidated into the Employment Rights Act 1996. Since then there have been some additions and amendments to the Act, principally by the Employment Relations Act 1999 and the Employment Act 2002.

Some rights outlined in this guide are contained in other legislation, in particular in the:

- Equal Pay Act 1970;
- Rehabilitation of Offenders Act 1974;
- Sex Discrimination Act 1975;
- Race Relations Act 1976;
- Safety Representatives and Safety Committees Regulations 1977;
- Transfer of Undertakings (Protection of Employment) Regulations 1981;
- Trade Union and Labour Relations (Consolidation) Act 1992;
- Disability Discrimination Act 1995;
- Working Time Regulations 1998;
- Public Interest Disclosure Act 1998;
- National Minimum Wage Act 1998;
- Maternity and Parental Leave etc. Regulations 1999;

Further information and advice on the legislation are available from the Advisory, Conciliation and Arbitration Service (Acas), which has a general duty to promote the improvement of employment relations and is independent of Government. Enquiries about redundancy payments should be made to a Redundancy Payments Office.

More detailed information on many of the rights can be found in other employment legislation guidance.
Note: the rights and obligations of employers and employees are also affected by statutory provisions which are outside the scope of this document. You are advised to approach the relevant organisations for details of, for instance, health and safety legislation (the Health and Safety Executive), taxation, National Insurance (HM Revenue and Customs) and Statutory Sick Pay (Department for Work and Pensions).
Qualifying conditions, contracts and written statements

The contract

The legal relationship between employer and employee is one of contract, based on common law principles. Statutes have established a number of further rights for employees. A contract of employment exists when an employer and employee agree the terms and conditions of employment. This is often shown by the employee's starting work on the terms offered by the employer. Both are bound by the agreed terms. A contract of employment need not be in writing, although contracts of apprenticeship must be. Employees are entitled to a written statement of the main particulars of their employment. This statement is not in itself a contract but provides information on the contracts main terms.

Many statutory employment rights are minimum terms. The employer and employee are free to agree better terms between themselves in a contract of employment or collective agreement.

When the terms of a contract of employment are not adhered to, either the employee or the employer may have grounds to make a complaint of breach of contract. Brief details of this are set out in the Complaints and remedies section of this document. There is more information in the document 'Contracts of Employment'.

Written statement of employment particulars

Generally employers must give employees a written statement of the main particulars of employment within two months of the beginning of the employment. It should include, amongst other things, details of pay, hours, holidays, notice period and an additional note on disciplinary and grievance procedures.

Employees who are not given a written statement of employment particulars by their employer or notification of a change in those particulars, or who contest the accuracy of the written statement, may refer the matter to an employment tribunal. Employers also may refer a dispute about the accuracy of a written statement to an employment tribunal. If the employment has come to an end, the reference must be made within three months of the end of the employment. The tribunal will decide what particulars the employee should have been given. For further details see the document 'Written statement of employment particulars'.

Continuity and calculation of payments

Some of the individual employment rights described in this document depend on an employee having worked a qualifying period of continuous employment.

Normally only employment with the present employer counts towards continuous employment. But there are certain circumstances in which a change of employer does not break continuity.

Whether those on Government-assisted courses of training in the workplace are employees or workers will depend on the nature of the relationship they have with the employer. If it is an employment relationship, then their period of training may count towards the period of continuous employment necessary for certain employment rights. The rules for reckoning continuous employment, and also for calculating a week's pay and tribunal awards arising from employment rights, are summarised in the document 'Continuous employment and a week's pay: rules for calculation'.

Entitlement and time limits

Normally various qualifying conditions must be fulfilled before a right may be claimed. Some rights apply to all employees as soon as they start work; others depend on factors such as
length of service and continuity of employment. For certain rights, various groups of people are excluded.

If an employment right is denied or infringed, an employee can normally claim a remedy by making a complaint to an employment tribunal. This must be done within the time limit specified for the particular right. In most cases, the time limit for a complaint is three months after the date of the infringement of the right.

You should always check the rules on who qualifies for the right and its time limit by referring to the relevant employment legislation document.
Pay

National Minimum Wage

Workers are entitled to be paid at least the level of the statutory National Minimum Wage (NMW) for every hour they work for an employer. From 1 October 2004:

- the main NMW rate for those 22 or over is £4.85 an hour;
- the development rate for those aged 18-21 years old inclusive, and also for older people receiving accredited training for up to six months after starting a new job with a new employer, is £4.10 an hour;
- there will be a new rate for those under 16 and who are above school leaving age of £3.00 an hour.

The following do not qualify for the NMW: the genuinely self-employed, genuine volunteers, apprentices under 19, apprentices under 26 who are still within the first 12 months of their apprenticeship, students doing work as part of their undergraduate or post-graduate course, workers on certain training schemes, residents of certain religious communities, prisoners, the armed forces and share fishermen.

However, there are no exemptions according to size of business or by sector, job or region. All workers including agency workers, commission workers, part-time workers and casual workers must receive at least the NMW.

Other than money, the only benefit that counts towards the NMW is accommodation provided by the employer. From 1 October 2004 the amount that can be 'offset' is a maximum of £26.25 per week (£3.75 per day).

From 1 October 2004, employers will have to pay their output workers (including homeworkers) the NMW for every hour they work or pay a fair piece rate that allows an average worker to earn the NMW.

Employees may complain to an employment tribunal of unfair dismissal, regardless of length of service, if they are dismissed because they qualify for the NMW or because they seek to enforce their right to it. Workers who are not employees may complain that they have suffered a detriment if their contracts are terminated for any of these reasons. Both employees and other workers are also protected from other detrimental action or deliberate inaction by their employer.

For further information, see the document ‘A detailed guide to the national minimum wage’, contact the NMW helpline on 0845 6000 678 or visit the Tailored Interactive Guidance on Employment Rights (TIGER) website, or the NMW website.

Itemised pay statement

All employees are entitled to an individual written pay statement, at or before the time they are paid. The statement must show gross pay and take-home pay, with amounts and reasons for all variable deductions. Fixed deductions must also be shown, with detailed amounts and reasons. Alternatively, fixed deductions can be shown as a total sum, provided a written statement of these items is given to each employee in advance - or at the time - of issue of the first pay statement showing the total sum, and after that at least once a year.

A dispute relating to the itemised pay statement provisions may be referred to an employment tribunal by either an employer or an employee. If the employment has come to an end, the reference must be made within three months of the end of the employment.

Further details can be found in the document ‘Pay statements: what they must itemise’.
Unlawful deductions from wages
The law protects individuals from having unauthorised deductions made from their wages, including complete non-payment. This protection applies both to employees and to some workers.

One of three conditions has to be met for an employer lawfully to make deductions from wages or receive payments from a worker. The deduction or payment must be:

- required or authorised by legislation (for example, income tax or national insurance deductions); or
- authorised by the worker's contract - provided the worker has been given a written copy of the relevant terms or a written explanation of them before it is made; or
- consented to by the worker in writing before it is made.

Protections for individuals in retail work make it illegal for an employer to deduct more than 10 per cent from the gross amount of any payment of wages (except the final payment on termination of employment) if the deduction is made because of cash shortages or stock deficiencies. Workers who believe they have suffered an unlawful deduction from wages can make a complaint to an employment tribunal.

Further details can be found in the document ‘Contracts of employment- Guidance.’

Guarantee payments
Certain employees are entitled to a guarantee payment for up to 5 days in any 3-month period. This is payable for days on which they would normally be expected to work under their contract of employment, but throughout which their employer has not provided them with any work (because of, say, reduced demand or lack of raw materials).

Payment does not have to be made if:

- the employee has not completed one month's continuous employment with the employer;
- the employee unreasonably refuses suitable alternative work;
- the employee does not comply with the employer's reasonable requirement to be available to work;
- the short-time or lay-off results from a strike, lock-out or other industrial action involving any employee of the employer or of an associated employer.

If the employer makes a payment in respect of the workless day under the employee's contract of employment, it is offset against the liability to make a guarantee payment for that day.

Further details can be found in the document ‘Guarantee payments’. The current level of guarantee payment is given in the document ‘Limits on payments’. An advice leaflet on Lay-offs and short-time working can be obtained from Acas.

Redundancy pay
Employers have to make a lump-sum 'redundancy payment' to employees dismissed because of redundancy. The amount is related to the employee’s age, length of continuous service with the employer, and weekly pay up to a maximum - the current maximum is shown in the document ‘Limits on payments’. The employer must also provide a written statement showing how the payment has been calculated, at or before the time it is paid.

Service under the age of 18 does not count. Employees who have not completed two years’ continuous employment are not entitled to a redundancy payment. Entitlement is reduced from age 64 and ceases at the age of 65, or at the normal retirement age for the job if that is below 65. The maximum number of complete years' service used in calculating redundancy payments is 20.
Redundant employees may not be entitled to a payment if they are offered a new job with the same employer, an associated employer or a successor employer who takes over the business - provided the new job is offered before the old employment contract expires and starts within 4 weeks. If the new job differs, wholly or partly, in capacity, place, terms or conditions, an employee can put off the decision to accept it for a 4-week trial period; where retraining is necessary, this period may be extended by written agreement.

At the end of the trial period, if the employee is still in the job, he or she is regarded as having accepted it. Employees who reject the new job before the end of a trial period, because it turns out not to be a suitable alternative to the old job, or for good personal reasons, are considered to be redundant from the date the original employment ended. But if a redundant employee unreasonably refuses a suitable offer of alternative employment, no redundancy payments will be due.

Any dispute about whether a redundancy payment is due, or about its size, can be determined by an employment tribunal.

Insolvency of the employer

Employees who have been dismissed can receive payments of certain debts (within limits) owed to them by an employer who is formally insolvent, as defined in the legislation, from the National Insurance Fund.

These debts include arrears of pay for a period of at least one week but not exceeding 8 weeks in all; holiday pay for up to 6 weeks; compensation for the employer's failure to give them proper statutory entitlement to notice, and any basic award of compensation for unfair dismissal. 'Pay' includes commission, overtime and bonus payments if these are contractual payments; guarantee payments; statutory payments for time off work or suspension on medical or maternity grounds; and any protective award made by an employment tribunal because the employer failed to inform or consult the employee's representative about a collective redundancy. All these debts are subject to a maximum weekly limit which is revised each year - details are given in the document 'Limits on payments'.

The employee should normally first apply for payment to the insolvent employer's representative (for example, the liquidator, receiver or trustee) who will provide the necessary forms and will then pass the completed application to the Redundancy Payments Service. Payment is normally made direct to the employee.

There are also some safeguards for occupational pension rights: trustees of occupational pension schemes may apply to the employer's representative for payment from the National Insurance Fund, within certain limits, in respect of relevant contributions which remain unpaid at the date of the employer's insolvency.

Further details can be found in the document Redundancy and insolvency: a guide for employees on the Insolvency Service website.
Dismissal and notice periods

Written reasons for dismissal

Employee who are dismissed and have completed at least one year’s continuous employment are entitled to receive, on request (orally or in writing), a written statement of reasons for dismissal within 14 days. An employee dismissed during:

- her pregnancy or her ordinary or additional maternity leave
- his or her ordinary or additional adoption leave

is entitled to a written statement of the reasons regardless of his or her length of service and regardless of whether or not he or she has requested it.

There are further details about the written reasons for dismissal provisions in the document ‘Rights to notice and reasons for dismissal’

Notice of termination

Both the employer and employee are normally entitled to a minimum period of notice of termination of employment. After one month’s employment, an employee must give at least one week’s notice; this minimum is unaffected by longer service. An employer must give an employee at least one week’s notice after one month’s employment, two weeks after two years, three weeks after three years and so on up to 12 weeks after 12 years or more. However, the employer or the employee will be entitled to a longer period of notice than the statutory minimum if this is provided for in the contract of employment.

Most employees, subject to certain conditions, are entitled to certain payments during the statutory notice period.

Employees can waive their right to notice or to payment in lieu of notice; employers can also waive their right to notice. Either party can terminate the contract of employment without notice if the conduct of the other justifies it.

Further details about notice provisions can be found in the document ‘Rights to notice and reasons for dismissal’.

Unfair dismissal

Employees have the right not to be unfairly dismissed. In most circumstances they must have at least one year's continuous service before they have this right. However, there is no length of service requirement in relation to a number of 'automatically unfair grounds' (see below). Also, the requirement is reduced to one month for employees claiming to have been dismissed on medical grounds as a consequence of certain health and safety requirements that should have led to suspension with pay rather than to dismissal.

A complaint of unfair dismissal must be received by an employment tribunal within three months of the effective date of termination of the employment (usually the date of leaving the job) unless the tribunal considers this was not reasonably practicable. However, from 1 October 2004 the time limit for submitting some tribunal claims will also be extended in certain circumstances to allow statutory minimum dismissal, disciplinary and grievance procedures to be followed.

If both the employer and employee agree, instead of going to an employment tribunal, the case may be heard by an arbitrator under the Acas Arbitration Scheme. For further details, see section The Acas Arbitration Scheme.
When hearing the complaint, a tribunal will first need to establish that a dismissal has taken place. Once dismissal is established, it is normally for the employer to show that it was for a legitimate reason (see 'Fair dismissal'). Having established the reason for dismissal, the tribunal must then in most cases decide whether in the circumstances the employer acted reasonably in treating that reason as a sufficient one for dismissal. The circumstances taken into account include the size and administrative resources of the undertaking; but these considerations do not apply if the tribunal finds that the dismissal was on one of the grounds classed as automatically unfair, because it was for one of the following reasons:

- pregnancy or any reason connected with maternity;
- taking, or seeking to take, parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants;
- failure to return from maternity or adoption leave because the employer did not give or gave inadequate notice of when the leave period should end;
- matters connected to/making a request under the flexible working provisions of the Employment Rights Act 1996 as amended by the Employment Act 2002;
- taking certain specified types of health and safety action;
- refusing or proposing to refuse to do shop or betting work on a Sunday;
- grounds related to rights under the Working Time Regulations 1998;
- performing or proposing to perform any duties relevant to an employee's role as an employee occupational pension scheme trustee or as a director of a trustee company;
- grounds related to acting as a representative for consultation about redundancy or business transfer, or as a candidate to be a representative of this kind, or taking part in the election of such a representative;
- making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998;
- asserting a statutory employment right;
- grounds related to the national minimum wage;
- qualifying for working tax credit or seeking to enforce a right to it (or because the employer was prosecuted or fined as a result of such action);
- trade union membership or activities, or non-membership of a trade union;
- taking lawfully organised official industrial action lasting eight weeks or less (or more than eight weeks, in certain circumstances);
- performing or proposing to perform any duties relating to an employee's role as a workforce representative or as a candidate to be such a representative for the purposes of the Transnational Information and Consultation of Employees Regulations 1999, or for taking, proposing to take or failing to take certain actions in connection with these regulations;
- grounds related to trade union recognition procedures;
- exercising or seeking to exercise the right to be accompanied at a disciplinary or grievance hearing, or to accompany a fellow worker;
- grounds related to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
- grounds related to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002;
- a failure to follow the statutory dismissal procedure;
- grounds related to the European Public Limited-Liability Company Regulations 2004;
- from 6 April 2005, grounds related to the Information and Consultation of Employees Regulations 2004 for undertakings with 150 employees (from 6 April 2007 for undertakings with 100 employees and from 6 April 2008 for undertakings with 50 employees);
- from 6 April 2005, grounds related to jury service.

If the employment tribunal finds the dismissal was unfair, it will order one of three possible remedies: reinstatement, re-engagement or compensation. Orders for reinstatement or re-engagement normally include an award of compensation for the loss of earnings.
Further details of the law on unfair dismissal and the remedies available, including how awards are calculated, can be found in the documents 'Unfairly dismissed?- Guidance and ‘Fair and unfair dismissal – Guidance.’

**Fair dismissal**

Dismissal is normally fair only if the employer can show that it is for one of the following reasons:

- a reason related to the employee’s conduct;
- a reason related to the employee’s capability or qualifications for the job;
- because the employee was redundant;
- because a statutory duty or restriction prohibited the employment being continued;
- some other substantial reason of a kind which justifies the dismissal.

Where the employer shows that the reason was one of these, the tribunal has to consider whether the employer acted reasonably in the circumstances by treating this reason as sufficient to dismiss the employee. Among the circumstances it takes into account are the size and administrative resources of the employer’s undertaking. It will also take account of whether the employer followed appropriate disciplinary procedures.

From 1 October 2004, when statutory dismissal and disciplinary procedures come into force arbitrable, where those procedures apply and are not treated as having been complied with, a dismissal will be unfair if an employee is dismissed without the procedure having been followed. From the same date, however, if an employer fails to follow a disciplinary procedure which goes beyond the statutory procedure, that failure will not by itself make the dismissal an unfair one - provided that properly following the procedure would have made no difference to the decision to dismiss, and that the dismissal was fair in all other respects.

Dismissal on the grounds of redundancy is unfair if the employee is selected for redundancy (when others in similar circumstances are not selected) for any of the reasons listed in the Unfair dismissal section as ‘automatically’ unfair (except dismissals in connection with the right to be accompanied). It may also be unfair for some other reason, such as the employer failing to give adequate warning of the redundancy, or to consider the employee for alternative employment.

1) The statutory procedures will apply when an employer first contemplates dismissal or disciplinary action on or after 1 October 2004, but not when a procedure of the employer’s own has been started before that date.
Parental legislation

Maternity rights

All employees have the right not to suffer unfair treatment at work on grounds of pregnancy or maternity. The document 'Maternity rights' brings together information on maternity leave, maternity pay, protection from detriment or dismissal and the health and safety at work of new and expectant mothers.

Time off for antenatal care

All pregnant employees are entitled to time off with pay to keep appointments for antenatal care made on the advice of a registered medical practitioner, midwife or health visitor. Antenatal care may include relaxation classes and parentcraft classes. Except for the first appointment, the employee must show the employer, if requested, a certificate from a registered medical practitioner, midwife or health visitor, confirming the pregnancy and an appointment card or some other document showing that an appointment has been made.

Ordinary maternity leave

An employee is entitled to a period of 26 weeks' ordinary maternity leave, regardless of her length of service. To qualify, she must tell her employer no later than the end of the 15th week before the expected week of childbirth:

- that she is pregnant;
- the expected week of childbirth, by means of a medical certificate if requested;
- the date she intends to start maternity leave; this can normally be any date which is no earlier than the beginning of the 11th week before the expected week of childbirth up to the birth.

Her employer should in turn notify her of the date on which her leave will end within 28 days of receiving her notification. If the employer fails to do this, the employee may have protection against detriment or dismissal if she does not return to work on time.

An employee can change the date she wants her leave to start as long as she notifies her employer 28 days before the date she originally chose or, if it is earlier, 28 days before the new date she wants her leave to start.

During the 26 weeks, she is entitled to benefit from all her normal terms and conditions of employment, except for remuneration (monetary wages or salary); and at the end of it, she has the right to return to her original job. If a redundancy situation arises, she must be offered a suitable alternative vacancy if one is available. If the employer cannot offer suitable alternative work, she may be entitled to redundancy pay; but if she unreasonably refuses a suitable offer, she could forfeit her right to redundancy pay.

A woman who qualifies for ordinary maternity leave and who wishes to return to work before the date it is due to end must give at least 28 days' notice, unless her employer didn’t notify her of when her leave should end.

Additional maternity leave

Employees with at least 26 weeks' continuous service by the beginning of the 14th week before the expected week of childbirth are entitled to 26 weeks' additional maternity leave. Their contract of employment continues but with limited terms and conditions. The additional maternity leave period begins at the end of ordinary maternity leave. This means a woman is entitled to be away from her job for 52 weeks in total. She does not have to notify her employer before the start of her ordinary maternity leave that she also intends to take additional maternity leave. However, when her employer notifies her of the end date of
her leave, they will have based their calculation on the assumption that, if she is entitled to
additional maternity leave, she will be taking it, and if she wishes to return before she has
taken her full 52 weeks’ maternity leave she must give at least 28 days notice.

At the end of additional maternity leave a woman is entitled to return to her original job or, if
this is not reasonably practicable, to a suitable alternative job. If the employer cannot offer
suitable alternative work, she may be entitled to redundancy pay; but if she unreasonably
refuses a suitable offer, she could forfeit her right to redundancy pay.

A woman who qualifies for additional maternity leave and who wishes to return to work before
the date it is due to end must give at least 28 days' notice, unless her employer didn't give her
adequate notice of when her leave should end.

Further guidance can be found in the document ‘Maternity rights’.

**Statutory Maternity Pay**

A woman is entitled to Statutory Maternity Pay (SMP) if she has been employed by her
employer for a continuous period of at least 26 weeks ending with the 15th week before the
expected week of childbirth, and has average weekly earnings at least equal to the lower
earnings limit for National Insurance contributions. SMP can be paid for up to 26 weeks. SMP
is paid by the employer but is partly (or, for small firms wholly) reimbursed by the state.
More information for employees on SMP can be obtained from the Department for Work and
Pensions leaflet *A guide to Maternity Benefits - Statutory Maternity Pay and Maternity
Allowance (NI17A)*, available from local social security or Jobcentre Plus offices, or through
the Department’s [website](#). The HM Revenue and Customs provides more information for
employers in their help booklet *E15 Pay and time off work for parents* (and the E15
supplement), available from its Employer's Orderline on 08457 646 646 and from the HM
Revenue and Customs [website](#). Employers may call the HM Revenue and Customs
Employer's Helpline on 08457 143 143.

**Maternity Allowance**

Women who do not qualify for SMP may be entitled to Maternity Allowance (MA). MA may
also be paid to the self-employed and women who have recently left their jobs. MA can be
paid for up to 26 weeks. MA is paid by the social security or Jobcentre Plus office. To qualify,
they must have been employed or self-employed for 26 weeks out of the 66 weeks before the
expected week of childbirth and have average weekly earnings of at least £30. For more
information, see details under Statutory maternity pay (above).

**Dismissal or detriment in connection with pregnancy**

An employer may not dismiss an employee or select her for redundancy on grounds related to
pregnancy, childbirth or the fact that she has taken or sought to take maternity leave or
because she does not return to work at the end of her leave in circumstances where her
employer gives her insufficient or no notice of when her leave should end. A woman
dismissed in these circumstances may make a complaint of unfair dismissal, regardless of her
length of service. More information about unfair dismissal procedures can be found in the
document ‘Fair and unfair dismissal’. There is further guidance on termination of employment
during or following maternity leave in the Ordinary maternity leave and Additional maternity
leave sections of this guide.

Employees also have the right not to suffer detrimental (unfair) treatment on grounds of
pregnancy, childbirth or maternity leave.
Maternity suspension

Employers must take account of health and safety risks to new and expectant mothers when assessing risks in work activity. If the risk cannot be avoided, the employer must take steps to remove the risk or offer suitable alternative work (with no less favourable terms and conditions); if no suitable alternative work is available, the employer must suspend the mother on full pay for as long as necessary to protect her health and safety or that of her baby. The Health and Safety Executive booklet *Management of Health and Safety at Work* (L21) contains the relevant regulations and supporting code of practice, and the HSE booklet *New and expectant mothers at work* (HS(G)122) gives further guidance to employers about assessing health and safety risks to pregnant employees. These are available from HSE Books (tel: 01787 881165) and other booksellers.

More information about maternity suspension provisions can be found in the DTI documents ‘Maternity rights’ and ‘Suspension from work on medical or maternity grounds under health and safety regulations’.

Parental leave

Employees who have completed one year’s service with their employer are entitled to 13 weeks' unpaid parental leave for each child born or adopted. The leave can start once the child is born or placed for adoption with the employee or as soon as the employee has completed a year's service, whichever is later. It may be taken at any time up to the child’s fifth birthday (or until five years after placement in the case of adoption). Parents of disabled children can take 18 weeks up to the child’s 18th birthday.

Employees remain employed while on parental leave and some terms of their contract, such as contractual notice and redundancy terms, still apply. At the end of parental leave they have the right to return to the same job as before or, if that is not practicable, a similar job which has the same or better status, terms and conditions as the old job; where leave is taken for a period of four weeks or less, the employee is entitled to go back to the same job. Wherever possible, employers and employees should make their own agreement about how parental leave will work in a particular workplace. Such agreements can improve upon the key elements set out above but they may not offer less.

Employees can complain to an employment tribunal if their employer prevents or attempts to prevent them from taking parental leave. They are also protected from dismissal or detrimental treatment for taking or seeking to take it. Further details can be found in the documents ‘Parental Leave: a short guide for employers and employees’ and ‘Parental Leave: a guide for employers and employees’.

Paternity leave

Employees who have worked continuously for their employer for 26 weeks leading into the 15th week before the baby is due and also up to the birth of the child are entitled to take one or two consecutive weeks’ paternity leave. To qualify, an employee must be the biological father of the child or the mother's husband or partner and must have or expect to have responsibility for the child’s upbringing. Leave must normally be completed within 56 days from the birth of the child and must be taken to care for the child or support the mother.

The partner of an individual who adopts, or the member of a couple adopting jointly who is not taking adoption leave may be entitled to paternity leave. The qualifying conditions are similar to those given above, except that he or she must have worked for their employer for 26 weeks leading into the week in which the adopter is notified of being matched with a child, and must continue to be employed up to the date of placement of the child for adoption. Leave must be completed within 56 days of the child’s placement.
During paternity leave employees are entitled to benefit from all their normal terms and conditions of employment except for remuneration (monetary wages or salary) and are entitled to return to the same job at the end of their leave.

Employees can complain to an employment tribunal if their employer prevents or attempts to prevent them from taking paternity leave. They are also protected from dismissal or detrimental treatment for taking or seeking to take it.

**Statutory Paternity Pay (birth and adoption)**

During their paternity leave employees may be entitled to one or two weeks’ Statutory Paternity Pay (SPP). The qualifying conditions for SPP are the same as those for paternity leave but, in addition, employees must have average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SPP is payable by the employer but partly (or, for small firms wholly) reimbursed by the State. There is no equivalent benefit for employees who do not qualify for SPP or for the self-employed but there are special rules to allow fathers who are entitled to unpaid paternity leave to claim Income Support.

For further information on paternity leave and pay see ‘**Working fathers: rights to paternity leave and pay: a guide for employers and employees**’ or, for adoptive parents, ‘**Adoptive parents: rights to leave and pay – a basic summary**’. HM Revenue and Customs provides more information for employers in the help books E15 and E15 supplement, **Pay and time off work for parents** or, for adoptive parents, the E16 and E16 supplement, **Pay and time off work for adoptive parents**, available from its Employers Orderline on 0845 7846 646 and on their website. Employers may call the HM Revenue’ and Customs’ Employer's Helpline on 08457 143 143.

**Adoption leave**

Where a child is placed for adoption on or after 6 April 2003, employees who have worked continuously for their employer for 26 weeks ending with the week in which they are notified of being matched with a child for adoption will be eligible for up to 26 weeks’ ordinary adoption leave followed immediately by up to 26 weeks’ additional adoption leave. The right is available to individuals who adopt or one member of a couple adopting jointly.

The employee is required to inform their employers of their intention to take adoption leave within seven days of being notified by their adoption agency that they have been matched with a child for adoption, unless this is not reasonably practicable. They must tell their employer:

- when the child is expected to be placed with them and
- when they want their adoption leave to start

Employers must respond to the notice within 28 days notifying them of the date on which they expect them to return to work if the full entitlement to adoption leave is taken. They can choose to start leave from the date of the child’s placement or from a fixed date which can be up to 14 days before the expected date of placement.

During ordinary adoption leave employees are entitled to benefit from all their normal terms and conditions of employment except for remuneration (monetary wages or salary) and are entitled to return to the same job at the end of their leave.

During additional adoption leave the employment contract continues and some contractual benefits and obligations remain (for example, compensation in the event of redundancy and notice periods). At the end of additional adoption leave employees are entitled to return to their original job or, if this is not reasonably practicable, to a suitable alternative job. If the employer cannot offer suitable alternative work, the employee may be entitled to redundancy
pay; but if he or she unreasonably refuses a suitable offer, her or she could forfeit his or her right to redundancy pay.

Employees who intend to return to work at the end of their full adoption leave entitlement do not have to give any further notification to their employers. Employees who want to return to work before the end of their adoption leave period must give their employers 28 days’ notice of the date they intend to return.

Employees can complain to an employment tribunal if their employer prevents or attempts to prevent them from taking adoption leave. They are also protected from dismissal or detrimental treatment for taking or seeking to take it or if their employer believed they were likely to take it.

**Statutory Adoption Pay**

A person who is adopting a child is entitled to Statutory Adoption Pay (SAP) if he or she has been employed by their employer for a continuous period of at least 26 weeks ending with the week in which they are notified by the adoption agency that they have been matched with a child for adoption, and they have an average weekly earnings at least equal to the lower earnings limit for National Insurance contributions.

For further information on adoption leave and pay see ‘Adoptive parents: rights to leave and pay – a basic summary’. HM Revenue and Customs provides more information for employers in the help book E16 and the E16 supplement, *Pay and time off work for adoptive parents*, available from its Employers Orderline on 0845 7646 646 and on their website.

**The right to apply to work flexibly and the duty on employers to consider requests seriously**

From April 2003, parents of children under six or disabled children under 18 have the legal right to request flexible working patterns and their employers will have a duty to seriously consider their requests. In order to qualify for this right an individual must:

- be an employee;
- have a child under six, or 18 where the child is disabled;
- make the request no later than two weeks before the child’s appropriate birthday;
- be responsible for the child as its parent;
- be making the application to enable them to care for the child;
- have worked for their employer continuously for 26 weeks at the date the application is made;
- not be an agency worker or a member of the armed forces;
- have not made another application to work flexibly under the right during the past 12 months.

Applications must be in writing. Information that must be provided includes an explanation of what effect, if any, the employee thinks the proposed change would have on the employer and how, in their opinion, any such effect might be dealt with. The employer must follow a defined procedure to consider the request. In the first instance, they must ensure that they arrange to meet with the employee to discuss the request within 28 days of receiving the application.

If the request is agreed, the new working pattern forms a permanent change to the employee’s terms and conditions.

Employers can reject an application where they have a clear business reason to do so. Acceptable business grounds are specified in law and an employer must provide a written explanation setting out why the ground applies in the circumstances. Employees whose
applications are turned down will be able to appeal against their employer’s decision, and in specific circumstances can take their case to Acas Arbitration or an employment tribunal.

Further details can be found in ‘Flexible working: the right to apply – a basic summary’. A helpline 08457 47 47 47 is also available

Other time off

Time off for dependants

All employees are entitled to reasonable time off work without pay to deal with an emergency involving a dependant; for example, if a dependant falls ill or is injured, if care arrangements break down, or to arrange or attend a dependant's funeral.

Further details on circumstances when leave can be taken and the definition of a dependant can be found in the documents ‘Time off for dependants: a guide for employers and employees (URN 99/1186)’ and Family emergency? your right to time off’.

Time off work for public duties

Under certain circumstances employers must give employees who hold certain public positions reasonable time off to perform the duties associated with them. This provision covers such offices, among others, as justice of the peace, prison visitor, and member of a local authority, a police authority, a statutory tribunal, and certain health and education authorities. Employers do not have to pay employees for the time off taken for public duties.

Further details can be found in the document ‘Time off for public duties’.

Time off work for trade union duties and activities

An employee who is an official of an independent trade union which is recognised by the employer must be allowed reasonable time off with pay during working hours to:

- carry out those duties as an official which relate to matters for which the employer has recognised the union, or any other functions which the employer has agreed the union may perform;  
- consult with the employer, or receive information from the employer, about mass redundancies or business transfers; or  
- undergo training relevant to those duties and which is approved by the union or by the Trades Union Congress.

An employee who is a member of an independent trade union which is recognised by the employer is entitled to reasonable time off for certain trade union activities. The employer is not obliged to pay the employee for time off for these activities.

The Acas code of practice Time off for trade union duties and activities provides guidance on the time off to be permitted by an employer.

Time off for safety representatives

Employees who are:

- safety representatives appointed under the Safety Representatives and Safety Committee Regulations 1977 by a trade union recognised by their employer; or
- representatives of employee safety elected under the Health and Safety (Consultation with Employees) Regulations 1996, to represent employees not covered by the 1977 Regulations; or
- safety representatives elected under the Offshore Installations (Safety Representatives and Safety Committee) Regulations 1989
are entitled to time off with pay to carry out their functions and to undergo training. Further details can be found in the following booklets available from HSE Books (tel: 01787 881165) and other booksellers: Safety representatives and safety committees (contains the 1977 Regulations and a supporting code of practice and guidance), A guide to the Health and Safety (Consultation with Employees) Regulations 1996 and A guide to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989.

**Time off for occupational pension scheme trustees and directors of trustee companies**

Employees who are trustees of an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993) or directors of trustee companies are entitled to reasonable time off with pay to carry out any of their trustee’s duties or to receive training relevant to those duties.

**Time off for employee representatives**

Employees who act as representatives for consultation about redundancies or business transfers, or are candidates to be representatives of this kind, are entitled to reasonable time off with pay during working hours to perform these functions and to receive appropriate training. Further details can be found in the documents ‘Redundancy consultation and notification’ and ‘Transfers of undertakings: a guide to the regulations’.

**Time off for activities relating to the Transnational Information and Consultation of Employees Regulations 1999**

The Transnational Information and Consultation of Employees Regulations 1999 implement the European Works Council Directive in the UK. They set out requirements for informing and consulting employees in undertakings or groups with at least 1000 employees in European Union countries and at least 150 employees in each of two or more of the EU’s member states. These regulations allow employees reasonable time off with pay to perform their functions as a member of a special negotiating body or a European Works Council, as an information and consultation representative or as a candidate in an election to be such a member or representative.

**Time off for activities relating to the Information and Consultation of Employees Regulations**

The above Regulations implement the EU Directive establishing a general framework for informing and consulting employees. The Regulations will come into force on 6 April 2005. They set out requirements for informing and consulting employees in undertakings with at least 50 employees. Initially the Regulations will apply to undertakings with 150 employees and then to undertakings with 100 employees (April 2007) and eventually to undertakings with 50 employees (April 2008). Employees are entitled to reasonable time off with pay to perform their functions as negotiating representatives or information and consultation representatives.

**Time off for activities relating to the European Public-Limited Liability Company Regulations 2004**

The above regulations implement in Great Britain the Directive on employee involvement (2001/86/EC), which supplements the European Company Statute. The Regulations came into force on 8th October 2004. The Statute (the combined EU regulation and directive) creates a legal framework for a new corporate entity, the European Company or "Societas Europea" (SE), available to companies operating in more than one Member State. The supplementary Directive provides for employee involvement: information, consultation and possibly participation arrangements in the SE. In the first instance the employee involvement arrangements are to be negotiated between the management and the employees, acting through a Special Negotiating Body (SNB). If a voluntary agreement is not reached, then certain "standard" rules will apply, provided management wants to carry on with registration of an SE. Employees are entitled to reasonable time off with pay to perform their functions as...
negotiating representatives, information and consultation representatives and other representative roles provided for in the regulations.

**Time off for study or training**

Employees aged 16 or 17 who have not achieved a certain standard in their education or training have the right to reasonable time off **with pay** to study or train for a relevant qualification which will help them towards that standard. Certain employees aged 18 have the right to complete study or training already begun. The study or training can be in the workplace, at college, with another employer or a training provider, or elsewhere. There is no qualifying period of employment for the employee. Details can be found in the Department for Education and Skills booklet *Time Off for Study or Training* (TfST EL1), available from Jobcentre Plus offices or see the DfES website.

**Time off for job hunting or to arrange training when facing redundancy**

An employee who is being made redundant, and who has been continuously employed by the same employer for at least two years, is entitled, whilst under notice, to take reasonable time off **with pay** within working hours to look for another job, or to make arrangements for training for future employment.

Further details can be found in the document ‘Redundancy entitlement - statutory rights: a guide for employees’.
Anti-discrimination

Employers wanting confidential advice on equality issues can either contact the Acas Equality Direct helpline on 0845 600 3444, or an adviser of the Race and Equality Advisory Service.

Sex and race

Under the Sex Discrimination Act 1975 (as amended), generally employers should not discriminate on grounds of sex, marriage or because someone intends to undergo, is undergoing or has undergone gender reassignment. The Race Relations Act 1976 generally makes discrimination by employers on racial grounds unlawful - that is, discrimination on grounds of race, colour, nationality (including citizenship) or ethnic or national origins.

'Discrimination' means treating someone less favourably on any of these grounds. It includes applying apparently neutral provisions, criteria or practices, unless they can be objectively justified which, though applied equally to all, have a disproportionately detrimental effect on particular racial groups or on one sex or on married people (as the case may be) and which cannot be shown to be justifiable (for instance to be job-related). Discrimination also includes victimising someone who has made a complaint under these Acts or under the Equal Pay Act 1970 (see Equal Pay below). These three Acts cover discrimination by employers in recruitment, in all aspects of their treatment of existing employees (including pay, training and access to promotion) and when terminating employment.

There are limited exceptions; for instance, where a job has to be done by a person of a particular sex or from a particular racial group for reasons such as authenticity in dramatic performances. The Race Relations Act does not apply, except for victimisation, to people employed to work in a private household. Both Acts permit employers, under certain conditions, to train employees of one sex or of a particular racial group in order to fit them for particular work in which their sex or racial group has recently been under-represented; they may also encourage the under-represented sex or racial group to take up opportunities to do that work.

Individuals’ complaints under the employment provisions of these Acts go to employment tribunals. The Equal Opportunities Commission (EOC) and the Commission for Racial Equality (CRE) both have statutory responsibilities in the employment field: they can conduct formal investigations and have issued codes of practice to help eliminate discrimination and promote equality of opportunity.

The CRE Employment code of practice gives practical guidance for employers and others on implementing policies to secure good race relations in employment. It does not extend the law but it may be used in evidence in Race Relations Act cases heard by an employment tribunal, and if the tribunal considers the Code could be relevant to a question arising in the proceedings, it must take it into account. Copies are available from the CRE, Elliott House, 10-12 Allington Street, London SW1E 5EH (Tel: 020 7828 7022).

The EOC has also produced a code of practice, which can be obtained from their website or by contacting the EOC, Arndale House, Arndale Centre, Manchester M4 3EQ (Tel: 0845 601 5901).

Further information about these Acts can be found in the guides Sex discrimination and Racial discrimination, available from Jobcentre Plus offices or from the EOC and CRE respectively. A guide to the Sex Discrimination (gender reassignment) Regulations 1999 (PL99 GR) can be obtained by calling 0845 602 2260. It is also available from the DTI Women and Equality unit.

Equal pay

Employers must give men and women equal treatment in terms and conditions if they are employed on 'like work', work rated as equivalent under a job evaluation study, or work found to be of equal value. Equal pay is, therefore, not restricted to remuneration alone, but includes
most terms in an employment contract. Terms covering special treatment because of pregnancy or childbirth, or reflecting statutory restrictions on the employment of women are not covered.

Individuals may complain to an employment tribunal under the Equal Pay Act 1970 up to six months after leaving the employment to which their claim relates. They may claim arrears of remuneration or damages.

A woman is employed on 'like work' with a man if her work is of the same or a broadly similar nature, and any difference between the things they do is not of practical importance in relation to their terms and conditions of employment. It is for the employer to show that any difference is of practical importance.

If it is established that the work is like work, or is rated as equivalent, an employer may still show that any differences between the man's and woman's contracts are genuinely due to a 'material difference' (other than the difference of sex) - qualifications for example. If a claim is made under the equal value provisions, the employer can also justify a difference in pay by showing material factors not attributable to personal qualities - an example could be the need to pay a computer programmer more than a clerical supervisor because a good programmer could not be obtained for less.

Further details can be found in the leaflet Are you getting equal pay?, available from the EOC website or by calling 0845 601 5901; and the Equal Opportunities Commission has produced a free code of practice on equal pay, available from its Manchester office (see 'Sex and race' for address).

Disability

Under the Disability Discrimination Act 1995 employers with 15 or more employees must not discriminate against current and prospective employees who have, or have had, a disability. Discrimination occurs when, for a reason related to the person's disability, an employer treats someone less favourably than he or she would treat other people, and cannot justify this treatment. It cannot be justified if, by making a 'reasonable adjustment' (see below), the employer could remove the reason for the treatment. Discrimination also occurs when an employer fails to make a 'reasonable adjustment' for a disabled person, and cannot justify the failure.

From 1 October 2004, the employment provisions of the DDA will apply to employers of all sizes. Changes are also being made to the definition of discrimination, and discrimination on the grounds of someone's disability will no longer be justifiable. Failure to make a reasonable adjustment, and discrimination for a reason related to a disability (rather than on the grounds of the disability itself) will still be justifiable. Harassment because of disability is specified as being unlawful.

A reasonable adjustment is any step or steps an employer could reasonably take to prevent arrangements made by him/her or physical features of premises occupied by him/her from putting a disabled person at a substantial disadvantage in comparison with a non-disabled person. The duty to make reasonable adjustments applies to any aspect of employment, including the recruitment process, access to training, promotion, access to work benefits or facilities, and selection for redundancy. From October 2004, the Disability Rights Commission will be empowered to take legal action in respect of discriminatory job advertisements.

People who have, or have had, disabilities and believe that is why they have been discriminated against in employment matters may make a complaint to an employment tribunal.

Free material on the Act's provisions can be obtained from the Disability Rights Commission (DRC) - Helpline on 08457 622 633, call 08457 622 644 for the textphone service for people with hearing impairments or email enquiry@drc-gb.org. Calls are charged at local British Telecom rates. Information can also be obtained through the DRC website or the government
Helpful booklets include: *The Disability Discrimination Act 1995 - What Employers Need to Know* (DL170); and *What employees and job applicants need to know* (DLE3). More detailed information and examples are available in *The Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability*. Detailed information on the definition of disability is available in *Guidance on matters to be taken into account in determining questions relating to the definition of disability*. These are priced publications available from The Stationery Office bookshops (or telephone 0870 600 5522).

**Sexual orientation and religion or belief**

The Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003 make it unlawful to discriminate against someone or harass someone on grounds of sexual orientation or religion or belief in employment and vocational training. The Regulations apply in all workplaces large or small throughout Great Britain, both in the private and public sectors. The cover all aspects of the employment relationship, including recruitment, pay, working conditions, training, promotion, dismissals and references.

'Discrimination' means treating someone less favourably than others because of their sexual orientation or their religion or belief. It includes applying provisions, criteria or practices, which disadvantage people because of a particular sexual orientation or religion or belief unless they can be objectively justified. Discrimination also includes victimising someone who has made a complaint under these regulations - for example, if someone made formal complaint of discrimination or given evidence in a tribunal case. 'Harassment' means unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

The legislation covers perception of sexual orientation or perception of religion or belief. So it protects people who are assumed - correctly or incorrectly - to be of a particular sexual orientation or to have a particular religion or belief. The legislation also protects people who are discriminated against because of the sexual orientation or the religion or belief of the people with whom they associate, for example, their family and friends.

Similarly to to sex and race legislation, there are certain exceptions where a job has to be done by a person of a particular sexual orientation or religion or belief, but these apply in a very limited set of circumstances. In most cases, a complaint must be made to the employment tribunal, though in cases involving institutes of further and higher education proceedings must be brought in the county or sheriff court.

Further information about these Regulations can be found on the DTI website. Acas, the independent employment relations service, provides information and good practice advice to employers and employees on a wide range of employment relations issues through its website, helpline (08457 47 47 47), publications and training. Acas has Equality and Diversity Advisers who specialise in providing practical help to businesses of all sizes and sectors on equality and diversity issues in the workplace. Acas also runs Equality Direct, a helpline for questions on managing equality in the workplace (08456 00 34 44).
Other statutory employment rights

Asserting a statutory employment right

Employees may complain to an employment tribunal if they are dismissed (including selection for redundancy when others in similar circumstances are not selected) for bringing proceedings against their employer to enforce certain rights, or for alleging the employer has infringed those rights. This protection applies to all employees, regardless of their length of service.

To benefit, the employee need not necessarily have specified the right, so long as it was reasonably clear to the employer what the right was. Provided they act in good faith, employees are protected regardless of whether they qualified for the right they sought to assert and regardless of whether that right had in fact been infringed. Employees can claim protection if they are dismissed after asserting rights relating to:

- written statement of employment particulars;
- itemised pay statement;
- for trade union duties and activities or training;
- unlawful deductions from pay;
- not having to make unauthorised payments to employer;
- guarantee payments;
- opting out of shop or betting work on Sunday;
- detriment in cases about: health and safety, Sunday working, working time, trusteeship of employee pension schemes, employee representatives, time off for study and training, protected disclosures, maternity, parental, paternity, adoption or domestic leave, or grounds related to trade union membership or activities;
- flexible working
- remuneration during suspension on medical grounds;
- time off: for public duties, to look for work or make arrangements for training prior to redundancy, for antenatal care, for dependants, for employee pension scheme trustee or director's duties or training, for study or training for young people, for employee representatives;
- minimum notice terminating employment;
- deduction of unauthorised or excessive union subscriptions;
- employer paying contribution to a union's political fund;
- consultation about redundancy or business transfer;
- working time, rest periods, breaks and annual leave;

Similar protection is provided for employees who are dismissed for certain actions under the Transnational Information and Consultation of Employees Regulations 1999, the Part-time Workers Regulations 2000, the Information and Consultation of Employees Regulations 2004, the European Public Limited-Liability Company Regulations 2004 or because they qualify for:

- the national minimum wage;
- working families tax credit.

or because any action is taken (or even proposed to be taken) to enforce any of these rights.

Trade union membership and activities, and non-membership of a union

Employees have the right to join or not join a trade union of their choice. Their employer may not dismiss them, select them for redundancy or make them suffer detriment for being or proposing to become a union member, nor for taking part in the union's activities at an
appropriate time. They are similarly protected if they choose not to belong to a union or refuse to join one. Dismissals which infringe these rights may be taken to an employment tribunal regardless of the employee's length of service. Employees who claim to have been unfairly dismissed in this way (except those complaining of unfair selection for redundancy) can also apply to the tribunal for an order of interim relief (which requires the employer to continue their contract of employment or to re-employ them pending the final outcome of the case).

For further information on these rights, see the documents 'Union membership: rights of members and non-members' and 'Unfairly dismissed?'.

**Taking action on health and safety grounds**

An employee may not be dismissed, selected for redundancy (when others in similar circumstances are not selected) or subjected to any detrimental action for taking certain types of action on health and safety grounds. These rights apply to all employees, regardless of their length of service, if they:

- carry out or propose to carry out activities which their employer has designated them to carry out in connection with preventing or reducing risks to health and safety at work; or
- perform or propose to perform functions they have as official or employer-acknowledged health and safety representatives or committee members; or
- bring to their employer's attention by reasonable means - and in the absence of a representative or committee with whom it would be reasonably practicable for them to raise the matter - a concern about circumstances at work which they reasonably believe are harmful to health and safety;
- in the event of danger which they reasonably believe to be serious and imminent and which they could not reasonably be expected to avert, leave or propose to leave the workplace or any dangerous part of it, or (while the danger continues) refuse to return; or
- in circumstances of danger which they reasonably believe to be serious and imminent, take or propose to take appropriate steps to protect themselves or others.

All employees have the right to complain to an employment tribunal if any of these rights are infringed. Where health and safety representatives or committee members or those designated to carry out workplace health and safety activities (which could include, for example, first aiders) are dismissed or selected for redundancy, they are entitled to compensation without a statutory limit. In other cases of dismissal or selection for redundancy on health and safety grounds, the remedies will be subject to the same limits as under the ordinary unfair dismissal provisions. For details see either the document 'Fair and Unfair Dismissal' or 'Unfairly Dismissed?'.

Where the employee has been subjected to some other detriment relating to taking action on health and safety grounds, the employment tribunal will award the compensation it considers just and equitable in all the circumstances, taking into account the particular infringement and any loss incurred.

**Suspension from work on medical grounds**

Certain health and safety regulations require employees to be suspended from their normal work on medical grounds, when their health would be endangered if they continued to be exposed to a substance specified in the regulations. These provisions cover exposure to ionising radiation, lead and some other hazards. Further details can be found in the document 'Suspension from work on medical or maternity grounds'.
Transfer of a business or undertaking

The Transfer of Undertakings (Protection of Employment) Regulations 1981 apply to the transfer of an undertaking, or part of an undertaking, to a new employer (for example, as the result of a sale). The employees automatically become employees of the new employer as if their contracts of employment were originally made with the new employer; and the new employer takes over all employment liabilities of the old employer (except criminal liabilities and occupational pension rights).

Employees are entitled to object to their contract being transferred to the new employer but, in doing so, normally lose the right to claim there was a dismissal unless they can show that the transfer would have involved a substantial and detrimental change in working conditions. If either the new or the old employer dismisses an employee solely or mainly because of the transfer of an undertaking or part of it, the dismissal is considered unfair.

However, if the main reason for dismissal, by either employer, is an economic, technical or organisational one entailing changes in the workforce, an employment tribunal may consider it to be fair. That is likely if the tribunal also finds that the employer acted reasonably in treating this reason as sufficient to justify dismissal. Further information is available in the document ‘Transfers of undertakings: a guide to the regulations’.

Sunday shop and betting work

Shop workers have the right not to be dismissed, selected for redundancy (when others in similar circumstances are not selected) or subjected to other detrimental action for refusing or proposing to refuse to work on Sundays.

There are similar rights for betting workers - that is broadly all employees at licensed betting offices, and those employees at horse race courses or licensed tracks whose work involves dealing with betting transactions.

For further information, see the document ‘Sunday shop and betting work: employees’ rights’.

Working time

The Working Time Regulations 1998 provide rights to:

- A limit of an average 48 hours a week on the period a worker can be required to work, although individuals may choose to work longer;
- Four weeks’ paid leave a year;
- 11 consecutive hours’ rest in any 24-hour period;
- An in-work rest break if the working day is longer than six hours;
- One day off each week;
- A limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

The regulations apply not only to employees but also to workers, which includes the majority of agency workers and freelancers. The regulations were amended, with effect from 1 August 2003, to extend working time measures in full to all non mobile workers in road, sea, inland waterways and lake transport, to all workers in the railway and offshore sectors, and to all workers in aviation who are not covered by the sectoral Aviation Directive. The regulations will also apply to junior doctors from 1 August 2004.

Mobile workers in road transport have more limited protections. Those subject to European drivers' hours rules 3820/85 are entitled to four weeks paid annual leave and health assessments if a night worker from 1 August 2003. Mobile workers not covered by European
drivers' hours rules will be entitled to an average 48 hours per week, four weeks paid holiday, health assessments if a night worker and adequate rest.

The regulations were previously amended, with effect from 6 April 2003, to provide enhanced rights for adolescent workers. Young workers (those over the minimum school leaving age but under 18) are entitled to 12 consecutive hours rest between each working day, two days' weekly rest and a 30-minute in-work rest break when working longer than four and a half hours, plus four weeks paid annual leave. Following a period of public consultation, the following changes for young workers took effect in 2003.

- Working time to be limited to eight hours a day and 40 hours a week
- Prohibition of night-work between 10pm and 6am or between 11pm and 7am
- Derogations from the working time limit and night-work prohibition permitted in specific circumstances, and in the case of the night-work prohibition, specific sectors

Workers may complain to an employment tribunal if they are being denied rest periods, breaks or the paid annual leave entitlements. The limits and health assessments (if a night worker) are enforced by the Health and Safety Executive, local authority environmental health departments, the Civil Aviation Authority (CAA) and the Vehicle and Operator Services Agency (VOSA).

Employees may complain to an employment tribunal of unfair dismissal, regardless of their length of service, if they are dismissed for exercising rights under these regulations; and workers who are not employees may complain that they have suffered a detriment if their contracts are terminated for this reason. Both employees and workers who are not employees are also protected from other detrimental action or deliberate inaction by their employer.

Further details can be found in the document ‘Your guide to the working time regulations’.

**Protected disclosures**

Workers who 'blow the whistle' on wrongdoing in the workplace can complain to an employment tribunal if they are dismissed or victimised for doing so. An employee's dismissal (or selection for redundancy) will be unfair if it is wholly or mainly for making a protected disclosure within the meaning of Part IVA of the Employment Rights Act 1996 (inserted by the Public Interest Disclosure Act 1998). Workers who are not employees can complain that they have suffered a detriment if their contracts are terminated for making such a disclosure, with compensation awarded on the same basis as for unfair dismissal. Both employees and other workers are also protected from other detriment by their employer.

For further information, see the document ‘Disclosures in the public interest: protections for workers who 'blow the whistle' ‘.

**Disciplinary and grievance hearings**

Workers are entitled to be accompanied at certain disciplinary and grievance hearings by a fellow worker or a trade union official of their choice, provided they make a reasonable request to be accompanied. They also have the right to a reasonable postponement of the hearing, within specified limits, if their chosen companion is unavailable at the time the employer proposes.

Workers have the right to take paid time off during working hours to accompany fellow workers employed by the same employer.

These rights apply to workers including agency workers and home workers, though not to those who are in business solely on their own account.

For further information, see Acas’s code of practice *Disciplinary and grievance procedures*. An employment tribunal will consider a worker has been unfairly dismissed, regardless of his or her age or length of service, if the dismissal was for exercising or seeking to exercise the
right to be accompanied, or for accompanying or seeking to accompany another worker; nor may an employer subject workers to any other detrimental treatment on these grounds.

**Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000**

The Regulations aim to ensure that part-time workers are not treated less favourably than comparable full-timers, unless the less favourable treatment can be justified on objective grounds. Principally, this means they should:

- receive the same rates of pay (including overtime pay, once they have worked normal full-time hours);
- not be treated less favourably for contractual sick pay or maternity pay purposes, or discriminated against over access to pension schemes or pension scheme benefits;
- not be excluded from training simply because they work part-time;
- receive holiday entitlement pro rata to comparable full-timers;
- have any career break schemes, contractual maternity leave and parental leave made available to them in the same way as for full-time workers; and
- not be treated less favourably in the criteria for selecting workers for redundancy.

Part-time workers who believe their treatment infringes these regulations have the right to make a request in writing for a written statement, within 21 days, giving the employer's reasons for the treatment.

Employees will be held to be unfairly dismissed (or selected for redundancy), regardless of age or length of service, if the main reason for the dismissal is that:

- they exercised or sought to enforce rights under the Regulations, refused to forgo them or alleged that the employer had infringed them; or
- they gave evidence or information in connection with proceedings brought by an employee under the Regulations; or
- the employer believed the employee intended to do any of these things.

Though only employees may complain of unfair dismissal, workers who are not employees may complain to an employment tribunal that they have suffered a detriment if their contracts are terminated for any of these reasons, compensation being awarded on the same basis as for unfair dismissal. Both employees and other workers are also protected from other detrimental treatment for these reasons.

**Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002**

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 say that fixed-term employees should not be treated less favourably than comparable permanent employees on the grounds they are fixed-term employees, unless this is objectively justified. Any such less favourable treatment must be actually necessary to achieve a legitimate objective and must also be an appropriate way to achieve it. Employees who believe their rights are infringed under these Regulations may present their case to an employment tribunal.

They apply to employees on contracts that last for a specified period of time or will end when a specified task has been completed or a specified event does or does not happen. Examples include employees covering for maternity leave and peaks in demand and employees on task contracts such as setting up a database. An example where less favourable treatment may be justified could be the disproportionate cost of giving a company car to an employee on a short fixed-term contract just because the comparator has one.

Less favourable treatment may be assessed in one or two ways: either each of the fixed-term employee’s terms and conditions of employment should not be less favourable than the
equivalent treatment given to their comparator or the fixed-term employee's overall package of conditions should not be less favourable.

Fixed-term employees have a right to ask for a written statement setting out the reasons for less favourable treatment if they believe that this may have occurred. The employer must provide this statement within 21 days.

Use of successive fixed-term contracts is limited to four years, unless further fixed-term contracts are justified on objective grounds. However, it will be possible for employers and employees to increase or decrease this period or agree a different way to limit the use of successive fixed-term contracts via collective or workforce agreements. Service accumulated from 10 July 2002 counts towards this four-year limit. If a fixed-term contract is renewed after the four-year period, it is treated as a contract for an indefinite period (unless the use of a fixed-term contract is objectively justified). Fixed-term employees have a right to ask their employer for a written statement confirming that their contract is permanent or setting out objective reasons for the use of a fixed-term contract beyond the four-year period. The employer must provide this statement within 21 days.

Any redundancy waiver that is included in a fixed-term contract which is agreed, extended or renewed after 1 October 2002 will be invalid.

Fixed-term employees should receive information on permanent vacancies in their organisation.

The end of a task contract that expires when a specific task has been completed or a specific event does or does not happen counts as a dismissal in law; so does non-renewal of a fixed-term contract concluded for a specified period of time.

**Dismissal relating to jury service**

From 6 April 2005, employees will be unfairly dismissed (or selected for redundancy) if the reason, or the principal reason, is that they have been summoned for jury service or have been absent from work on jury service. There is no qualifying period of service or upper age limit for employees who wish to complain that they have been dismissed for these reasons. This protection will not apply, however, if the employer shows that the employee's absence will cause substantial injury to his business and makes this known to the employee, who nevertheless unreasonably refuses, or fails, to apply to be excused from jury service or to have his jury service deferred.

Employees are also protected against detrimental action or deliberate inaction by their employer because they have been summoned for jury service or have been absent from work on jury service. However, the protection does not cover failure to pay remuneration during absence on jury service unless the employee's contract of employment entitles him to be paid during such an absence.

**Rehabilitation of offenders**

Broadly speaking, anyone who has been convicted of a criminal offence and who is not convicted of a further offence during a specified period (the 'rehabilitation period') becomes a 'rehabilitated person' and the conviction becomes spent. This means it does not have to be declared for most purposes, such as applying for a job.

The rehabilitation period depends on the sentence and runs from the date of conviction. A conviction resulting in a prison sentence of more than 30 months can never become spent. Under the Rehabilitation of Offenders Act 1974, a spent conviction - or failure to disclose a spent conviction or any circumstances connected with it - is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for prejudicing a person in any way in any occupation or employment. However, there are some exceptions to the Act (which relate broadly to work with children, the sick, disabled people
and the administration of justice). Where an exception applies, an individual must, if asked, disclose all convictions including spent ones.

Further information about these provisions can be found in the Home Office leaflet *Wiping the slate clean*. 
Complaints and remedies

New legislation for resolving disputes in the workplace

From 1 October 2004, employers and employees will be required to follow a minimum three-stage process to ensure that disputes at work are discussed. The new minimum procedures create a framework for dealing with dismissal, disciplinary action and grievance issues, but are not intended to replace established effective procedures. The three steps consist of (1) a letter outlining the problem; (2) a meeting to discuss the matter and (3) an opportunity to appeal at a further meeting. Employees who have not been able to resolve a grievance through discussion should attempt to complete the three step procedure. If the employee does not complete step 1 and wait 28 days, his/her case will not be accepted by an employment tribunal. Where an employer or employee is found not to have fully complied with these procedures, employment tribunals will impose financial penalties.

Detailed guidance is available on the DTI website.

Further help and advice can be found on the Acas website and by contacting their helpline on 08457 47 47 47.

The Acas Arbitration Scheme

The Acas Arbitration Scheme provides an entirely voluntary alternative to an employment tribunal hearing in cases of unfair dismissal or flexible working. Arbitration is an effective method of resolving a dispute in which an independent arbitrator’s decision is binding as a matter of law and has the same effect as a court judgement. The scheme is confidential, relatively fast, cost efficient, non-legalistic and informal.

The Scheme covers England, Wales and Scotland for claims of Unfair Dismissal. In Flexible Working cases the Scheme currently covers England and Wales only, but is due to be extended to Scotland later this year. Detailed guidance on using Acas Arbitration for Unfair Dismissal or Flexible Working applications can be obtained on the Acas website or by ringing the Acas Arbitration Scheme section on 020 7210 3742.

Making a complaint to an employment tribunal

If an employee makes a complaint to an employment tribunal, the tribunal office receiving the application will send a copy to a conciliator at Acas who will try to help the two sides settle the case, if they wish to avoid the need for a tribunal hearing. The booklet Making a claim to an employment tribunal explains the procedure and contains an application form: it is available from Jobcentre Plus offices, Citizens Advice Bureaux, from the DTI Publications Orderline on 0870 1502 500 or from the Employment Tribunals Service website.

Hearing Review

A full tribunal or, in certain circumstances, a chairman sitting alone may conduct a pre-hearing review of a case in advance of the full tribunal hearing. This may be as a result of a request by either party or of the tribunal's own motion.

If the tribunal decides that a party whose case is under consideration is unlikely to succeed, either in whole or in part, it may ordered the party to pay a deposit of up to £500 as a condition of being allowed to continue.

Tribunal hearing

If conciliation is not possible or fails, the employment tribunal will hear the case. A tribunal normally consists of a legally qualified chairman and two lay members; but in certain circumstances the chairman may sit alone.
Most hearings are heard at permanent tribunal offices although additional centres are hired where necessary. Both parties should attend. They may claim travelling and other expenses within certain limits, but not the cost of any legal representation. Tribunals try to keep their proceedings as simple and informal as possible. Many applicants and respondents put their own cases to the tribunal although some may choose to have a representative, who may be a lawyer, trade union official, representative of an employers’ organisation, or simply a friend or colleague.

Time limits

Complaints to an employment tribunal must normally be made **within 3 months** of the date of the infringement of the right. Exceptions to this general rule are detailed in the documents about the particular individual rights.

Remedies

In cases where particulars of the written statement of employment are disputed, the tribunal will decide what the correct particulars should be. In other cases, where an employer is found not to have complied with one or more statutory provisions, the tribunal may award compensation to be paid by the employer to the employee. If the tribunal decides that the employee has been unfairly dismissed, the remedy will be either re-instatement, re-engagement or monetary compensation, depending on the circumstances. A compensatory award will be reduced, however, if the tribunal finds the employee partly to blame for the dismissal or because the employee did not mitigate his or her loss - for example, by making reasonable efforts to obtain another job.

The use or non-use of an internal appeals procedure, where available, may also be taken into account in calculating the award, up to a maximum of two weeks' pay.

If the tribunal finds someone has been discriminated against on grounds of race, sex or disability, it may make one or more of the following:

- a declaration of the rights of those involved,
- a recommendation that the employer take action to remedy the discrimination or
- an award of compensation. There is no statutory maximum on awards for sex, race, or disability discrimination; and such awards may also include an amount for injury to feelings.

Costs

A tribunal has the power to award up to £10,000 costs against a party where it finds that the case was misconceived and had no reasonable prospect of success; or where a party, or party's representative, has behaved vexatiously, abusively, disruptively or otherwise unreasonably in conducting the proceedings.

Breach of contract claim

Employees who suffer a measurable financial loss because their employer has departed from the agreed terms of their contract of employment (or of any other contract connected with employment) can seek damages by making a breach of contract claim. Normally this must be made to a county court or other civil court but if the employment has ended, it may be made to an employment tribunal. Further details are given in the document 'Contracts of employment'.

Employer's counter-claim

Employers who suffer a measurable financial loss because an employee has departed from the agreed terms of the contract of employment (or of any other contract connected with employment) can seek damages by making a breach of contract claim - or, if the employee has already claimed breach of contract to the tribunal, a counter-claim. Again, such a claim must normally be made to a county court or other civil court but where the employment has
ended, it may be made to an employment tribunal. Further details are given in the document ‘Contracts of employment’.

Further information

Further information on employment tribunals can be found on their website or you can ring the tribunal helpline on 0845 795 9775. The helpline can give information on tribunal procedures and publications, but cannot provide legal advice.

Advisory, Conciliation and Arbitration Service (Acas)

Acas has a general duty of promoting the improvement of employment relations. It can supply information on legislation and advise on a wide range of employment matters. Employers and employees can request assistance from Acas conciliators to help settle disputes. In most cases where employees or trade unions have a complaint against an employer that they could take or have taken to an employment tribunal, an Acas conciliator can help the parties try to settle the case without the need for a tribunal hearing.

Acas conciliation, in cases which are or could be the subject of complaints to employment tribunals, is explained in the leaflet Conciliation explained.

The Acas code of practice Disciplinary and grievance procedures aims to help employers, workers and their representatives by giving practical guidance on how to deal with disciplinary and grievance issues. It also has guidance on a worker's right to be accompanied at a disciplinary or grievance hearing.

Failure to observe any part of the code does not in itself make employers liable to proceedings but it may be used in evidence at an employment tribunal. If the tribunal considers it relevant to any question arising in the proceedings, it must take the code into account in determining that question. Similarly the code must be taken into account by arbitrators appointed to determine unfair dismissal cases under the Acas Arbitration Scheme.

Acas also publishes two other codes of practice: Disclosure of information to trade unions for collective bargaining purposes and Time off for trade union duties and activities. The same rules apply as regards their use in evidence at employment tribunals.