

## ***Know Your Rights!***

***A Practical Introduction to Understanding  
and Dealing with Rights, Procedures and  
the Law in your Workplace.***



**British Isles Regional Organising Committee of the  
Industrial Workers of the World**

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**[www.iww.org.uk](http://www.iww.org.uk)**

## **Index**

<b>Rights .....</b>	<b>3</b>
<i>Pay .....</i>	<i>3</i>
<i>Time Off .....</i>	<i>5</i>
<i>Employment Contracts .....</i>	<i>9</i>
<i>Training .....</i>	<i>10</i>
<i>Work and the Family .....</i>	<i>11</i>
<i>Unions .....</i>	<i>13</i>
<i>Discrimination and Disability Rights .....</i>	<i>14</i>
<i>Special Cases .....</i>	<i>16</i>
<b>Health and Safety .....</b>	<b>20</b>
<i>Employer Responsibilities .....</i>	<i>20</i>
<i>Employee Responsibilities .....</i>	<i>21</i>
<i>Health and Safety Union Reps .....</i>	<i>21</i>
<i>Accidents.....</i>	<i>21</i>
<i>Workplace Environment .....</i>	<i>22</i>
<i>Stress .....</i>	<i>23</i>
<b>Procedures .....</b>	<b>24</b>
<i>Disciplinary Procedures .....</i>	<i>24</i>
<i>Grievance Procedures .....</i>	<i>25</i>
<i>Employment Tribunals .....</i>	<i>25</i>
<i>Termination of Contracts .....</i>	<i>26</i>

## **Rights**

### **Pay**

#### **National Minimum Wage**

The National Minimum Wage applies to almost all people in employment over the age of 16. It is graduated according to age:

- 16-17 year olds: £3.40 per hour
- 18-21 year olds (and some trainees): £4.60 per hour
- 21 years and over: £5.52 per hour

#### **Exceptions**

The National Minimum Wage does not apply to:

- Those under the age of 16.
- Members of the armed forces.
- Family members working for the family business.
- Volunteers.

#### **Wage deductions**

The most common deductions from wages are:

- Income Tax
- National Insurance contributions
- Pension contributions
- Union dues

Of these legal deductions, only Income Tax is compulsory.

Some deductions of wages can be allowed for breakages and other things that are the fault of the employee. However, for these deductions to be legal, they must be written into the contract of employment.

If your employer deducts money from your wages for any other reason, you may wish to go to an Employment Tribunal that will decide the legality of those deductions.

#### **Wage statements**

You have the right to an itemised wage statement from your employer. This should include gross pay, net pay, and any additions or deductions of pay.

### Pensions

There are three types of pension:

- State Pension: from the government
- Occupational pension: from your employer
- Personal Pension: private pensions and savings.

You automatically receive a basic state pension when you reach retirement age. However, the other two types of pension are entirely voluntary. Your employer cannot force you to take part in the company pension scheme if you do not wish to.

This is an extremely complex topic for which there are several good sources of information:

The Pension Service: [www.thepensionsservice.gov.uk](http://www.thepensionsservice.gov.uk)

The Financial Services Authority: [www.fsa.gov.uk](http://www.fsa.gov.uk)

The Pensions Advisory Service: [www.opas.org.uk](http://www.opas.org.uk)

### Tax

#### *Income Tax*

Income Tax is deductible from your wages, and is on a Pay As You Earn (PAYE) basis. It is variable according to how much money you earn.

In order to calculate how much you have to pay you are given a tax code. Your tax code will change every now and again, as your personal circumstances change.

The details held under your tax code are confidential between you and the Inland Revenue. Although your employer may know your tax code, (s)he is not allowed to know your personal tax details. Any attempt by him/her to get hold of these details is illegal.

#### *Tax returns*

At the end of each financial year, your employer should give you a P60 form. It is important to receive this form, since without it, you may end up paying more tax than you need to the following year.

Similarly, you will receive a P45 form when your employment comes to an end, and this should be kept too.

### *National Insurance*

National Insurance contributions come directly out of your wages. You are not obliged to make National Insurance contributions, but they can help towards receiving more money if something happens to you, for example retirement or receiving incapacity benefits.

More information can be found at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

### *Working Tax Credit*

This acts as a sort of 'top-up' to wages for people working in low paid jobs. It is separate from Child Tax Credit, and you may apply for both if you have dependents.

Provided you are aged 25 or over, and work at least 30 hours a week, you can claim Working Tax Credit.

Although many fear retributions from their employer, it is illegal for employers to interfere with this scheme, and if a worker is dismissed for claiming Working Tax Credit, it is automatically considered to be unfair dismissal. Similarly, workers have the right to go to an employment tribunal if their employer harasses them over this scheme.

## **Time off**

### *Paid leave*

#### *Holidays*

Working Time Regulations state that all workers must have a minimum of four weeks' paid leave per year. This is based upon your 'average' working week, so a full-time worker is entitled to a minimum of 20 days. Part-time and temporary workers are likewise entitled to an equivalent amount of leave, although in the case of temporary workers this may be 'rolled up' in the normal pay packet (it must be shown as a distinct item upon any wage slip). In most cases this entitlement is given as a block sum at the beginning of each year. However, employers are allowed to use an accrual system in the first year of employment where those four weeks build up over twelve month-long periods.

Employers are legally allowed to include public holidays as constituting part of the four weeks if they so wish, although many do not do so. However, this must be explicitly mentioned on your employment contract.

You must book this paid leave with your employer's permission, and you must give sufficient notice, which is twice the number of days leave that has been requested (e.g. a request a weeks leave requires two weeks notice). Employers actually have the right to tell you when to take your holidays, but must follow the same requirements regarding notice as does the worker.

If your contract permits it, you can take unpaid lieu time if you have worked more than your contract specifies. This lieu time is usually measured by the hour and you can only receive this after you have done extra work. This lieu time is also subject to your employer's approval in terms of when you take it. But remember, if your contract includes lieu time, you are legally entitled to it, and your employer is contractually bound to give it to you at some point, or pay for the extra hours worked.

### *Sick leave*

Whether or not you are entitled to be paid when you are off work due to illness depends on your contract of employment. Your employer must give you details of these arrangements within eight weeks of you beginning your job, although even if they said they would give sick pay, they can change their mind before they give you these details. However, once they have given you the details, they are contractually obliged to follow them.

If your employer does not give sick pay, you may be eligible for Statutory Sick Pay if you make National Insurance contributions.

### *Maternity leave*

You are entitled to maternity leave from the first day of employment. You will also be entitled to paid maternity leave if you have worked for 26 weeks by the 15<sup>th</sup> week before your baby is due.

If you have qualified for maternity pay, you may extend your leave by a further 26 weeks, although this leave will be unpaid and you will have fewer rights. It is possible for you or your union to go into negotiation with your employer over the terms of this additional maternity leave, but your employer has no obligation to do so.

After returning from maternity leave, you or your union may wish to negotiate more flexible work times. Your employer is legally obliged to 'seriously consider' giving you this flexibility, but (s)he is not obliged, ultimately, to agree to anything. As with many things, you are much more likely to be successful if you are in a union.

Under health and safety regulations, all women must take two weeks of compulsory maternity leave following childbirth. It is illegal for an employer to employ someone during this period.

Maternity leave also extends to adopted babies. However, some other rules apply.

### Paternity leave

Paternity leave can last for one or two consecutive weeks. If you wish to take paternity leave, you must give your employer details of:

- When your child is due to be born.
- The date you have chosen to leave on.
- The amount of time you intend to take off.

This notice must be given on or before the 15<sup>th</sup> week before the baby is due. You must also choose a specific point in the baby's development at which you will leave:

- The day the child is born.
- A specific number of days after the child is born.
- A specific date no less than a week after the child is born.

You may take paternity leave if you are not the child's father but are its mother's partner and will be partially responsible for it.

You do not receive any pay for paternity leave, but you can take parental leave instead, since in some cases (depending on your contract), parental leave is paid leave. Parental leave is time off for looking after a child, and can only be taken in one-week chunks with a minimum of 21 days notice.

### Adoption Leave

Women who adopt have the same maternity leave rights as any other mother-to-be. Men, however, must take adoption leave rather than paternity leave. The two are extremely similar, but there are some differences.

Firstly, you must notify your employer within seven days of having been matched with a child. Your employer may tell you to fill out an SC4 form, which is a certificate that shows you are eligible for adoption leave. However, you are not obliged to complete this form unless your employer tells you to.

Strangely enough, you are only entitled to paid adoption leave if your earnings are above the Lower Earnings Limit. This is the lowest earnings threshold above which you are eligible to pay National Insurance contributions.

If you are the named adoptive parent (all adoptions must state just one primary adopter), you may be eligible for additional adoption leave of 26 weeks.

## Breaks

### *Rests During Shifts*

You are entitled to no less than 20 minutes of uninterrupted rest on any shift of six hours or more. This is sometimes greater if it states so in your contract, but never less. This rest must be taken during the shift, and not at the beginning or end.

This does not apply to those whose working time is unmeasured.

### *Daily Breaks*

As an adult worker you are entitled to 11 consecutive hours rest in any 24 hour period, and if you work at night, then you are entitled to more.

Any different arrangements must be collectively agreed upon by you/the workforce and your employer, and compensation must be made for any rest that may be lost as a result of this.

Again, this is only applicable to workers whose working time is measured.

### *Weekly Breaks*

You are entitled to no less than 24 hours of uninterrupted rest in any seven-day week. However, your employer may change this to two 24 hour uninterrupted rest periods in every 14 day period, or one 48 hour uninterrupted rest period in every 14 day period.

This is in addition to the 11 hours of daily rest.

### *Night Workers*

If you work for at least 3 hours between 11pm and 6am, you are classed as a night worker. Your employer must take 'reasonable' steps to ensure that you work for no more than 8 hours in every 24 hour period.

If your work involves hazardous tasks, then this 8 hour rule is strictly enforced.

### *Mobile Workers*

If you work in rail or road transport, your rest periods are more ambiguous. You are entitled to 'adequate' rest, which can vary. It is advisable to take advice from your union about how much this is.

## Compassionate leave

Compassionate leave doesn't exist unless it involves a dependant (see below). Unless it is explicitly written in your contract of employment, it is down to the discretion of your employer as to whether (s)he allows you time off for personal problems.

### Voluntary work

You are generally not allowed time off for voluntary work. However, in some cases, your employer will have a partnership scheme with a charity or voluntary organisation in which you are allowed normally between one and three paid days a year to participate in this scheme. Normally you must sign up to the scheme for a certain amount of time in order to qualify for this paid time off.

## **Contracts of employment**

### Changes of contracts

Contracts are legally binding documents, but they are changeable. Your employer can make minor changes to your contract, so long as (s)he gives a month's notice. The law is vague here, and it is possible for your employer to make changes without you, but they must not do so entirely without consultation with you first.

It is illegal for your employer to change your contract without your consent, and vice versa. If you refuse to let your employer make a change you don't like, and (s)he fires you for refusing to accept it, you have good grounds for claiming unfair dismissal. However, your main avenue in this case is to negotiate with the help of your union.

On the other hand, you are within your rights to propose a change to your contract, but your employer has no obligation to accept it.

### Hours of work

Your contract should give details of your 'normal hours of work'. However, this does not necessarily mean that these hours will be constant. In the case that the hours of work may change, your contract should specify things such as overtime and lieu time.

### Location of work

Within eight weeks of commencing work, you should be issued with a written statement that specifies your employer's address, the place(s) of work you are expected to visit, and details of any foreign travel you may have to undertake.

Any relocation from the places specified on the statement can only be justified if a 'relocation clause' is present in your contract. Also, if relocation results in a significant increase in difficulty for you (e.g. due to a disability or childcare needs), this can be classed as indirect discrimination, which is illegal.

### Expenses

Your employer is legally obliged to reimburse you for 'reasonable expenses' that you have incurred during your everyday work. Even if it is not written into your contract, your employer still must pay you, although what classes as 'reasonable' is debatable.

### 'Employee' vs. 'worker'

There is an important distinction between these two terms.

An employee is someone who has a contract of employment with a business. This gives employees a certain number of statutory and contractual rights.

A worker is someone who does not have a contract of employment with their place of work. This can include subcontracted cleaning staff, freelance workers or agency workers, for example.

In other words, all employees are workers, but not all workers are employees.

### Fixed-Term and Permanent Employees

As of July 2006, those in fixed-term contracts are legally considered to be permanent employees under the following circumstances:

- If their fixed-term contract has been renewed at least once.
- If they have had four years continuous service in the same job.

### Training

#### Apprenticeships

Most people undertaking apprenticeships are legally classed as employees. You should receive a contract which makes it clear whether or not you are an employee. This should also include the hours you are expected to work, giving enough time for studying outside of work hours.

In terms of pay, this is dependent on the employer. Apprentices aged 16-18 are not covered by the National Minimum Wage, and neither are those

between 19 and 25 if you are in your first year. However, your employer must pay you a minimum of £80 per week.

If your apprenticeship is explicitly unwaged, you are still entitled to £40 per week from the government.

If you are classed as an employee, you can get help in negotiating pay from your union.

### On the job training

If you wish to undergo training, your employer has the right to refuse to let you undertake that training if (s)he believes it is not appropriate for your job. However, you are able to undertake this training if it is available outside of your working hours.

On the other hand, if your employer wants you to undergo training, it is extremely hard for you to refuse. In legal terms if, for example, your employer wants you to undergo training in a computer package you never use, this can be legitimised by your employer because it does not preclude the possibility of you having to use it sometime in the future.

Most training related to health and safety is likely to be mandatory. In this case, your employer will have a legal obligation to make you undertake this training, whether you want to or not.

If you have to undertake training outside of work hours, you will usually be paid or get lieu time for it. However, this is subject to your contract of employment, which should say one way or another.

If you are unsure of your position, your union should be able to help.

### Sabbaticals and Career Breaks

These are usually at the discretion of your employer. Some large companies allow long breaks, particularly in order to retain women after they take maternity leave.

Otherwise, long-term time off, for example to write a book or undergo non-work-based training, is rarely allowed. However, you may be able to make a business case for why you should be given such a long time off.

Even if it is granted, it is very unlikely that you will be paid, and may not retain the same rights as a working employee. However if your employer chose you to become redundant specifically because you were on a career break, you may be eligible to file for unfair redundancy at an employment tribunal.

## **Work and the family**

### *Flexible working*

If you have a child under the age of 6, or a child who is disabled and under the age of 18, you are able to consult with your employer regarding flexible working hours. You must initiate this, and it must be done in writing.

Your employer may already have a flexible working policy, but if (s)he doesn't, you are advised to negotiate flexible working with the help of your union. However, in negotiation proceedings, you are only allowed to be accompanied by a co-worker. It is illegal for your employer to refuse to allow you to be accompanied.

Flexible working covers a range of possibilities, from working at home, to flexitime, to job-sharing. The type of flexible working you can apply for will depend on the nature of your work.

Unfortunately, employers have a wide range of 'legitimate' reasons to not grant you flexible work. These include additional costs, inability to hire new staff, detriment to customer service and lower quality output. They must inform you in writing as to the reasons they have refused your application, and you have the right to contest this decision internally or in an Employment Tribunal if need be.

### *Dependants' leave and Childcare*

In legal terms, a dependant is one of the following:

- A child.
- Husband or wife.
- A parent.
- Any other person who lives in the same household.
- Anyone who relies on you in some way due to mental or physical illness or accident.

If you require urgent leave to look after a dependant (including in the event of the death of a dependant), you will not be paid unless your contract states so.

In terms of day-to-day childcare needs, your employer is under no obligation to provide childcare while you are at work. If you are having trouble with balancing work and children, you may be eligible for dependants' leave. Alternatively, you may also be eligible for maternity leave or paternity leave.

## **Unions**

### **Membership rights**

All workers have the right to join a union. It is illegal for an employer to prevent you from joining a union, and also for an employer to discriminate against you for being a member of a union. This also applies to non-unionised workers.

If you are an employee, dismissal due to union membership is automatically unfair dismissal. If you do not have employee status (e.g. if you are an agency worker), this is not unfair dismissal although you can make a legal claim for detriment if dismissed in this way.

### **Industrial action**

Industrial action is defined as any action committed by an employee or employer that means your contract is not fully operative. This could include:

- Strikes.
- Go-slows.
- Lockouts.
- Overtime Bans.
- Work-to-Rule.

However, in some cases, these breaches of contract are lawful. A strike, for example, is legal if:

- The action is work-related.
- The employer has been given notice.
- A secret postal ballot has taken place and the majority of voters voted in favour of a strike.

Thus actions such as wildcat strikes and solidarity strikes are technically illegal. If this is the case, you are no longer protected by the law and your contract. However, this does not mean that you will be automatically dismissed, since this is up to the discretion of your employer. There have been many instances of wildcat strikes being effective and getting changes made very fast. This is a tactical decision that only you and your fellow workers can make.

For 'legal' strikes, there is a twelve-week threshold beyond which, the law has made it difficult to continue striking. You have been unfairly dismissed if:

- You have been on strike for twelve weeks or less.
- The strike is continuing but you have stopped striking by twelve weeks.

- You have been on strike for over twelve weeks and your employer has not made a 'reasonable' effort to settle the dispute.

While on strike, your employer is not obliged to pay you.

### **Discrimination and disability rights**

Discrimination according to the law is defined as when an employer treats you less favourably than other employees due to sex, sexual orientation, race, religion or belief, disability or the membership of a union.

This is distinct from harassment (a form of discrimination), which is an employee being singled out or victimised due to one of the above.

Discrimination is extremely hard to prove, and we would advise that if you think you are being discriminated against, you should write a logbook of events (no matter how small) specifying what happened, where, who was involved and the date and time. Your rights against harassment begin as soon as your contract is signed.

It must also be noted that there are some 'Genuine Occupational Qualifications' that mean that discrimination is legal, such as casting for a play or employment as a priest in a particular religion.

#### Types of discrimination

##### *Sexual*

Sexual discrimination (including for those who have undergone gender realignment) is illegal, except in a few cases, called Genuine Occupational Qualifications. These can include casting for acting roles, decency (e.g. single-sex swimming pool attendant), residential employment, single sex establishments and some welfare appointments.

Where you are in a same-sex relationship, you have the same rights as any unmarried heterosexual couple. This extends to all areas, including maternity, paternity and adoption leave.

##### *Racial*

Under the 2000 Race Relations act, racial discrimination can be discrimination in terms of ethnicity, colour, language or nationality.

##### *Religious*

You are protected from discrimination both due to your religious beliefs whatever they may be. This also extends to atheism or discrimination between different denominations in the same religion.

### *Disability*

Under the recent Disability Discrimination Act (DDA), your employer is not allowed to treat you less favourably if you have either a mental or physical disability, visible, or invisible.

### *Disability rights*

#### *DDA*

The DDA is in effect not only in workplaces but also in terms of the accessibility of buying or renting property, and access to goods and services.

It defines a disability as any condition, physical or mental, that negatively affects your ability to conduct day-to-day activities.

In terms of the workplace, it requires the employer to make 'reasonable' adjustment to the working environment in order to ensure that discrimination against people with disabilities is minimised. Reasonable adjustment, however, is a fairly vague term, and employers can often excuse themselves from major reconstruction or purchasing of materials on the grounds that it is not economically viable. You (whether you have disabilities or not) have the right to appeal this decision at an employment tribunal, but it requires specialist advice from disability rights experts.

If you have a disability that would fall under the DDA, you do not automatically 'qualify'. If you wish to undertake action under the DDA you must somehow prove to your employer that you have a disability. Notes from doctors or other healthcare professionals can be useful in this respect, but they are not classed as 'certification' for a disability, rather they can be used as strong supporting evidence in a dispute. Employers will often claim that you are not 'really' disabled as their first line of defence, so it is important to go into detail about the restrictions on your everyday life that your disability causes. Your union and medical practitioners can help you with this.

Under the DDA, you may also qualify for extra materials such as computer software. This requires an assessment by Access to Work (a government branch), and your employer to pay for the equipment. Your employer will then invoice Access to Work in order to claim back the money spent. This means that economic reasons should not affect your employer's decision, and refusal to comply with the recommendations of your assessment is classed as discrimination. You are, however, expected to return the equipment to Access to Work (via your employer) once your contract ends.

### Harassment and bullying

If you feel you are being harassed or bullied at work, initially you should undertake your work's grievance procedure. During this procedure, you have the right to be accompanied by a colleague or union official.

### Equal Pay

Men and women, by law, should receive equal pay if they are doing the same job, or if that job is considered

- "Like work": performing highly similar tasks.
- "Work of Equal Value": different work, but considered equivalent in terms of complexity, responsibility and so on.
- "Work Rated as Equivalent": different work, but which has been officially rated as equivalent by a job evaluation scheme.

If you wish to make a claim for equal pay on the basis of Work of Equal Value, you must find someone of the opposite sex to which you can compare your own job. Then, you must take your claim to an employment tribunal.

### **Special Cases**

#### Young workers (under 18)

Young workers are defined as having reached the age at which compulsory schooling is no longer in effect (usually 15 or 16 depending on the birthdate), and under the age of 18.

The law states that children are allowed to work if they are 14 or older, but local legislation can change this to as low as 13 for some jobs.

Children under the age of 13 are usually not allowed to work, except in circumstances, such as performances and sports, which have specific licences to employ children under 13 years of age.

#### *Minimum wage issues*

Under 16, there is no minimum wage, whether or not you class as a young worker. For 16-17 year olds, you are entitled to £3.00 per hour, and for those between 18 and 22, the minimum wage is £4.25 per hour.

#### *Rest periods*

Young workers are entitled to longer rest periods than other workers. Workers aged 16 or 17 should have at least 12 hours consecutive rest per 24-hour

period. Similarly, young workers are entitled to greater rest periods during a working day. If you are working for over 4 and a half hours, you are entitled to 30 minutes of uninterrupted break time.

You are also not usually allowed to work for over 8 hours per day or 40 hours per week, nor are you usually allowed to work overnight between 10pm and 6am, or between 11pm and 7am.

### Part-time workers

There is no real threshold for what classifies as a part time worker. Anyone who does not classify as a full time worker is considered part time.

It is illegal for your employer to discriminate against you if you work part time, and it is up to an employment tribunal to decide whether you are being discriminated against, and if that discrimination is justifiable. This right to equal treatment also extends to training opportunities, no matter how few or how many hours you work.

### Working students

Student workers have very few different rules compared with other workers. While students do not have to pay tax on loans, you must still pay income tax if you earn over £4,895 per year and you may wish to contribute to National Insurance.

Similarly, you have the right to union membership, the same amount of paid holiday, the same number of rest periods, and so on, as you would if you were not a student.

The main difference between students and non-students is if you are an international student. Depending on your situation, particularly with regards visas, you may not be allowed to undertake paid employment. If your visa stamp reads 'Prohibited', you are not allowed to work in the UK. If your visa stamp reads 'Restricted', you may work in the UK under certain conditions:

- You may only work for up to 20 hours per week.
- You must be on a full time course of 6 months' duration or longer. However, you may work full time hours during holiday periods.
- During placement years of your course, you may work full time so long as you do not set up your own business or become self-employed.

If you have come from any member state of the European Economic Area (EEA), you have the same right to work as any British student.

International students must also pay the same rate of tax and National Insurance as UK citizens.

### Agency workers

Since employees have more rights than workers, it is important to understand whether or not you are an employee. The law here is ambiguous, but there are indicators that can suggest one way or another. You are likely to be an employee if:

- Your terms and conditions of work are decided upon by the company at which you are working.
- You have access to grievance procedures at work.
- You have worked there for a long time.

### *Hours of Work and Time Off*

You have the right to work no more than 48 hours per week. Your agency may wish you to sign a waiver for this clause, which allows you to work for more hours, but this is not compulsory. It is illegal for anyone to force you to sign this waiver.

The waiver is averaged over 17 weeks. In other words, you may work over 48 hours in some weeks, but this must be counterbalanced by other weeks in which you do not work as many hours.

In terms of rest periods, you have the right to the same amount of rest as any other worker. Young workers at agencies still also receive longer rest periods. You are also entitled to paid leave, although this is often on the basis of accrual of holiday hours over time.

### *Maternity/paternity leave/pay*

Only employees are automatically entitled to maternity leave. However, if you meet certain criteria, you are still eligible for statutory maternity pay. These criteria are:

- You have ceased to work due to pregnancy.
- You earn above a minimum amount (around £82 per week, before tax deductions) in your job.
- You have worked for the same agency for 26 weeks continuously.

You may also be able to take paternity leave, so long as you are an employee, and it is illegal for your employer to try and stop you from taking that leave, or firing you because of it.

### *Unions*

You are allowed to join a union as an agency worker. In many respects, since agency workers are some of the most vulnerable workers, this is to be encouraged even more strongly than usual.

## Migrant workers

### *Registering for work*

You will need to register for work if you wish to work in the UK. Initially, all foreign nationals will need to register, including members of the EU. After 12 months working in the UK, EU members will have full rights, just like UK citizens.

The charge for a first application is £70, and your registration form is reference EEA1.

You will also need a National Insurance number in order to work, and this will be given to you once you find employment.

If you need more information or assistance, the Immigration and Nationality Enquiry Bureau can help. Their hotline number is 0870 606 7766.

### *Rights for migrants*

Once you have permission to work in the UK, you are entitled to the same rights as any other UK worker. You cannot be discriminated against because you are an immigrant, and you can join a union.

Unfortunately, if you have arrived in the UK to seek asylum, the law gives you very little protection and you are not legally allowed to undertake paid or voluntary work. If you do choose to work illegally you are at risk of arrest or deportation.

You are still able to join a union, and you are encouraged to do this in order to protect the few rights you do have. However, since you are not covered by UK employment law, you are not entitled to things such as a minimum wage, health and safety protection, and your employer can sack you at any time for any reason and there will be little you can do about it.

## **Health and Safety**

What is important to remember, is that your boss cannot discriminate against you for highlighting health and safety problems at work.

### **Employer responsibilities**

Your employer has a 'duty of care' to ensure your health of safety are not at risk. Similarly, employers have a duty of care to non-employees such as workers, as well as the general public, to ensure they are not harmed.

If you are concerned that your employer is not complying with the law and is endangering you or your fellow workers, you should immediately speak to the Health and Safety Executive, who will send an inspector to your workplace.

### **Codes of Practice**

Your employer may have a health and safety code of practice that spells out in more detail the health and safety precautions that (s)he and you must take at work. These are more common in specialist workplaces where there are guidelines for specific tasks or machinery.

It is not mandatory to have a code of practice, but where they are present they can be used in legal or disciplinary proceedings as supporting evidence.

### **Risk assessments**

It is the law that your employer must undertake a risk assessment in order to identify and work out how best to avoid dangerous situations. Employers must conduct a risk assessment, but they have a great deal of freedom as to actually how they go about minimising risks.

In some cases, there are specific governmental regulations that must be obeyed by both employees and employers alike. These are mandatory and are not negotiable.

### **First aid**

Employers are legally required to provide appropriate first aid supplies at your work. They are also required to provide a means of administering that first aid, which usually involves appointing and training designated first aiders. This first aid provision must be available at all times.

## **Employee responsibilities**

As an employee, you have a 'duty of care' towards yourself and your colleagues. In other words, you must act with reasonable care and skill to minimise health and safety risks.

## **Health and safety union reps**

A health and safety union rep is a fellow worker elected by other union members to look after the health and safety of fellow workers. A health and safety rep can only be made official if your employer recognises your union, but there is no reason why you shouldn't have an unofficial rep if you are not officially recognised.

If you become an official health and safety rep, then you will have, by law, greater access to decision making and health and safety assessment procedures. You will also have the power to investigate complaints, be consulted on policy changes, as well as set up a health and safety committee. What is also important to remember is that you are able to undertake specific health and safety trainings without loss of pay, as well as paid time off to undertake your duties.

## **Accidents at work**

There are various different rules and regulations regarding particular workplaces, and it is worth investigating into your particular job, but some general points apply.

## **HSE investigations**

If there are concerns about health and safety, or if there has been an accident at work, an inspector from the Health and Safety Executive (HSE) may visit your workplace to investigate. In order to conduct their investigations, HSE inspectors have a range of powers:

- To enter the premises.
- To take verbal and written statements.
- To take photographs, samples and measurements.
- To take away hazardous substances and objects.
- To cordon off areas as out of bounds for a period of time.

You and your employer are obliged by law to co-operate with these investigations, and you can be prosecuted for obstructing an HSE inspector in her/his duties.

### Industrial injury benefit and compensation

An industrial injury (also called a personal injury) is classed as any injury, disease or impairment that is caused or aggravated by your work. If this has happened to you, you may be able to claim compensation (within three years of the event) from your employer for both the injury and any financial losses that you may have had as a result of the injury. This would usually take place in the county court. In order to make a claim, you must prove several things:

- That you sustained an injury at work
- That your employer was in breach of their duty of care.
- That this breach of duty of care was responsible for your injury.
- That the injury was foreseeable under the circumstances previous to the injury.

In terms of getting legal support, your union may be able to help you. Be wary of 'no win no fee' claims companies, there have been an increasing number of scams and problems with small print for these companies.

The financial and emotional costs of a personal injury case can be quite hefty. Your union may be able to help you with the financial side, but cases are often long and tiring so it is important to be sure that you have a strong case.

### Workplace environment

In some cases, special considerations must be made for particular types of worker with regards their working conditions. Particularly, pregnant and young workers have special rules.

#### Pregnant workers

There are several regulations that employers must follow regarding pregnant employees. There are three in particular:

- If you work with ionising radiation, you must be exposed to lower than usual levels, since this radiation can harm the development of your baby.
- If you work with lead, greater precautions must be taken to ensure minimum chances of contamination and lead poisoning. You should also take a blood test to ensure lead levels in your blood are not too high. If they are too high, you should not be expected to work with lead until levels drop.
- In general, you will be placed under greater protection under the Management of Health and Safety at Work regulations (1999).

It is worth speaking with your employer and health and safety rep to find out the specifics of the regulations in each case. However, your rights remain even if your employer does not know that you are pregnant.

### Young workers

Before a young worker starts work, the employer must undertake a risk assessment in light of their youth. This is to take into account the relative lack of maturity and experience of young workers. Also, young workers are entitled to longer rest periods and are more restricted in terms of the hours they are allowed to work.

### **Stress**

There have been cases in which people have successfully claimed stress to be classed as an industrial injury, and that therefore the employer has breached her/his duty of care.

## **Procedures**

### **Disciplinary hearings**

Disciplinary hearings are internal procedures that take place when your employer thinks that you are guilty of misconduct. There are also capability or competency hearings which are similar, but take place if your employer thinks you are not doing your job properly.

There are no formal procedures that are laid out in law, although a lot of large companies and organisations have formal processes. Because of this lack of regulation, a disciplinary hearing might simply be a meeting with your manager. Any meeting that could result in termination of contract or verbal/written warnings is legally classed as a disciplinary hearing and is therefore subject to certain regulations.

It is therefore important, if your employer wants to have a meeting with you, that you ask the specific subject of the meeting.

However, it must be borne in mind that your employer is able to sack you on the spot for gross misconduct. You would then have to appeal this decision at an employment tribunal.

### **Representation**

You have the right to formal representation or accompaniment. Any attempt by your boss to deny you this right is illegal. In this case, you should refuse to attend any formal hearing, under the 1999 Employment Relations Act, until they grant you representation.

You can be accompanied by one of the following:

- A full-time union officer.
- An elected union representative (not necessarily from your own workplace)
- A fellow worker from the same workplace.

They can help you in the following ways:

- Making an opening address at the beginning of the hearing.
- Confer with you at any time during the hearing.
- Take detailed notes. These can be extremely useful if the issue is taken any further, for example to an employment tribunal.

The person accompanying you, after their opening address, may not address the hearing without the permission of your employer. This, however, is a legal minimum, and negotiation with your employer beforehand may allow your companion to have a greater part in proceedings, such as asking questions.

## **Grievance Hearings**

Grievance hearings are initiated by employees if they are unhappy about something at work. There is no legal requirement for employers to have formal grievance procedures, but most large employers do.

The law states that you are only allowed to be accompanied if your grievance relates to a breach of contract by your employer. Again, this is a legal minimum, so you may be able to negotiate this point.

Grievances can be based on 'explicit' or 'implicit' conditions of employment. Explicit conditions are written in your contract, and implicit conditions are not, such as the obligation of your employer to obey the law. Your employer's obligation to obey the law is one of the two most common implicit conditions, the other being their duty of care towards employees.

These meetings are likely to be conducted in a similar way to disciplinary hearings, that is, a meeting between yourself, your manager (and probably their line manager or other senior manager), and whoever you choose to accompany you.

## **Employment tribunals**

Employment tribunals can be brought for various reasons. The main reason is that there is some sort of dispute between you and your employer which cannot be decided between you through internal procedures. They are official governmental hearings of workplace disputes, and although their decisions can be appealed, the outcome of an employment tribunal is legally binding.

If you want to make a claim to an employment tribunal, you must first give your employer 28 days notice that you intend to do so. After that 28 day period, you must submit a claim form (ET1) to the courts in writing, which includes details such as your name, your employer's name, details of the dispute, and whether or not you classify as an employee.

In most cases, you will be expected to pay for your own costs for representation and so forth, but sometimes, part of the decision will be to order one party to pay for the representation of the other.

### **What happens?**

Employment tribunals are presided over by a panel of three legal professionals appointed by the government to decide the outcome of the dispute. The process is in three sections:

- Case Management discussions: these are to clarify the nature of the case, and to decide the date of the later hearings.

- Pre-hearing review: This decides whether or not there is a potential case to answer.
- Final Hearing: This is the official hearing that decides the outcome of the case, and what must be done as a result of the decision. It is during this hearing that you can bring witnesses and evidence to support your case.

### Representation

Before you make a claim, you can get help or advice from your union, legal advice (this could be a lawyer, or free services such as the Citizens' Advice Bureau), or advice from ACAS (Advice, Conciliation and Arbitration Service). If your claim involves some sort of discrimination, you can also contact bodies such as the Disability Rights Commission for advice.

You are entitled to representation at all hearings, be that a union official or lawyer. You can also choose to represent yourself.

### Appeals

The judgement of tribunals can be called into question either by a call to review the judgement (in the light of new evidence, for example), or after an appeal by one side due to bad application of law, or due to unreasonable penalties. The former must be filed within 14 days of the judgement, and the latter must be filed within 42 days of receiving a written justification for the decision.

### **Termination of employment**

When you leave a job, for whatever reason your employer should give you a P45 form. You should keep hold of this for future jobs and also tax purposes.

There are five main reasons for your employment contract ending. The first three usually require a notice period, which should be included in your contract:

- Leaving your job: your decision to move on.
- Redundancy: As a result of your employer wanting to reduce the workforce.
- Dismissal: if your employer terminates your contract for whatever reason, it is dismissal. Dismissal can be fair or unfair (see below).
- 'Constructive Dismissal': This is essentially when an employee resigns on the spot due to something done by the employer. It is extremely hard to win Constructive Dismissal cases, unless your working conditions are completely intolerable.
- End of contract: When your fixed-term contract comes to an end and is not renewed.

### Permanent contracts

The legal minimum notice period for termination of a job that has lasted longer than one month is a week. However, notice periods are usually longer than this, and your contract of employment will state how much notice you will need to give.

### Agency contracts

Agency workers usually have an agreement with their agency that they or their employer may end their contract at any time. It is extremely important that you find out whether or not this is the case. In some cases there are notice periods required for long-term agency contracts, but these are rarely more than a week.

Remember: agencies are not allowed to charge you for finding you work.

If your contract is ended with the job you are currently doing, it is usually the case that you are still registered with the agency, and are able to return to the agency for more work elsewhere.

If you believe your agency has been acting unreasonably or illegally, contact the Employment Agency Standards Inspectorate on 0845 955 5105.

### Temporary and fixed term contracts

Unless your temporary or fixed-term contract has been mediated through an agency, you are entitled to the same rights regarding termination of employment as a permanent employee.

### Fair and unfair dismissal

There are five statutory reasons for 'fair dismissal':

- If you have a lack of aptitude for the job.
- If your conduct is deemed unacceptable.
- Redundancy, or no longer a need for your job to exist.
- Continued employment would mean that you or your employer was breaking the law.
- Any other 'substantial reason' why you should have been dismissed. This is a particularly grey area.

If your dismissal does not fall into one or more of these categories, then you may have been unfairly dismissed. Unfair dismissal claims can only be filed to employment tribunals if you have worked in the same job for twelve months.

However, there are some instances when dismissal has been automatically unfair, irrespective of how long you have worked in your job. This is usually regarding discrimination, pregnancy or maternity/paternity leave.

Your employer should give you notice (set out in your employment contract) of dismissal. Unless the dismissal is due to gross misconduct or as the result of disciplinary processes, (s)he is not allowed to fire you on the spot.

In the case of unfair dismissal, you may take it to an employment tribunal where they will most probably tell your boss to give you compensation. On average, the level of compensation granted is around £3,000 to £4,000.

### ***Further Information***

If you require more information or help with any of the issues mentioned here, or if you are interested in joining us, feel free to contact the IWW. We can offer advice and support for legal problems, workplace organising, and any other workplace issues that you may have. We are also able to support you through disciplinary procedures, employment tribunals or contract negotiations if you are a member. Virtually any worker in any industry including retired workers, co-operatives, students and the unemployed can join the IWW, since we believe that *an injury to one is an injury to all*.

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