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POCKET GUIDE

Your Rights at Work

- ✓ Expert advice
- ✓ Everyday employment law issues explained
- ✓ Easy to understand



Handy legal advice

This is an excerpt from Lawpack's book *Your Rights at Work*.

To get all the answers to your employment law questions, [click here](#).

Your Rights at Work
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For convenience (and for no other reason), 'him', 'he' and 'his' have been used throughout and should be read to include 'her', 'she' and 'her'.

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CHAPTER 2


The employment relationship

Once you have accepted a job offer, the legal relationship with your new employer is governed by two things:

- your ‘statutory rights’ (i.e. those laid down by law); and
- your contract of employment.

The contract may be verbal or in writing or a mixture of the two and is governed by ‘express’ terms (written) and ‘implied’ terms (unwritten, implicit terms such as the duty of good faith) which set out the rights and obligations of you and your employer.

You and your employer are free to agree upon any terms you wish, subject to the statutory rights that are summarised below.

 **Does my contract have to cover all my rights?**

No, some rights are not included because they are ‘statutory’ and therefore automatic.

Statutory rights of employees

You automatically become entitled to statutory rights upon entering into an employment contract, without any need for the details of these rights to be written into a contract. A number of these rights depend upon you having a minimum period of employment. The main rights are:

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Access to Stakeholder Pensions

If you have at least three months' service working in an organisation with more than five full-time employees, you are entitled to be offered access to a Stakeholder Pension plan by your employer. You do not have to join the plan and your employer does not have to pay any contribution to the plan.

Equal opportunities

See chapter 4.

Equal pay for work of equal value

See chapter 4.

'Guarantee pay'

If you have at least one month's service, you must be paid 'guarantee' payments when you could normally expect to work, but no work is available; the rate is currently £21.50 per day for up to five days in any period of three months. Therefore, the annual maximum is currently £430.

You can complain to an employment tribunal if your employer fails to pay the whole or part of a guarantee payment to which you are entitled; the tribunal can award compensation equal to the amount of the guarantee payment which it finds due.

Healthy and safe working environment

Point of Law

*Section 2 Health and Safety at Work
etc Act 1974*

All employees are entitled to be provided by their employer 'so far as is reasonably practicable'

with a safe place to work and safe access to the place of work, a safe system of work, adequate materials, competent fellow employees and protection from unnecessary risk of injury.

The Health and Safety Executive (HSE) publishes guidance notes on this subject that are available from HSE Books, listed in the ‘Useful contacts’ section.

Itemised pay statements

Itemised pay statements must be issued to all employees each time they are paid and these must include the following particulars:

- gross earnings;
- net pay;
- deductions from gross earnings;
- if the net pay is paid in different ways, the amount and method of payment of each part of the payment.

You can complain to an employment tribunal if your employer fails to issue a pay statement or if the content is in dispute.

Maternity rights and benefits

See chapter 3.

National minimum wage (NMW)

You must not be paid less than the NMW. The current rates for the NMW (before deductions for tax and National Insurance contributions) are:

- £5.73 per hour for those aged 22 and above ;
- £4.77 per hour for those aged from 18 to 21 and for employees in the first six months of a new job with a new employer who are in specific training.



Our nanny says she must be paid the minimum wage, is that right?

No, if she works and lives as part of your family, she has no right to it.

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Workers aged 16–17 qualify for a third rate of £3.53 per hour, but apprentices in this age group are exempt.

Employees working and living as part of a family and those on formal apprenticeships currently have no right to the NMW.

If you do not receive the NMW, you can complain to an employment tribunal. For more details, contact the NMW Helpline on 0845 600 0678.

Not to be unfairly dismissed

See chapter 5.

Notice of termination of employment


The minimum notice periods for termination of employment are as follows:

By the employer:

<i>Length of employee's service</i>	<i>Minimum notice period</i>
Less than 1 month	Nil
1 month–2 years	1 week
2–3 years	2 weeks

...and an additional week for each year of continuous employment to a maximum of 12 weeks.

By the employee: one week.

 **I want to quit my job, what's the minimum notice I have to give my boss?**

One week.

Protected rights on the transfer of a trade or business

When a trade or business is transferred from one employer to another, its employees automatically become employees of the new employer, as if their contract of employment were originally made with the new employer. The service is counted as continuous from the date on which the employment began with the first employer.

Redundancy pay

See chapter 5.

Remuneration on suspension on medical grounds

You are entitled to be paid for up to 26 weeks if, in compliance with any regulation or law that concerns the health and safety of workers, you are suspended on medical grounds.

You are entitled to be paid ‘a week’s pay’ (or a proportion of ‘a week’s pay’) for every week of suspension. If you want an explanation of how to calculate a week’s pay, see the Department of Trade and Industry’s (DTI’s) booklet entitled ‘Rules Governing Continuous Employment and a Week’s Pay’ (see ‘Useful contacts’ section).

You can complain to an employment tribunal about your employer’s failure to make a medical suspension payment within three months of the day on which it is alleged that payment was not made. The tribunal will extend the time limit for bringing the claim if it was not reasonably practicable for the claim to be made within three months.

Statutory Sick Pay

Subject to satisfying certain conditions, you are entitled to receive Statutory Sick Pay (SSP) from your employer when you are absent from work because of sickness. The current weekly rate of SSP is £75.40, verifiable by contacting the Department for Work and Pensions (DWP) or the Advisory Conciliation and Arbitration Service (ACAS) (see ‘Useful contacts’ section). This sum is subject to Income Tax and National Insurance contributions.

Unless the contract of employment states that there is a right to be paid normal pay for a period of sickness absence, SSP is all the employer is obliged to pay an employee during sickness.

You are not eligible for SSP if on the first day of sickness:

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- you have a contract of services which is for a specified period of three months or less;
- your average weekly pay is below the point at which National Insurance contributions are payable (currently £90);
- you have received Social Security Benefit in the 57 days before the first day of sickness;
- you have not yet started working;
- you become sick while pregnant during the Statutory Maternity Pay period;
- you have been due SSP for 28 weeks from a former employer and the last day on which SSP was paid is eight weeks ago or less;
- you become sick during a trade dispute at your workplace, unless you can prove you have no direct interest in the dispute; or
- you are in legal custody.

If notified that an ineligible employee has been absent for four or more consecutive days, your employer must send a form to you within seven days that explains why SSP is not payable. You may then claim Incapacity Benefit. Forms for claiming Incapacity Benefit are available from local Jobcentre Plus offices.

SSP is only payable:

- if you have been incapable of work for four or more consecutive days; and
- if you have notified your employer of your absence and given evidence of your incapacity, i.e. a doctor's note (in accordance with any rules laid down by your employer which must be made available to all employees); and
- for days on which you would normally be required to work; and
- until:
 - (i) you return to work; or

- (ii) SSP has been paid for 28 weeks (if you are still sick in these circumstances, you shall become entitled to Incapacity Benefit); or
- (iii) the expiry or termination of your contract of employment; or
- (iv) you become entitled to Maternity Allowance or Statutory Maternity Pay (see chapter 3); or
- (v) you go into legal custody.

If there are less than eight weeks between any periods of absence, they are linked and counted as one period of absence for SSP purposes.

Employers must issue a Form SSP(I)(T) to employees whose maximum entitlement to 28 weeks is about to expire, no later than the 23rd week of sickness.

Sunday shop working

Unless you are employed to work only on Sundays, if you are employed as a shop worker you have protection from dismissal, selection for redundancy or any other disadvantage for refusing to work on Sundays.

Even if you have agreed to work on Sundays, you can opt out of Sunday working by giving your employer three months' notice. Your employer should have given you a written explanatory statement setting out your right to opt out and if it fails to do so within two months of you agreeing to work on Sundays, the opt-out notice period is reduced from three months to one month.

Time off

Holiday

All workers have the right to the minimum of 24 days' paid holiday per year. Paid public holidays (of which there are currently eight in the UK) can be counted as part of the statutory 24 days' holiday entitlement. Some employers

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provide more generous contractual holiday entitlement than the statutory minimum.



My employer counts Bank Holidays as part of my holiday allowance, can he do that?

Yes, they can be counted as part of your statutory 20 days' holiday.

If you are a part-time worker, you are entitled to the same holidays as a full-time worker, calculated on a pro rata basis. So, for example, where your employer gives full-time employees 24 days' holiday per year (plus public holidays), if you work three days a week (Tuesday to Thursday) you should have 14.4 days' paid holiday (plus 3/5 of the year's public holidays even if you do not work on Mondays).

You cannot carry holiday time over into the following year, nor can you receive payment in lieu to replace unused holiday time, except where your employment is terminated. Some contracts of employment allow some holiday to be carried over or to attract payment in lieu; this is acceptable provided it is holiday that exceeds the statutory minimum holiday entitlement.

Point of Law

Working Time Regulations 1998

You are entitled to be paid for each week of your statutory leave entitlement. This is relatively easy to calculate if your pay does not vary with the amount of work done. However, if your pay varies with the amount of work done or you are a shift or rota worker or if you have no normal working hours, then the amount of a week's pay is the average pay received over the preceding 12 weeks.

Public duties

You are entitled to time off to perform the public duties listed below. The amount of time you can take depends upon your employer's business and the effect of your absence.

The employment relationship

- As a justice of the peace.
- As a member of a local authority.
- As a member of the Broads Authority (an authority with responsibilities for conservation and recreation on the Norfolk Broads).
- As a member of any statutory tribunal.
- As a member of a board of visitors or a visiting committee.
- As a member of a National Health Service trust, a Regional Health Authority, an Area Health Authority, a District Health Authority, a Family Practitioner Committee or a Health Board.
- As a member of the managing or governing body of an educational establishment maintained by a local education authority or a school council or the governing body of a designated institution or a central institution.
- As a member of the governing body of a grant-maintained school.
- As a member of the governing body of a further education corporation or higher education corporation.
- As a member of a school board or of the board of management of a self-governing school.
- As a member of the board of management of a college of further education.
- As a member of the National Rivers Authority or a river purification board.

There is no right to have time off for jury service or to attend court as a witness. But an employer who prevents such attendance would be in contempt of court.



Does my employer have to pay me while I am on jury service?

No, but you can claim an allowance from the court.

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There is no automatic right to be paid by your employer while on jury service. You can claim an allowance from the court for loss of earnings (up to a cap), travel costs and a subsistence rate. For details of the rates payable, see the Court Service website (www.hmcourts-service.gov.uk).

Trade union activities, duties and training

Officials of independent trade unions are entitled to time off with pay to perform duties concerned with the industrial relations in the employing company and to undergo training. There is also a right to time off to accompany another worker at disciplinary and grievance hearings.

Union members are entitled to time off without pay in order to take part in trade union activities (e.g. voting in a union election, recruiting new members, distributing union literature and attending branch meetings).

Elected employee representatives

If you are an employee who has been elected as an employee representative for consultation purposes regarding collective redundancies or the transfer of a trade or business, you are entitled to reasonable paid time off to perform your functions as a representative. You also have the right to paid leave to undergo training.

Safety representatives

Safety representatives appointed by recognised trade unions are entitled to paid time off during working time to carry out their functions and undergo training for these functions. Representatives of non-unionised workplaces are also entitled to paid time off to carry out functions and undergo training.

Pension scheme trustees

If you are a pension scheme trustee, you are entitled to paid time off during working hours for performing your duties or for training in connection with those duties.

Maternity leave, including antenatal care

See chapter 3.

Redundancy

See chapter 5.

Parental leave

See chapter 3.

Paternity leave

See chapter 3.

Time off for dependants

See chapter 3.

Working time

Subject to certain exceptions, you cannot be required to work more than 48 hours per week unless you agree to opt out of the 48-hour limit.

Point of Law

Working Time Regulations 1998

Any agreement to opt out of this 48-hour limit must be in writing and you must not be forced to

opt out or suffer any disadvantage if you refuse to opt out.

You are also entitled to:

- frequent short breaks if your work is monotonous or your work rate is predetermined;
- 20 minutes' rest every six hours if the working day is longer than six hours;
- 11 consecutive hours' rest in any 24-hour period;
- 24 consecutive hours' rest in every seven-day period.

If you work nights, you cannot be required to work more than eight hours in 24. This working time can be averaged

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I work nights and my health is suffering, what can I do?

You should ask your employer to give you a free health check.

over 17 weeks unless you are involved in special hazards or heavy physical/mental strain, when no averaging is allowed. If you work nights, you are also entitled to free health assessments before you start the position and then at regular intervals. If your GP certifies that you are suffering from health problems connected with night work, you may transfer to alternative day work.

Written reasons for dismissal (upon request)

If you are dismissed and you have one year's continuous service, you can ask your employer for a written statement of reasons for dismissal. If the statement is not provided within 14 days, or if the reasons given are inadequate or untrue, you can complain to an employment tribunal and claim compensation of two weeks' pay.

Written statement of terms and conditions of employment

You have a right to be provided with a written statement of the terms and conditions of your employment, unless your employment is for a period of less than one month. This is called the 'principal statement' and is often covered by your contract.

If you are employed for more than 13 weeks, you may complain to an employment tribunal if your employer fails to provide the written statement of the terms of employment.

Information which must be included in the principal statement:

- The names of the parties.
- The date on which employment began and the date on which any previous employment (with this or any other

The employment relationship

employer) commenced which is to be regarded as continuous with this employment.

- The scale or rate of remuneration or the method of calculating such remuneration and the frequency of payment.
- Any terms and conditions relating to hours of work, including normal working hours.
- Any terms and conditions relating to entitlement to holidays, including public holidays and holiday pay (enough to enable your entitlement, including entitlement to accrued holiday pay on termination, to be precisely calculated).
- Your job title or a brief description of your work.
- Your place of work, or if you are required or permitted to work at various places, an indication of that fact, together with the address of your employer.

Information which must be given in writing (e.g in a separate letter), but which may or may not be included in the principal statement (even when there are no such arrangements under these, this fact should be stated):

- Where the job is not intended to be permanent, the period for which it is expected to continue.
- Where the job is for a fixed term, the expiry date.
- The length of notice you are obliged to give and are entitled to receive in order to terminate your contract (or reference to the law or an accessible collective agreement, i.e. one negotiated between your employer and your trade union).
- The rules relating to sick leave and sick pay (or reference to a document where such details may be found).



Does my boss have to provide me with a written contract?

Strictly speaking, no; but written terms and conditions must be provided if your job lasts for more than a month.

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- Any collective agreements which directly affect your terms and conditions of employment including, where your employer is not a party, the names of the parties.
- The details of any pensions or pension schemes (or reference to documents where such details may be found).
- A statement of whether a State Pension contracting-out certificate is or is not in force.
- Where you are required to work outside the UK for more than one month, the period of such service, the currency in which remuneration will be paid, and additional remuneration and/or benefits provided while working overseas and any terms and conditions of employment relating to your return to the UK.
- Any disciplinary rules and grievance procedures applying to you (or reference to documents where these details can be found). This only applies if your employer employs more than 20 employees.
- The person to whom you can complain if you have any grievances or you are dissatisfied with a disciplinary decision (or reference to documents where these details can be found).

Statutory dispute resolution procedures

All employers are required to apply certain procedures when dealing with disciplinary or dismissal situations. Employees also have to take certain steps to try to resolve their grievances with their employer before bringing a claim in an employment tribunal.

Whenever an employer is contemplating dismissing an employee or taking disciplinary action other than giving a warning (e.g. demotion or transferring him to work in a different department) it must follow the standard dismissal and disciplinary procedure.

The main consequence of a failure by an employer to follow the procedures is that dismissal will be deemed to be

automatically unfair (subject to the employee having a year's service) and the compensatory award may be increased or decreased by between 10 to 50 per cent, depending on which party is at fault (subject to the statutory cap of £66,200). For further details on unfair dismissal and automatically unfair dismissal, see chapter 5.

If you have a grievance about an action by your employer, you will need to initiate the statutory grievance procedure before you can bring a subsequent employment tribunal claim.

Can I rely on verbal promises made by my employer during my interview, or during my employment as forming part of my contract of employment?

The terms of your contract can be written or verbal. The difficulty with relying on verbal promises as contractual terms is that they are very much more difficult to prove; it will often be your word against your employer's. This can be particularly difficult if a period of time has passed since your job started and memories have faded, or if the relevant manager who made the verbal promise has left your employer. Therefore, if a verbal promise has been made and you wish to rely on this as a contractual term, it is wise to ask your employer to incorporate it into your contract.

Before agreeing to any written contract of employment it is sensible to ensure that all of the benefits you have been verbally promised are included in the contract.

Can my employer change the terms of my contract?

Generally, your employer cannot change the terms of your contract without first obtaining your agreement.

However, there are some changes that your employer can make if it built 'flexibility' into your contract, for example, by stating that 'You may be required to work anywhere in the

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UK' or that 'You will work eight hours in 24, day, night or shift work'.

Another way flexibility may have been built into your contract is by the use of terms that can be altered or removed. For example, entitlement to a bonus may be stated to be at your manager's discretion and/or your employer may reserve the right to remove entitlement to a bonus without compensation.



I have been asked to start work an hour earlier, must I comply?

Not unless your contract or staff handbook states that your hours of work may be changed.

A staff handbook 'as issued from time to time' may be stated to be incorporated into a contract. This would mean that matters dealt with in a handbook

could be changed and that change would be automatically incorporated into the contract, without the need of your employer's express consent.

If the contract contains such flexibility, then your employer will be able to alter the terms in line with these clauses provided it introduces the changes in a reasonable manner. For example, if a mobility clause is included in the contract, your employer should give reasonable notice before requiring you to relocate.

If there is no flexibility, then your employer must follow the correct procedure if it wants to alter your terms of employment. Your employer must offer the new terms to you; you can either accept or reject them. If you do nothing, this does not mean you have accepted the new terms. The only time doing nothing can amount to acceptance is when your employer's letter varying the terms says something like 'If you do not object in writing within 14 days you will be deemed to have accepted the change'. Alternatively, it is possible for you to accept the new terms by your conduct; if you change your behaviour to comply with a term in the offer (e.g. you turn up for work at a new time), you will be judged to have accepted the new terms.

If you do not accept the changes, your employer may dismiss you and then offer employment on the new terms. However, if this happens you may have a claim for breach of contract, unfair dismissal or redundancy if the correct procedures are not followed and fair reasons for dismissal do not exist (see chapter 5 for further details on termination of employment).