

Employment Data  
6th April 2015



**MOORE BLATCH**  
solicitors



# EMPLOYMENT RIGHTS

## ENTITLEMENT **Qualifying Period**

- Day 1**
- Breach of contract claim by employee.
  - Protection from unfair dismissal in certain specific circumstances, for example, if the main reason involves:
    - Pregnancy, maternity, adoption, dependant care and parental leave.
    - Health and safety.
    - Making a protected disclosure.
    - Asserting statutory rights, including asserting the right to be accompanied at a disciplinary or grievance meeting.
    - Making a flexible working application.
    - Status as a part time worker or fixed term employee.
    - The employee's political opinions or affiliations.
  - Protection from discrimination on the grounds of sex, sexual orientation, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion or belief, age and disability.
  - 26 weeks' ordinary maternity leave + 26 weeks' additional maternity leave.
  - Equal pay.
  - Unpaid time off to care for dependants and paid time off for ante-natal care.
  - Failure to conduct collective consultation.
  - Right to paid annual leave.
  - Right to statutory sick pay after 3rd consecutive day of absence subject to certain qualifications.
- 1 month**
- At least 1 week's notice of termination of contract.
  - Guarantee payments in case of lack of work.
  - Payment of salary during suspension on medical grounds for up to 26 weeks.
- 2 months**
- A written statement of the particulars of employment as contained in Section 1 Employment Rights Act 1996.
- 26 weeks**
- 2 weeks' paternity leave plus paternity pay.
  - Right to request time off for study or training where employers have 250 or more employees.
  - 39 weeks' maternity pay + 52 weeks' leave.
  - 39 weeks' adoption pay + 52 weeks' leave.
  - Make a flexible working request.
  - Make a shared parental leave request.

- 1 year**
  - 18 weeks' unpaid parental leave in respect of each child.
- 2 years**
  - Written reasons for dismissal.
  - Statutory redundancy payment.
  - Right to paid time off to look for work when under notice of redundancy.
  - Protection from unfair dismissal.

## STATUTORY NOTICE

- No notice requirement if less than 1 month's employment.
- 1 week if continuous employment is between 1 month and 2 years.
- 1 week's notice for each year of continuous employment between 2 and 12 years.
- 12 weeks' notice if the period of continuous employment is 12 years or more.

A contract of employment can provide for greater periods of notice but cannot reduce them.

## WORKING PARENTS

- Ante-natal care**
  - All female employees are entitled to time off for ante-natal care and at normal rates of pay regardless of length of service.
  - Those in qualifying relationships with a pregnant woman or her expected child are entitled to unpaid time off to attend 2 ante-natal appointments.
- Paternity leave** Up to 2 weeks' ordinary paternity leave at £139.58 per week or 90% of normal weekly earnings if lower and up to 26 weeks' additional paid leave, if the female employee returns to work after 6 months but before the end of her additional maternity leave.
- Parental leave** 18 weeks' unpaid leave to care for a child up to 18 years of age from date of birth.
- Adoption leave** 26 weeks' ordinary adoption leave followed by 26 weeks' additional leave. Up to 39 weeks' paid leave at £139.58 or 90% of normal weekly earnings if lower.
- Time off for dependents** A 'reasonable amount' of unpaid time off to deal with an unexpected emergency and make necessary long term arrangements involving a dependant.

- Flexible working**
- All employees with at least 26 weeks' continuous employment are entitled to make a request for flexible working.
  - The request to vary working hours, days or location can be for any reason but can only be made once every 12 months.

The application must:

- Be in writing;
  - Be dated;
  - State that it is a flexible working request;
  - Specify the change the employee is seeking and when they wish it to take effect;
  - Explain the effect the employee expects the change would have on the employer and how that might be dealt with; and
  - State if any previous requests have been made.
- Employers have 3 months to consider the request and make a decision.
  - Whilst the application must be dealt with in a reasonable manner the employer can refuse the request for one or more of the following reasons:
    - The burden of additional costs.
    - Detrimental effect on the ability to meet customer demand.
    - Inability to reorganise work among existing staff.
    - Inability to recruit additional staff.
    - Detrimental impact on quality.
    - Detrimental impact on performance.
    - Insufficiency of work during the periods the employee proposes to work.
    - Planned structural changes.
  - If the employer agrees to the change it will mean a permanent change to the employee's contract of employment.
  - There is no legislative requirement to allow for an appeal but it is recommended by the Acas Code.

## MATERNITY LEAVE & PAY

### Statutory maternity pay

Qualifying employees are entitled to 39 weeks' Statutory Maternity Pay (SMP). Rate of SMP is:

- 90% of average weekly earnings for first 6 weeks.
- Lesser of £139.58 or 90% of normal weekly earnings for remaining 33 weeks.
- Employers are reimbursed 92% of SMP (100% for small employers).

### Qualifying for SMP

- The employee must have 26 weeks' continuous employment ending on the 15th week before expected week of childbirth (EWC).
- Her normal weekly earnings in the 8 weeks up to the 15th week before EWC must not be less than the lower earnings limit for NIC, currently £112.
- The employee must notify the employer no later than the 15th week before EWC:
  - That she is pregnant.
  - When the EWC will be.
  - When she intends OML to start.
  - When she expects SMP to start (28 days' notice required). Employer has 28 days to confirm expected return date.

### Maternity leave

- Starts no earlier than the 11th week before EWC.
- All female employees are entitled to at least 26 weeks' ordinary maternity leave (OML) and 26 weeks' additional maternity leave (AML) regardless of length of service.

*Up to 10 keeping in touch days may be worked during OML or AML without bringing leave to an end or losing SMP.*

### Compulsory maternity leave

- 2 weeks from date of childbirth.
- 4 weeks if employee works in a factory.
- A later date in certain cases by statutory requirement.

### Return after maternity leave

- The employee does not have to give notice of her intention to return at the end of her maternity leave if this is the same date as previously notified to her employer.
- Return date is the 1st working day after the end of maternity leave.
- The employee must give 8 weeks' notice to return before the end of full maternity leave entitlement.
- The employee must give contractual notice if she does not intend to return after maternity leave.

## SHARED PARENTAL LEAVE

- For babies due on or after 5 April 2015 an eligible mother can choose to end her maternity leave early and with her partner or the child's father (if they also meet the qualifying requirements) opt for shared parental leave (SPL) instead.
- The mother is still obliged to take compulsory maternity leave but can choose to share the remaining 50 weeks of maternity leave and 39 weeks of pay.
- Fathers will continue to be entitled to take up to 2 weeks' paternity leave in addition to SPL.
- The parents can decide how to share the leave and whether to take periods of leave as one continuous period or in separate blocks (up to a maximum of three).
- If an employee requests a continuous period of leave then the employer cannot refuse this.
- If the employee requests a discontinuous period then the employer can refuse this. If a request for discontinuous leave is refused then the total amount of leave requested in the notice will automatically become a continuous block of SPL unless the request is withdrawn by the employee.
- The employee must give at least 8 weeks' written notice of their intention to take SPL which must include:
  - Their partner's name;
  - Start and end dates for maternity or adoption leave and pay;
  - The total amount of SPL and Shared Parental Pay (SPP) available and how much they and their partner intend to take;
  - Confirmation that they're sharing childcare responsibility with their partner; and
  - An indication of the pattern of leave they are thinking of taking.

The employee must also include with their notice a signed declaration from their partner stating:

- Their name, address and National Insurance number;
  - That they satisfy the qualifying requirements for SPL and SPP; and
  - That they agree to their partner taking SPL and SPP.
- If both parents qualify for SPL then employers cannot lawfully refuse an SPL request, subject to the limit of a maximum of three booking requests.

*In addition to the 10 existing keeping in touch days parents will be entitled to 20 shared parental leave keeping in touch days.*

## STATUTORY REDUNDANCY PAYMENTS

- The right to a redundancy payment starts when the employee has completed 2 years' employment.
- Service is calculated by counting backwards from the end of the notice period for each complete year of continuous service.
- For each complete year of service (for a maximum of 20 years), use the following multiplier:

Aged 22 years old or under = Half a week's pay\*

Between 23-41 years old = One week's pay

Aged 42 years or over = One and a half week's pay

*Example:* 3 years of service x 1 (aged 27 at date of dismissal)  
x £475 = £1,425

\* *Limit on week's pay = £475*

## COLLECTIVE REDUNDANCY - consultation obligations

- Applies when 20 or more employees are to be made redundant at one establishment within a period of 90 days or less.
- Consultation must start "in good time" but:
  - At least 30 days before the first dismissal takes effect for between 20–99 redundancies.
  - 45 days before the first dismissal takes effect for 100 or more redundancies.
- Employees on a fixed term contract that has expired are excluded from consultation.
- Failure to consult properly may result in a protective award of up to a maximum of 90 days **actual** pay per employee calculated on gross pay.

## AUTO-ENROLMENT AND NEW EMPLOYER PENSION DUTIES

- On 30th June 2012 new laws came into effect that require all employers in the UK to automatically enrol eligible workers in a pension scheme and pay a mandatory minimum contribution.
- Eligible employees who have been auto-enrolled will have a right to opt out of scheme membership.
- The Government has been staging implementation month by month over a five and a half year period since 1 October 2012, with employers separated into bands according to their payroll size.

- Any employers with 50 or more employees will have already hit their staging date and enrolled eligible workers into a pension scheme.
  - For employers with fewer than 50 employees: staging dates are between 1 June 2015 and 1 April 2017.
  - New employers set up between 1 April 2012 and 30 September 2017: staging dates between 1 May 2017 and 1 February 2018.
- If an employer does not comply with its duties the Regulator may issue a warning letter followed by a formal compliance notice. In addition, financial penalties can be imposed starting from £400 and reaching up to £10,000 a day. There are also possible criminal proceedings for wilful failures.

## AGENCY WORKER REGULATIONS

- Agency workers have the entitlement to the same treatment as other employees in respect of basic employment and working conditions after 12 weeks' employment (ie. basic hourly pay rate, overtime, bonuses, rest breaks and holiday).
- From day one, agency workers must have access to the same facilities as comparable employees and they must be advised of relevant employment vacancies.

## WORKING TIME REGULATIONS

**Working Time Regulations apply to all workers (with specific exceptions for certain sectors ie sea, air and road transport)**

- Hours**
- 48 hour maximum working week averaged over a 17 week period (can be extended by agreement to 52 weeks, 26 weeks in special cases).
  - Opt out by written agreement signed by the worker which can be cancelled on 7 days' notice, or longer (up to 3 months) if agreed.
  - Does not apply to workers who can decide how long they work eg. Directors.
- Rest breaks**
- 11 hours uninterrupted rest in a 24 hour period.
  - 1 whole day off a week, averaged over 2 weeks (24 hours rest per week or at the employer's choice 48 hours per fortnight).
  - 20 minute rest break during every 6 hour stretch.
  - Special rules apply to young workers and night workers.

## Holidays

- 28 days' paid annual leave (for those working a 5 day week).
- Leave includes Bank Holidays (unless they are allowed as extra by the contract of employment or custom and practice).
- Leave accrues at the rate of 1/12 each month (rounded up to the next half day).
- Workers must give notice of intention to take leave.

## NATIONAL MINIMUM WAGE

<b>Adult rate</b>	(worker aged 21 + ) Presently £6.50 per hour.	From 1st Oct £6.70
<b>Development rate</b>	(worker aged 18-20 inclusive) Presently £5.13 per hour.	From 1st Oct £5.30
<b>Young workers' rate</b>	(16 & 17 year olds) Presently £3.79 per hour. Maximum accommodation set off £5.08 per day.	From 1st Oct £3.87 From 1st Oct £5.35
<b>Apprentices under 19 or in 1st. year of apprenticeship</b>	Presently £2.73 per hour.	From 1st Oct £3.30

## SICKNESS PAYMENTS

Qualifying employees who have been absent from work for 4 or more consecutive days are entitled to receive statutory sick pay £88.45 per week for up to 28 weeks in any 3 years.

## COMPENSATION LIMITS

<b>Employment right</b>	<b>Maximum award</b>
<b>Unfair dismissal</b>	
Basic award	£14,250*
Compensatory award	£78,335* or if lower, one year's gross pay
Additional award	£12,350 – £24,700 (i.e. 26–52 weeks' pay)
<b>Redundancy pay</b>	£14,250*
<b>Discrimination</b>	No limit
<b>Dismissal for health and safety reasons</b>	
Basic award	£14,250 (minimum £5,807)*
Compensatory award	No limit

### **Dismissal for making a protected disclosure**

Basic award	£14,250 (minimum £5,807)*
Compensatory award	No limit

<b>Guarantee pay</b>	£130.00 (5 days in any period of 3 months) (£26.00 per day)*
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<b>Breach of flexible working regulations</b>	8 weeks' pay (up to £3,800)
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<b>Failure to inform or consult over a TUPE transfer</b>	13 weeks' actual pay (gross)
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<b>Failure to inform or consult over collective redundancy</b>	90 days' actual pay (gross)
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<b>Breach of right to be accompanied</b>	2 weeks' pay (up to £950)
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<b>Contract claims in a Tribunal</b>	£25,000
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<b>Limit on a week's pay</b>	£475 (where applicable)*
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<b>Failure to give statement of employment particulars</b>	Minimum 2 weeks' pay (up to £950) Maximum 4 weeks' pay (up to £1,900).
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\* The Secretary of State will increase these figures annually in line with the retail prices index every year.

## **FUTURE LEGISLATION & CHANGES 2015–2016**

- May 2015 The "Fit for Work" Service will be introduced. The Service will result in free health and work advice and free referrals for occupational health assessments for employees who have reached, or whose GP expects them to reach, 4 weeks of sickness absence.
- 2015 or later The passing of the Small Business, Enterprise and Employment Bill 2014–2015 will, among other things, render exclusivity clauses in zero-hour contracts unenforceable.

The information contained in this leaflet is correct as at April 6th 2015. It is intended as a useful check list only and is not intended to provide specific legal advice to you or your business. The firm is not authorised under the Financial Services and Markets Act 2000 but is able in certain circumstances to offer a limited range of investment services to clients because we are members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.

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For more information please contact

**Katherine Maxwell**

023 8071 8094

katherine.maxwell@mooreblatch.com

**Emma Edis**

023 8071 8872

emma.edis@mooreblatch.com

**Naomi Greenwood**

020 3274 1006

naomi.greenwood@mooreblatch.com

**Paul Whitaker**

023 8071 6125

paul.whitaker@mooreblatch.com

**MOORE BLATCH**  
solicitors

Southampton • Richmond • City • Lymington • Whiteley

023 8071 8000 info@mooreblatch.com

**www.mooreblatch.com**