

EMPLOYMENT DATA

April 2013 - September 2013

MB

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 part time worker or fixed term employee.
- 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 weeks' 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.
- Up to 26 weeks additional 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.

- 1 year**
 - Protection from unfair dismissal for employees whose employment commenced before 6th April 2012.
 - 18 weeks unpaid parental leave in respect of each child up until the child's fifth birthday (for a disabled child up until the child's eighteenth birthday).
- 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

- All female employees are entitled to time off for ante-natal care and at normal rates of pay regardless of length of service.
- 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.

Paternity leave Up to 2 weeks ordinary paternity leave at £136.78 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 5 years from date of birth (18 years in the case of disabled children, where a child is entitled to disability living allowance).

Adoption leave 26 weeks' ordinary adoption leave followed by 26 weeks' additional leave. Up to 39 weeks' paid leave at £136.78 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 dependent.

Flexible working

Both father and mother and employees who care for a child or adult can request flexible working patterns, on the basis that he or she:

- Is an employee.
- Is the parent of a child under 17 years old (or 18 if the child is disabled) or has responsibility for caring for an adult.
- Is the child's parent or the partner, spouse or civil partner of the parent.
- Is making the application in order to care for the child or an adult in need of care.
- Has worked for 26 continuous weeks at date of application.
- Has not made an application to work flexibly in the last 12 months.

The employer must:

- Meet to discuss the request within 28 days.
- Notify the employee of their decision in writing within 14 days after the meeting.
- Allow the employee 14 days to appeal.
- Hold the appeal hearing within 14 days of receipt of appeal.
- Notify the employee of the outcome of the appeal within 14 days of appeal hearing.
- Allow the employee to be accompanied at the meeting.

The employer can only refuse on limited grounds:

- Burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality or performance.
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes.

The maximum award for a breach of the Flexible Working Regulations is 8 weeks pay, up to £3,600.

MATERNITY LEAVE & PAY

Statutory maternity pay

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

- 90% of normal weekly earnings for first 6 weeks.
- Lesser of £136.78 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 £109.
- 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.

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.

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

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.

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 24 when joined)
x £450 = £1,350

* Limit on week's pay = £450

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.
 - 90 days before the first dismissal takes effect for 100 or more redundancies, pre 6th April 2013.
 - 45 days before the first dismissal takes effect for 100 or more redundancies, post 6th April 2013.
- From 6th April 2013 people 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

- From 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 is staging implementation month by month over a five and a half year period from 1 October 2012, with employers separated into bands according to their payroll size. As a general guide, the position is as follows:
 - More than 250 employees: staging dates between 1 October 2012 and 1 February 2014.
 - Between 50 and 249 employees: staging dates between 1 April 2014 and 1 April 2015.
 - Fewer than 50 employees: staging dates 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).
 - 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 each day.
 - 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

- Adult rate** (worker aged 21+)
Presently £6.19 per hour.
- Development rate** (worker aged 18-20)
Presently £4.98 per hour.
- Young workers' rate** (16 & 17 year olds)
Presently £3.68 per hour.
Maximum accomodation set off £4.82 per day.
- Apprentices under 19 or in 1st. year of apprenticeship**
Presently £2.65 per hour.

SICKNESS PAYMENTS

Statutory sick pay £86.70 per week for up to 28 weeks in any 3 years.

COMPENSATION LIMITS

Employment right	Maximum award
Unfair dismissal	
Basic award	£13,500*
Compensatory award	£74,200*
Additional award	£11,700-£23,400 (i.e. 26-52 weeks' pay)
Redundancy pay	£13,500*
Discrimination	No limit
Dismissal for health and safety reasons	
Basic award	£13,500 (minimum £5,500)*
Compensatory award	No limit
Dismissal for making a protected disclosure	
Basic award	£13,500 (minimum £5,500)*
Compensatory award	No limit
Guarantee pay	£121.00 (5 days in any period of 3 months) (£24.20 per day)*
Breach of flexible working regulations	8 weeks' pay (up to £3,600)
Failure to inform or consult over a TUPE transfer	13 weeks' actual pay (gross)
Failure to inform or consult over collective redundancy	90 days' actual pay (gross)
Breach of right to be accompanied	2 weeks' pay (up to £900)
Contract claims in a Tribunal	£25,000
Limit on a week's pay	£450 (where applicable)*

Failure to give statement of employment particulars Minimum 2 weeks' pay (up to £900)
Maximum 4 weeks' pay (up to £1,800).

* The Secretary of State will increase these figures annually in line with the retail prices index every year.

FUTURE LEGISLATION & CHANGES 2013 - 2015

- April 2015 (Currently under government consultation)
Flexible Parental Leave. The government proposes to entitle fathers to unpaid leave to attend antenatal appointments and to introduce a new system of 50 weeks flexible parental leave.
- Tribunal Reform (Currently under Bill) The Government intends to introduce a number of changes:
 - claimants to submit all disputes to ACAS before bringing a tribunal claim to encourage early conciliation.
 - Introduction of tribunal fees (summer 2013) so that a claimant must pay to lodge a claim and a respondent to defend the claim.
 - Power to fine an employer up to £5,000 (on top of damages) if they lose a case.
- Pre-termination Negotiations
The Government is also considering introducing "pre-termination negotiations". The purpose of which will be that an offer made or discussion held with an employee with a view to terminating employment cannot be taken into account in unfair dismissal proceedings. The aim is that employers can have a frank conversation with employees without the fear it will be used in future litigation.
- Unpaid Parental Leave
It is proposed that from 2015 the right to take unpaid parental leave will be extended so that time can be taken off anytime up to a child's 18th birthday.
- Flexible Working
From 2014 it is proposed that all employees will have the right to request flexible working.

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