



Global HR & Relocation Solutions

EMPLOYEMENT IN THE UK: LABOR AND SOCIAL LAWS REPORT



United Kingdom: Labor and Social Laws

Employment Considerations

Employment Agreement

- A Contract of Employment needs to be in writing. It is the employer obligation to submit an Employment Agreement within the first two months of employment.
- Following are the employment terms required to be in writing:
 - Employment starting date
 - Job title
 - Place of work
 - Payment of salary
 - Hours of work
 - Annual leave
 - Sick pay
 - Pension plan
 - Notice period
- The employment agreement defines the scope of employment duties. However, it is normal for many duties of an employee to be unspoken. They will be "implied contractual terms". An example is the duty of an employee to take reasonable care of the employer's property, normally implied if not expressly set out in the employee's contract.
- It is also normal for many of the obligations of an employer to his employees to be unspoken and not formally set out in their employment contracts. The law requires employers to give employees a written statement of basic employment particulars but the legal system work under the assumption that no contract will, or could, include every term governing the relationship of the employee and employer and many terms will simply be "implied".
- Some of these obligations will be imposed by statute (e.g., the Equal Pay Act implies an "equality clause" into every agreement under which an individual is employed in Great Britain unless there is an express equality clause). Others obligations can be implied by custom, common law or trade usage (e.g., all employers have a common law duty to provide a safe environment).

Variation in Employment Agreement

- The contract of employment is binding on both parties. Accordingly, it is unlawful for one party to change the employment terms without the agreement of the other unless the employment agreement includes specific provisions allowing such a change.
- In case of a variation of the employment agreement the employer should consult



the employee/s prior to the suggested change's announcement and provide the employee with a written notification at least one month prior to planned variation date.

- Changes in existing terms of employment are usually made in one of three ways:
 - By agreement with the employee(s).
 - By unilateral variation of contract terms (or of works rules applied by the contracts).
 - By giving required notice to terminate existing contracts and offering new contracts on new terms.
- Choices open to an employee are:
 - Go along with the employer's proposals.
 - Reject them and quit, perhaps claiming constructive dismissal.
 - Reject them but continue to work on a without prejudice basis (i.e. "under protest") on the new terms, reserving all rights, negotiating if possible and ultimately bringing court or Tribunal proceedings if agreement cannot be reached. In coming to a decision the tribunal will take into account whether the employer acted reasonably in all the circumstances of the case.
 - Reject them and continue to work "without protest". In case the employee continues to work under the new terms without making his/her objection to the employer, he/she could after a time be deemed to have implicitly accepted it and it would then become incorporated into the employment agreement.
- In case the employee refuses to accept the suggested change the employer can
 - Terminate the original contract, with proper notice, and offer a new contract to the employee, including the revised terms. Normally this will not constitute a breach of contract and if the employee accepts the new contract, continuity of employment is preserved.
 - Terminate the employment under the relevant statutory and contractual termination terms. The employer would then be free to offer the job on the new terms either to the dismissed employee or to a new applicant.

Employed Vs. Self-Employed

- The fact that a person is being defined (by himself and/or the employer) as self-employed does not necessarily mean that he is actually so. Neither is the location in which the work is being performed (from home or at the employer premises). The differentiating factor is whether or not the person is genuinely in business on his own.
- Following are the criteria defining employment:
 - The employer has the obligation to provide work.
 - The employer controls how and when the work is being conducted
 - The employer supplies the tools and equipment required.
 - The employer pays taxes and makes contributions on behalf of the employee.
- Following are the criteria defining self-employment:



- ❑ The person can decide whether or not to accept the work.
- ❑ The person can decide how to carry the work.
- ❑ The person makes his own arrangement in regard to holidays, vacation and sick pay.
- ❑ The employee pays his own taxes and makes his own contributions.

Part-Time Employment

- Part-time employees have had the same rights and have the same employment protection rights as full-timers for purposes of the UK employment protection. However there is no statutory right to work part time only.

Employment Agency

- Workers supplied by an agency may either simply be introduced to an employer by the agency or may be employees of the agency and be temporarily seconded to a "hirer". The Employment Agencies Act distinguishes between the two by defining the former as carrying on of the business of an "employment agency" and the latter as carrying on an "employment business". There are new regulations in this area reinforcing this distinction and adding provisions to ensure that all parties are aware of their precise status. They also require an employment business to specify to the hirer whether the work seeker being provided is employed by it or is self-employed or an apprentice.



Termination of Employment

Grievance/Disciplinary Procedure

- There is currently no legal requirement for an employer to operate any formal grievance (or disciplinary) procedures. Even though not statutorily required it is of course good practice for employers to have formal grievance (and disciplinary) procedures. It is well established that a failure to operate a reasonable grievance (or disciplinary) procedure in any particular case will be an important factor taken into account by employment tribunals in considering relevant matters, such as unfair dismissal.
- Under current (May 2004) law an employer who operates a grievance procedure must if he has 20 or more employees include details of it in the written particulars of employment he is obliged to give employees. Whether he has a formal grievance procedure or not every employer, regardless of size, must include in every statement of particulars of employment a note of the person to whom an employee can apply for the purpose of seeking redress of any grievance relating to his employment and the manner in which any such application should be made.

Termination of Employment

- In general, an employee has no legally enforceable right to work and his employer's only obligation is to pay the agreed salary.
- Accordingly, the employer has the right to terminate the employment of an employee. The only limitation for employment termination is termination related to Employment Discrimination (see later) or terms set in the employee's contract or in a collective agreement.
- An employer or employee who commits a breach of a fundamental term of the employment contract which is so serious that it goes to the very root or heart of the contract is said to "repudiate" the contract. The other party is then entitled (at his option) to treat the contract as at an end.
- If it is the employer who is in serious breach of contract the (ex-) employee will be able to claim compensation for unfair dismissal and/or damages for wrongful dismissal. The (ex-) employee will also be automatically released from all primary contractual obligations to the employer.
- If it is the employee who is in serious breach of contract, the employer will be entitled to dismiss the employee without notice or compensation
- Save in exceptional circumstances, employers must always consult with employees before dismissing them - failure to do so will normally make the dismissal "unfair". This rule applies even on expiry of a fixed term contract, especially if the employer might have alternative work available.



Notice Period

- The statutory minimum notice entitlement ranges from one to twelve weeks as follows:
 - One week if period of continuous employment is between 1 month and 2 years.
 - One week for each year of continuous employment between two and 12 years.
 - 12 weeks if period of continuous employment is 12 years or more.

Severance Payment

- Severance payments are required when termination meets the statutory definition of redundancy and only for employees with over two years of service. In such case the company is required to pay the following severance payments for each year of service:
 - 18 to 21 years of age: half a statutory week's pay.
 - 22 to 40 years of age: one statutory week's pay.
 - 41 years to retirement age: one and a half statutory week's pay.



Working Time and Leaves

Working Hours

- The normal working time is an average of 48 hours per week as measured over 17 weeks. All leaves (sick, maternity, holidays) are not included in the average. However, training and overtime are included in the average.
- Employers can request for longer working time. However, employees are required to agree in writing for such an extension.
- Employees are entitled for the following work breaks:
 - 20 minutes per a working day of more than 6 hours.
 - 11 hours between two working days.
 - A day rest per a working week.
 - 4 weeks paid leave per year.
- Parents of a child under the age of 6 years or of a disabled child have the right for a flexible working environment (including working hours and working location) as long as the employer does not provide a proof that such an environment does create significant business damage.

Overtime

- There are no statutory rules requiring an employee to work overtime or an employer to make overtime work available. Nor are there any statutory rules giving an employee the right to extra pay for working overtime.
- A requirement for working overtime should be stipulated in the employment agreement. An employee has the right not to agree to work overtime.

Holidays

- The standard annual amount of statutory holidays is 8 days as follows:

<u>Holiday</u>	<u>Date</u>
New Year's Day	January 01
Good Friday	April 02
Easter Monday	April 05
May Day	May 03
Spring Bank Holiday	May 31
Summer Bank Holiday	August 30
Bank Holidays	December 27-28

Annual vacation

- Almost every employee has the right to four weeks paid holiday per year, or proportionally for part of a year. A full time employee who works 5 days a week will



thus be entitled to a minimum of 20 paid days holiday per year.

- An employee has no legal right to carry untaken holiday forward to the next year
- The average annual vacation is 20 days for technical positions, 23 days for managerial positions and 25 days for senior managerial positions.

Parental Leave

- Employers are required to give a minimum of three months unpaid leave to both mothers and fathers after the birth of a child. Adoptive parents of children up to eight years old must have the same right.
- After 2 years of service the statutory minimal maternity leave is 40 weeks.
- The market practice is to provide maternity leaves up to the legal requirement.
- During the maternity leave the employee is entitled for a weekly social security allowance of about £60.



Social Benefits and Terms

Social Security

- National Insurance contributions are payable on the earnings of individuals who work in the United Kingdom.
- Special arrangements apply to individuals working temporarily in the United Kingdom. Under certain conditions, an employee is exempt from contributions for the first 52 weeks of employment in the United Kingdom.
- The contribution is made in two parts — a primary contribution from the employee and a secondary contribution from the employer.
- An employer contributes an amount based on an employee's earnings, with no ceiling.
- If the employee contracts out of the state earnings-related pension scheme (SERPS), which is permitted if the employee is a member of an approved occupational pension scheme, the employer's and employee's required contributions are reduced.

Statutory Sickness Pay

- Regular employees are entitled to sickness pay of £63.25 per week for 28 weeks.

Medical Leave

- Most companies provide sick leave with a full pay (inclusive of the Statutory Sickness Pay). Following is the medical leave entitlement for senior positions in the relevant industry:

<u>Length of Service Days</u>	<u>Company Sick Pay Entitlement</u>
Under 6 months	5 days
Less than 1 year	10 days
More than 1 year but less than 5 years	20 days
5 years and above	30 days



Legal Considerations

Discrimination

- **Age Discrimination** - There is no specific legislation making age discrimination unlawful in the UK (whether in the employment field or generally). However, by, at latest, 2nd December 2006 Britain must introduce legislation to implement the EC Directive establishing a General Framework for Equal Treatment in Employment and Occupation. This requires all EU Member States to outlaw age discrimination in employment. The British government has announced that new regulations are to be introduced which will make direct and indirect discrimination on the basis of age unlawful in the employment field (including vocational training) as from 1st October 2006, unless objectively justified.
- **Disability Discrimination** - it unlawful for an employer to treat a disabled person less favorably than others unless he can show that the treatment in question is justified. This covers job applicants and self-employed people who contract personally to provide services as well as those who come within the normal definition of employee. They also require employers to make reasonable adjustments to working conditions and environment to help overcome the practical effects of disability.
- **Sex Discrimination** - The Sex Discrimination Act and the Equal Pay Act deals with sex discrimination generally. In the employment field its main purpose is to outlaw discriminatory practices in connection with recruitment, promotion, dismissal and "access to.... benefits, facilities or services".
- **Sexual Orientation Discrimination** – The Employment Equality (Sexual Orientation) regulations outlaw any discrimination based on sexual orientation.

Minimum Wage

- The National Minimum Wage Act make it unlawful for an employer to pay less than the National Minimum Wage ("NMW") as stipulated from time to time. There is no statutory provision that entitles employees to annual or other pay reviews or pay increases (except of course so far as may be required to ensure that their pay is not less than the NMW rate as stipulated from time to time). The current NMW hourly rates (as of October 2006) are:
 - £5.35 for employees 22 years and older.
 - £4.45 for employees between 18 years and 21 years old.
 - £3.30 for employees below 18 years old and above compulsory school age.
- All employees, including part-time employees, casual employees, home employees and temporary employees, are covered under the NMW. However, some exceptions can be made in regard to self-employed.
- NMW should be a part of the non-variable compensation.



Trade Unions

- The Employment Relations Act allows employees working for an employer with over 21 employees to establish a trade union to act on their behalf. Once such a trade union is established by a majority vote of the employees it lasts at least for 3 years.
- Trade unions typically negotiate a collective agreement. The terms of a collective agreement that must be incorporated into the individual employment agreements.
- A trade union can take an industrial action only if the dispute relates to labor issues between the employer and the employees and by a majority secret vote.