

## Legal United Kingdom knowledgebase

### Hiring blueprint

#### Core employment practices

Employment rights and protections in the UK are legally mandated and vary based on employment status, with some requiring a qualifying period known as continuity of service. Continuity of service is crucial for accessing rights like protection from unfair dismissal and statutory redundancy payments. Even with breaks in work, courts can sometimes determine that an overarching contract exists, preserving continuous service, especially in cases of temporary work cessation. Freedom of contracting

The concept of a legal agreement aligns with the doctrine of freedom of contract, permitting parties to determine contract terms without court intervention. This freedom extends to labour law, where all employees are entitled to an employment contract specifying their terms of employment, rights, responsibilities, and duties. Although an employment contract need not be in writing, employees and workers are entitled to receive a 'written statement of employment particulars.'

#### Priority of employment rights

In the UK, employment rights are protected by a hierarchy of legal sources. The order of priority is as follows: statutory rights, common law principles, contractual agreements, and company policies.

1. Statutory Rights: Established by laws such as the Employment Rights Act 1996 and the Equality Act 2010.
2. Common Law Principles: Judicial decisions that interpret statutes and establish legal principles.
3. Contractual Rights: Terms and conditions agreed upon between employers and employees.
4. Company Policies: Internal rules that provide additional benefits and clarify how statutory and contractual rights are applied, without contradicting statutory rights.

#### Employment contracts

Employment contracts are essential documents that outline the terms and conditions of an employment relationship. They can be part-time or full-time contracts, based on agreed working hours, fixed-term or indefinite contracts, or zero-hours contracts. Full-time workers typically work 35 hours or more per week. Fixed-term contracts are limited to a specific duration, but can be used for seasonal or casual workers, specialized staff, or maternity leave. Zero-hours contracts are typically for piece work or on-call arrangements.

Employees should be provided with a written statement of employment particulars, which includes details about the employer's name, job title, address, pay, working hours, holiday pay, sick leave, paid

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leave, benefits, notice period, job duration, probation period, and training requirements. This document is not the employment contract itself but is crucial for ensuring a fair and respectful employment relationship.

## Working hours

The maximum allowable working hours for employees are 48 hours per week, excluding self-employed individuals and those with flexible working arrangements. The Court of Justice's *Pfeiffer v Deutsches Rotes Kreuz* case highlighted the need for regulations to protect workers with less bargaining power and control over their work conditions. If laws, collective agreements, or individual employment contracts do not specify working hours, the default assumption is 48 hours per week. Night employees work at least three hours during the 'night period', typically from 11 pm to 6 am. They are entitled to the National Minimum Wage, but there is no higher rate specifically for night working. Employers are prohibited from discriminating against workers who do not wish to work night shifts.

## Leave entitlements

Employment policies provide employees with various leave entitlements, including 28 days of paid annual leave per year, equivalent to 5.6 weeks of holiday. Employees can accrue one-twelfth of their entitlement each month. Statutory Sick Pay (SSP) is available for up to 28 weeks, and employees can opt for Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP) if they are pregnant, using a surrogate, adopting, or fostering a child. Eligible employees are entitled to up to 52 weeks of maternity leave, split into two periods: Ordinary Maternity Leave and Additional Maternity Leave.

## Termination of employment

An employment contract can be terminated by either the employee or the employer for various reasons, including death, expiry of a fixed-term contract, retirement, mutual agreement, serious breach of contract, dismissal, court decision, or giving notice by either party. The employee can end the contract without specifying a reason but must fulfill the notice period mandated by law or agreed upon in the contract. Employers must have a legitimate cause to terminate the employment contract, and the employee retains the right to challenge the dismissal's validity in court.

## Health and safety

Employers are responsible for the health and safety of employees working from home, including those with disabilities or significant hazards. Risk assessments should consider factors like stress levels, mental health, and equipment use. Employers should engage in dialogue with employees about their home working arrangements and conduct home visits as needed. Addressing stress through comprehensive risk assessments and appropriate actions is crucial. Employers can provide guidance on home office setups, use self-assessment tools, and engage in regular communication.

## Discrimination and equal treatment

The Equality Act 2010 safeguards individuals from discrimination based on various protected characteristics, including age, gender reassignment, marital status, pregnancy, disability, race,

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religion, sex, and sexual orientation. These protections apply across multiple settings, such as employment, education, public services, property transactions, and private organizations. Positive action may be voluntarily undertaken to support individuals with protected characteristics, particularly those who are disadvantaged or under-represented. The Act covers workplace discrimination, including issues related to dismissal, employment terms, pay, benefits, promotion, transfer opportunities, training, recruitment, and redundancy. Employers are required to make reasonable adjustments to assist disabled employees and job applicants. It is imperative for employers to comply with these legal requirements to avoid discriminatory practices.

## Collective bargaining

Collective bargaining is the formal process where trade unions negotiate with employers on behalf of their members. In the UK, most collective bargaining agreements are voluntary, allowing unions to collectively negotiate wages and other terms for large groups of workers. However, the law permits unions to achieve recognition from even unwilling employers through 'statutory recognition.' Once an employer acknowledges a union for collective bargaining, any negotiated improvements to contract terms, such as pay increases, should be automatically included in the employment contract. Collective bargaining is an effective means to secure fair wages, terms, and conditions.

## Employment of foreigners

Foreign nationals seeking to work in the UK must provide the necessary documentation and pass a points-based assessment to obtain permission to enter or remain in the country. Employers must also obtain a sponsor licence from the Home Office. The Immigration, Asylum, and Nationality Act 2006 governs the prevention of illegal working and includes provisions on the right to work and study in the UK. The Home Office develops and enforces immigration rules based on this legislation. Employers are required to verify that employees have the legal right to work in the UK before employment begins. For existing employees from the EU, EEA, or Switzerland who arrived in the UK before 1 July 2021, no additional checks are necessary. Employers must conduct one of three types of checks before hiring an employee: a manual right to work check, a right to work check using Identity Document Validation Technology (IDVT) via a certified Identity Service Provider (IDSP), or an online right to work check through the Home Office.

## Salary disbursement and monthly client invoicing

**Salary payment date:** According to the United Kingdom Labour Code, the deadline for salary payments is 10th of the following month. According to Native Teams policy, the deadline for salary payment is the last day of the current month.

**Salary input:** According to our company policy, monthly inputs must be submitted to us by the 12th of each month. This deadline may vary slightly based on business days and public holidays.

**Invoicing deadlines:** According to our company policy, invoices are sent on the 15th of each month. This deadline may vary slightly based on business days and public holidays.

**Payslips:** Payslips are shared on employee's account on Native Teams platform on or after the salary payment.

## Minimum wage

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The National Minimum Wage (NMW) is a legal requirement for all employees, including those aged 21 or over. The Low Pay Commission (LPC) is an independent public body that advises the government on the rates of the NMW, including the NLW. Employers must pay a minimum amount for the hours worked, with the NLW for those aged 21 or over being £11.44, and the NMW for those aged 18 to 20 being £8.60.

## Pay increases

Annual pay increases are essential for employees as they affect their financial well-being and recognise their contributions to the organization. While there are no statutory rates for annual salary increases, the UK private sector's salary increase rates are monitored each year. Various factors influence these rates, including inflationary pressure, a tighter labour market, employee expectations, anticipated recession or weaker financial results, and cost management concerns. According to a survey, nearly 71% of UK employers cited inflationary pressure as a major factor in budget decisions, while 27% highlighted employee expectations as influencing salary budgets.

## Reduction of wages

In the UK, it is illegal for an employer to impose a pay cut on all staff members without their consent. This means a pay cut can only be applied if each employee agrees to it. Deductions are not permitted unless they are required by law, agreed to in writing, specified in the employment contract, due as a statutory payment to a public authority, related to non-work due to a strike or industrial action, involve the recovery of an earlier overpayment of wages or expenses, or have been ordered by the court for debt payments.

## Social security and benefits

Social security benefits are payments provided by the Department for Work and Pensions (DWP) to support various needs. These benefits include State pensions, child benefits, and statutory sick pay. Since 2013, several benefits have been integrated into Universal Credit, such as Child Tax Credit, Working Tax Credit, Housing Benefit, income-based Employment and Support Allowance, income-based Jobseeker's Allowance, and Income Support. Contribution-based Jobseeker's Allowance and contribution-based Employment and Support Allowance have been replaced with New Style Jobseeker's Allowance and New Style Employment and Support Allowance, which are claimed separately from Universal Credit.

# Labour laws

## Legal framework

UK labour law oversees the interactions between employees, employers, and trade unions, guaranteeing a core set of employment rights sourced from legislation, common law, and equity. The primary focus of UK labour law is to guarantee that every individual in the workforce possesses a

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basic set of rights within their workplace, along with the ability to advocate for fair standards that extend beyond the minimum requirements.

English courts perceive an employment contract as fostering a relationship of mutual trust and confidence. This perspective enables them to expand the range of remedies accessible to both workers and employers in cases where one party behaves in bad faith.

In companies employing more than 50 employees, there is a requirement for negotiation with employees to reach an agreement regarding any proposed changes to contracts, workplace organization, significant economic developments, or challenges.

Compared to Europe or the United States, the UK maintains a more voluntary stance towards collective bargaining and strikes. In essence, employers and trade unions have the opportunity to reach collective agreements through voluntary negotiation. Typically, these agreements aim to establish an updated wage structure, equitable and adaptable working hours, provisions for holidays and breaks, transparent hiring and dismissal procedures, impartially managed pension schemes, and a shared commitment to the success of the enterprise. The UK currently lacks a unified definition for determining who falls under the umbrella of labour rights protection. Instead, its legal framework relies on two primary definitions - "employee" and "worker" - alongside three secondary classifications, including "jobholder," "apprentice," and individuals engaged in an "employment relation." Each category carries distinct sets of rights and entitlements, contributing to the complexity of labour law in the country.

For instance, a "worker" is entitled to fundamental rights including a minimum wage, paid holiday days, enrollment in a pension plan, a safe work environment, and equal treatment, which extends to consumers and users of public services. On the other hand, an "employee" enjoys all these rights, plus additional entitlements such as a written employment contract, maternity or paternity leave, fair notice before termination, redundancy compensation, and obligations such as contributing to the National Insurance fund and paying income tax.

The delineation between "worker," "employee," and other categories is often subject to interpretation by the courts based on the context of usage in statutes. However, individuals in a more vulnerable position typically receive enhanced protections, reflecting the imbalance in bargaining power.

## Employment contract

### Types of employment contract

Employment agreements can take various forms, provided they are mutually agreed upon and compliant with regulations. There exists a variety of employment contracts, each tailored to specific aspects of the employment relationship. These include part-time or full-time contracts, delineated by the agreed-upon working hours; fixed-term or indefinite contracts, structured around the

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duration of the employment commitment; and zero-hours contracts, distinct in their flexible approach to working arrangements.

Part-time and full-time contracts:

There's no set number of hours defining full or part-time employment, but generally, full-time workers put in 35 hours or more per week.

Fixed-term and indefinite-term contracts:

Fixed-term contracts, unlike indefinite ones, are limited to a specific duration. However, to prevent exploitation and safeguard employees, such contracts can be used under certain circumstances:

- Employing seasonal or casual workers for up to six months during peak periods
- Hiring specialized staff for a project
- Covering maternity leave.

It's crucial to note that fixed-term contracts can't exceed four years, beyond which they're considered indefinite.

Zero-hours contracts:

Zero-hours contracts, also called casual contracts, are typically for 'piece work' or 'on-call' arrangements, such as those for interpreters. When initiating an employment relationship with different type of employment contracts, it is imperative to ensure that all terms are clearly documented.

Courts typically interpret contracts in favor of the employee, underscoring the importance of written agreements to mitigate potential adverse outcomes.

Ensuring equality among employees is paramount. Employees are entitled to fair treatment regarding pay rates, sick leave, and family-related benefits such as maternity and paternity leave.

Employers must not treat employees less favourably than ordinary employees doing the same or substantially the same work, unless they can show that there is a good business reason for doing so.

This is known as 'objective justification'.

## Content of an employment contract

Anything promised to an employee and agreed to becomes a term of the contract, as long as it does not contravene statutory labour rights. Employment contracts should cover specific terms and conditions tailored to individual circumstances, including agreements on the following points:

1. The employer's name
2. The employee or worker's name

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3. The start date (the day the employee or worker starts work)
4. The date that 'continuous employment' (working for the same employer without a significant break) started for an employee
5. Job title, or a brief description of the job
6. The employer's address
7. The places or addresses where the employee or worker will work
8. Pay, including how often and when (for example, £1,000 per month, paid on the last Friday of the calendar month)
9. Working hours, including which days the employee or worker must work and if and how their hours or days can change
10. Holiday and holiday pay, including an explanation of how it's calculated if the employee or worker leaves
11. The amount of sick leave and pay (if this information is not included in the document, the employer must state where to find it)
12. Any other paid leave (if this information is not included in the document, the employer must state where to find it)
13. Any other benefits, including non-contractual benefits such as childcare vouchers or company car schemes
14. The notice period either side must give when employment ends
15. How long the job is expected to last (if it's temporary or fixed term)
16. Any probation period, including its conditions and how long it is
17. If the employee will work abroad, and any terms that apply
18. Training that must be completed by the employee or worker, including training the employer does not pay for. Besides the legal rights explicitly stated in contracts, there are also standard implied terms in employment relationships. These terms, understood by courts, ensure fair treatment and protection for employees. For instance, employers must provide a safe working environment and pay wages even when no work is available. They're also required to inform employees about pension rights, but advice on qualifying for disability benefits is not mandatory.

A crucial implied term is the duty of good faith or 'mutual trust and confidence'. It covers various aspects, like treating employees respectfully, avoiding discrimination, and acting transparently in bonus allocation. There's debate over whether this duty can be waived, with some arguing it's subject to judicial interpretation.

Another essential aspect is employees following employers' instructions, except where it violates laws or agreed terms. Employers have discretion in certain areas, but this must align with contracts or collective agreements. Flexibility clauses granting employers broad discretion are contentious, as they may lead to abuse. Courts are vigilant, especially if these clauses affect access to justice or breach the duty of mutual trust and confidence.

If there's no explicit agreement between an employee and employer on a certain matter, it might be addressed by an implied term. For instance, if a company has a longstanding practice of giving out Christmas bonuses, even if it's not written into contracts, it could still be considered an implied term.

## Oral, written, or electronic employment contracts

Upon accepting a job offer, an employment contract is formed, which may not always be in writing. Nonetheless, the employer has specific obligations within the initial two months of employment. Employers are required to provide employees and workers with a document outlining the key terms of their employment when they begin work. This document is called a 'written statement of employment particulars.' It's important to note that this document is not the employment contract itself.

The written statement includes two parts: the main document, known as the 'principal statement,' and a broader written statement.

Employers must provide the principal statement on the employee's first day of work, and the wider written statement must be given within two months of the start of employment.

On the first day of work, employers must provide employees or workers with information about sick pay, other types of paid leave (like maternity or paternity leave), and notice periods. This information can be included in the main employment document or provided separately, but it must be easily accessible to the employee, such as on the company's intranet.

Employers are also required to inform employees about any changes to this written statement within one month of making the change.

Workers who started their job before April 6, 2020, may not be entitled to a written statement, but they can still request one from their employer.

According to UK law, an employment contract signed electronically with an e-signature holds the same legal validity as one signed by hand.

## Probationary period

A probationary period allows both employer and employee to assess job fit before committing long-term. The probation period should:

- Only be used to determine if the job is a good fit for both the employer and the potential employee.
- Be offered for a job where the jobseeker is the sole candidate being considered.
- Be for a job that requires at least 16 hours of work per week for a minimum of 13 weeks.

Employers must agree on the duration of the work trial with the jobseeker before it begins. It should:

- End when the employer is confident about whether the jobseeker is suitable for the role.
- Last no more than five days if the job is for less than six months.
- Last no more than 30 days (usually around five days) for jobs lasting six months or more.

Jobcentre Plus will verify that the employee has volunteered for the trial and that it meets the eligibility criteria.

The length of probation periods can differ, but they typically last around three to six months.



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Usually, probation periods in the UK are three months long, but they can also extend to six months. Beyond six months, it may seem excessive and could be viewed as unreasonable.

The duration of a probation period is determined by the parties involved, but here's a common practice:

- For entry-level roles with minimal experience requirements, a three-month probation period is typical.
- More senior positions or roles with significant experience or education prerequisites often have a probation period of six months.
- Extending the probation period beyond six months is uncommon. While there's no law restricting a six-month probation period, anything longer may be seen as unreasonable without a valid reason.

## Key requirements

### Working hours

Working hours are crucial in defining employment relationships, shaped by agreed terms and legal constraints.

Currently, the maximum allowable working hours stand at 48 per week, averaged over 17 weeks. However, this limit does not apply to self-employed individuals or those with flexible working arrangements.

In the case of *Pfeiffer v Deutsches Rotes Kreuz*, the Court of Justice highlighted that these regulations aim to protect workers with less bargaining power and control over their work conditions.

It's important to note that workers and employees can take legal action against their employer if they suffer any negative consequences.

If the law, collective agreements, agreements between the works council and the employer, or individual employment contracts do not specify working hours, the default assumption is that the full working time is 48 hours per week.

Additionally, time spent 'on call,' where individuals must be ready to work, is considered as working time. Part-time working hours refer to any working hours that are shorter than full-time working hours. Typically, part-time work involves a weekly work week that falls below 35 hours.

Overtime is typically counted within the employees' 48-hour work limit. This means that the total hours worked by employees in a week, including overtime, should not surpass 48 hours.

Employers are not obligated to compensate workers for overtime. However, the average pay for the total hours worked by an employee must not dip below the National Minimum Wage.

The terms of any overtime pay rates and their calculation methods are typically outlined in the employment contract.

## Night work

Night work, common in certain industries, is regulated to ensure employee well-being without strict limitations on night shifts. Employees who work at least three hours during the 'night period' are considered night employees. The night period typically spans from 11 pm to 6 am, unless a different night period is agreed upon in writing between the employee and employer. If a different night period is established, it must be seven hours long and include the time from midnight to 5 am.

Night employees are entitled to the National Minimum Wage, but there is no higher rate specifically for night working. For employees on sleep-in shifts, such as care workers provided with suitable sleeping facilities, they will only receive the National Minimum Wage for the time they are awake and performing tasks. However, employees expected to work for most of a shift will receive the National Minimum Wage for the entire duration, even if they are allowed to sleep between tasks.

Employers are prohibited from discriminating against workers who do not wish to work night shifts. Night employees are subject to additional regulations beyond those governing maximum weekly working hours and rest breaks. They must not work more than an average of eight hours in any 24-hour period, typically calculated over a span of 17 weeks. However, this calculation period can extend up to 52 weeks if agreed upon by both the employee and employer, such as through a collective agreement.

Regular overtime is factored into the average, while occasional overtime is not. Employees are not permitted to opt out of this limit.

Employers are required to maintain records of night employees' working hours to ensure compliance with the limits. These records must be retained for a minimum of two years.

Employees aged 16 or 17 are prohibited from working between midnight and 4 am.

Employers are obligated to provide night employees with a free health assessment prior to their commencement of night work, though employees are not obliged to accept it. In cases where an employer is uncertain about an employee's fitness for night work, a follow-up examination by a health professional is required.

Employers must maintain confidential records of:

- Health assessments (retained for two years)
- Dates when assessments were offered (if an employee declined).

## Breaks and types of leaves

UK Legislation ensures breaks for employee productivity and well-being, with regulations established to safeguard their health and welfare. Employees aged 18 and above typically enjoy three types of breaks: rest breaks during work hours, daily rest periods, and weekly rest periods.

An employee working at least six hours per day is entitled to a rest break of uninterrupted duration lasting at least 30 minutes each working day, unless otherwise specified by relevant legislation. This break commonly takes the form of a tea or lunch break.

Within each 24-hour period, employees are entitled to a daily rest period lasting at least 11 consecutive hours.

Furthermore, employees have the right to a weekly rest period spanning a continuous duration of at least 24 uninterrupted hours, which includes the daily rest period.

Employers should ensure that employees receive adequate breaks, particularly in roles involving repetitive tasks like those on a production line, to safeguard their health and safety. Employers have the discretion to determine when employees take their rest breaks during working hours, provided that:

- The break occurs in one continuous period, typically in the middle of the day and not at the start or end of the shift.
- Employees are permitted to use the break away from their work area, providing them with a break from their usual tasks.

If an employer requires an employee to return to work before their break is complete, it does not qualify as a rest break.

Young employees (those above the school leaving age but under 18) are generally entitled to:

- A 30-minute rest break if their shift exceeds 4.5 hours, preferably as one uninterrupted break.
- A daily rest period of 12 hours.
- A weekly rest period of 48 hours.

Employees who are unable to take or are denied rest breaks have the option to file a claim with an employment tribunal.

## Annual leave

Paid annual leave is a fundamental entitlement mandated by law, ensuring that employees have time off for rest and recreation. For most employees on a five-day workweek, the minimum requirement is 28 days of paid annual leave per year, equivalent to 5.6 weeks of holiday.

Part-time employees working regular hours throughout the year also have the right to at least 5.6 weeks of paid holiday, though this will translate to fewer than 28 days based on their work schedule.

Accrual of annual leave begins from the start of employment, with employees accumulating one-twelfth of their entitlement each month.

Regarding leave notice, employees typically need to provide at least double the length of leave requested, plus one day. For instance, for one day's leave, an employee would give three days' notice.

Employers have the option to offer more leave than the legal minimum and can apply different rules to the extra leave. For example, additional leave entitlement may require a certain length of

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employment before it accrues. The employee's contract determines how much leave they can carry over into the next year. For employees with 28 days' leave, a maximum of eight days can be carried over.

- If an employee has more than 28 days' leave, the employer may permit them to carry over any additional untaken leave.
- If an employee cannot take leave due to family-related leave, such as parental leave, they can carry over their untaken leave to the next year.

If an employee could not take their leave entitlement because they were sick, they can carry over:

- Up to 20 days of the 28-day entitlement for employees working regular hours throughout the year
- Up to 28 days for employees working irregular hours or part of the year

Employees can carry over their entire leave entitlement if:

- They didn't receive entitled 'rolled-up holiday pay'
- They weren't given a reasonable opportunity to take leave
- They weren't informed that they'd lose their leave if not taken by the end of the leave year.

During the notice period, employees may use any remaining statutory annual leave. If an employee takes more leave than entitled, the employer cannot deduct money from their final pay unless agreed in writing beforehand.

## Public holidays

In the UK, public holidays, known as bank holidays, see most businesses and non-essential services closed.

### **The official holidays for 2025 for United Kingdom are listed below: (England and Wales):**

- January 1 (Wednesday) - New Year's Day
- April 18 (Friday) - Good Friday
- April 21 (Monday) - Easter Monday
- May 5 (Monday) - Early May bank holiday
- May 26 (Monday) - Spring bank holiday
- August 25 (Monday) - Summer bank holiday
- December 25 (Thursday) - Christmas Day
- December 26 (Friday) - Boxing Day

**Note:** Public holidays vary slightly in Scotland and Northern Ireland.

While there's no automatic entitlement to time off on these days, banks commonly close, and many employees may either receive the day off or extra compensation for working. This is typically outlined in their contracts.

In cases where a bank holiday lands on a weekend, a substitute weekday, often the following Monday, is usually designated as the official bank holiday.

## Salary

Pay reference periods are determined by the frequency of payment, such as weekly, monthly, or every ten days, with a maximum duration of 31 days.

During the pay reference period, employees must receive at least the minimum wage, calculated based on their age.

The minimum hourly rate varies depending on the employee's age, with individuals needing to be at least school leaving age to qualify for the National Minimum Wage, and 23 or older for the National Living Wage.

Certain payments are included when calculating the minimum wage, such as income tax, National Insurance contributions, wage advances, and penalty charges for misconduct. However, other payments, like travel expenses paid by the employer or purchases made by the worker for their job, are excluded.

Payments excluded from minimum wage calculations include expenses used solely for the employer's benefit, items bought for the job by the employee, and tips or service charges.

The government reviews minimum wage rates every year and they're usually updated in April.

The United Kingdom Government has confirmed effective from April 1, the new minimum wage 2025 is £12.21 per hour. This rate represents a 6.7% increase from the previous rate of £11.44.

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It is the employer's responsibility to maintain records demonstrating compliance with minimum wage regulations, which must be retained for at least six years. These records can be kept in various formats, such as paper or electronic.

Contracts that stipulate payment below the minimum wage are not legally enforceable, and employees are entitled to receive the National Minimum Wage or National Living Wage regardless.

Failure to pay the minimum wage or falsify payment records constitutes a criminal offence.

HM Revenue and Customs (HMRC) officers have the authority to conduct inspections and request access to payment records at any time. They can also investigate complaints lodged by employees and pursue legal action against non-compliant employers.

Employees can also seek recourse through the employment tribunal, and those dismissed due to minimum wage disputes can file claims for unfair dismissal.

## Sick leave

Sick leave supports employees' well-being by offering financial assistance during recuperation, prioritizing their health. Employees are entitled to Statutory Sick Pay (SSP), which amounts to £109.40 per week for up to 28 weeks. SSP is paid for the days an employee would normally work, known as 'qualifying days', and is distributed similarly to regular wages, with tax and National Insurance deductions.

While employers can offer more through a company sick pay scheme, they cannot offer less than the statutory amount.

To qualify for SSP, employees must:

- Have an employment contract
- Have completed some work under their contract
- Be sick for four or more days in a row (including non-working days), termed a 'period of incapacity for work'
- Earn an average of at least £123 per week
- Provide notice and proof of illness when required

Employers may request a fit note if the employee is absent from work for more than seven consecutive days (including non-working days). A fit note, issued by healthcare professionals such as a GP, hospital doctor, or registered nurse, can be either printed or digital. If an employee does not qualify for SSP or their entitlement ends, the employer must issue them form SSP1 within seven days of their sick leave.

Statutory annual leave continues to accrue even during periods of sickness absence, regardless of the duration of the absence, and can be utilized while on sick leave. Employers are prohibited from mandating that employees use their annual leave entitlement during sick leave periods. Moreover, taking annual leave does not disrupt an employee's period of incapacity for work.

SSP is applicable when an employee is sick for a minimum of four consecutive days, inclusive of non-working days.

A day cannot be classified as a sick day if an employee has worked for any amount of time before leaving work due to sickness.

In instances where an employee's shift spans across two consecutive days and they fall ill during or after the shift, the following day will be considered a sick day.

Employers are not obligated to maintain records of SSP payments to employees, although HMRC may request access to these records in case of disputes regarding SSP payments. Employers have the discretion to decide how they wish to maintain records of their employees' sickness absence.

## Parental leave

Parental leave allows both parents to care for their newborn or adopted child without risking job security. The employee and their partner have the option to opt for Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP) if they are:

- Having a baby
- Using a surrogate to have a baby
- Adopting a child
- Fostering a child whom they plan to adopt
- They can divide up to 50 weeks of leave and up to 37 weeks of pay between themselves within the first year after their child's birth or placement.

They have the flexibility to take leave in blocks, with intervals of work in between, or take it all at once. They can also choose to take time off together or stagger their leave and pay.

To qualify for SPL and ShPP, the employee and their partner must:

- Meet the eligibility criteria, which differ for birth parents and adoptive parents or those using a surrogate
- Provide notice to their employers
- Forego some of the maternity or adoption leave and pay

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- ShPP is paid at a rate of £172.48 per week or 90% of their average weekly earnings, whichever is lower. To qualify for Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP), both parents must share responsibility for the child from birth.

For adoptive parents or those using a surrogate, eligibility requires shared responsibility from:

- the child's due date or birth date in the case of surrogacy
- the date the child is placed with them in the case of adoption or fostering for adoption

To access SPL and ShPP, the employee or their partner must:

- Take less than 52 weeks of maternity or adoption leave and utilize the remaining time as SPL
- Take less than 39 weeks of maternity or adoption pay (or Maternity Allowance) and utilize the remaining amount as ShPP

For instance, if the mother has taken 20 weeks of Maternity Leave and Statutory Maternity Pay, she can share 32 weeks of SPL and 19 weeks of ShPP with her partner.

They can divide SPL into up to three separate blocks, even if they're not sharing the leave with their partner. With employer approval, they can take more than three blocks of leave.

## Paternity and maternity leave

Unlike parental leave, this pre-parental leave is mandatory for the mother up to a specified period. Eligible employees are entitled to up to 52 weeks of maternity leave, split into two periods: the first 26 weeks known as 'Ordinary Maternity Leave' and the last 26 weeks as 'Additional Maternity Leave'. Maternity leave can start as early as 11 weeks before the expected week of childbirth, unless the baby arrives sooner.

Employees must take at least two weeks off after the birth (or four weeks if they work in a factory). If the baby is born prematurely, leave begins the day after the birth.

For partners, they may be eligible for one or two weeks of paid Paternity Leave when their partner is having a baby, adopting a child, or having a baby through surrogacy. Leave cannot start before the birth and must end within 56 days of the birth (or due date if the baby is premature), including for same-sex partners.

During maternity and paternity leave, employees are entitled to employment rights such as pay, holidays, and the right to return to their job. Employees remain eligible for maternity or paternity leave and pay even if the baby is stillborn after the start of the 24th week of pregnancy, or dies after birth.

However, some employees may not qualify for both maternity/paternity leave and pay.

To qualify for maternity or paternity leave, employees must:

- have an employment contract regardless of their length of service



- provide the correct notice (at least 15 weeks before the baby's due date)

To qualify for maternity or paternity payment, employees must:

- be on the payroll in the 'qualifying week'
- provide the correct notice (proof should be provided within 28 days of the SMP start date, but employers can accept it later if agreed)
- provide proof of pregnancy
- have been continuously employed for at least 26 weeks up to any day in the qualifying week
- earn at least £123 a week (gross) in an 8-week 'relevant period'

The 'qualifying week' is the 15th week before the baby is due.

Statutory Maternity Pay (SMP) can be paid for up to 39 weeks, with the first six weeks at 90% of the employee's average weekly earnings before tax, and the remaining 33 weeks at £172.48 per week or 90% of their average weekly earnings (whichever is lower). Tax and National Insurance deductions apply.

The statutory weekly rate of Paternity Pay is £172.48 or 90% of the employee's average weekly earnings (whichever is lower).

## Termination

### Methods of employment termination

Employment termination rules aim to protect employees and ensure fairness in the process. An employment contract can be terminated by either the employee or the employer for various reasons:

- Death of the worker or the employer (if an individual)
- Expiry of a fixed-term contract
- Retirement of the worker at the age of 65 with 15 years of pensionable service, unless otherwise agreed
- Mutual agreement between the worker and the employer
- Termination by the employee due to a serious breach of contract by the employer
- Dismissal
- Court decision
- Giving notice by either party.

These are the typical grounds for termination, each mandating adherence to specified notice periods, severance pay, and potentially additional compensation based on the situation. Both the employer and the employee hold the option to pursue extraordinary termination of an employment contract, regardless of whether it's for a definite or indefinite period.

In such instances, neither party is bound by the notice period, yet they are required to substantiate a valid reason for termination.

Extraordinary termination occurs when a severe breach of employment obligations or other significant circumstances render the continuation of employment untenable, considering the interests of both parties.

In these cases, both the employer and the employee must furnish evidence of a justified rationale for termination.

## Ordinary dismissal by the employer

Both the employee and the employer hold the authority to ordinarily terminate the employment contract under normal circumstances. The employee can typically end the employment contract without specifying a reason, but must fulfill the notice period mandated by law or agreed upon in the contract.

On the other hand, the employer must have a legitimate cause to terminate the employment contract, and the employee retains the right to challenge the dismissal's validity in court. Employers may terminate the employment contract under seven categories of ordinary terminations:

- Inadequate performance
- Prolonged illness
- Redundancy
- Immediate dismissal
- Compliance with legal restrictions
- Substantial reasons
- Impossibility to continue employing the individual. The employee possesses the entitlement to request a written explanation from the employer regarding the grounds for their dismissal if they have completed two years of service as an employee.

When an employer terminates an employee, they are obligated to communicate the following:

- The reasons for the dismissal
- The termination date of their employment contract
- Any applicable notice period
- The employee's right to appeal the decision.

Upon request, the employer is obligated to furnish this statement within 14 days.

Furthermore, if the employee is dismissed during their Statutory Maternity Leave, they are entitled to receive this written statement irrespective of whether they have specifically requested it or the duration of their employment tenure.

## Notice period and challenging the dismissal

The notice period provides a buffer for both parties in case of employment termination, allowing time for adjustment and the possibility of contesting the decision. The statutory notice periods are as follows:

- At least one week's notice if employed between one month and two years
- One week's notice for each year if employed between two and 12 years
- 12 weeks' notice if employed for 12 years or more
- one week during probation period.

The employee must give at least a week's notice if they've been in employment for more than a month.

The employer has two options:

- Pay the employee through their notice period.
- Pay the employee in lieu of notice, depending on their circumstances.
- The notice pay is calculated based on the average weekly earnings of the employee over the 12 weeks before their notice period starts.

The employee retains the right to appeal against the dismissal decision. An appeal serves to reevaluate whether the decision made should be reversed or modified.

Following a dismissal, the employer must provide employees with the opportunity to appeal. This enables the employee to lodge an appeal if they believe:

- the disciplinary action taken against them is excessively harsh
  - the outcome of their grievance is incorrect
  - any aspect of the disciplinary or grievance process was flawed or unjust
  - they were dismissed for an unfair cause
  - they possess new evidence to present
- If either party fails to provide adequate notice as stipulated in the employment contract, or if notice is given verbally when it should be in writing, it may constitute a breach of the contract. In such cases, the aggrieved party has the option to pursue legal action.

The notice period typically commences from the day following its submission.

The employer might instruct the employee to refrain from attending the workplace, opting instead for remote work or another location, during their notice period. This arrangement is commonly referred to as 'gardening leave'.

During gardening leave, the employee will continue to receive their regular pay and contractual benefits.

If the employee lodges an appeal, the employer must reevaluate the case to determine if:

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- the correct procedures were followed in a fair manner
- the outcome reached was just

The employer should:

- conduct a hearing to listen to the employee's appeal
- conduct further investigations if necessary
- consider if a different outcome is warranted
- promptly communicate the final decision in writing

Following the employee's appeal, the employer or designated individual overseeing the appeal process should arrange a 'hearing.' This is a meeting where the employer gathers all evidence to reach a final decision.

If the appeal against dismissal proves successful, the employer must reinstate the employee in their role retroactively. This entails treating the employee as if they had been continuously employed during the intervening period.

## Rights and obligations of unemployed persons

Unemployment benefits, known as 'Job Seeker Allowance' in the UK, provide crucial support for those facing income loss during unemployment. The employee may be eligible to apply for Jobseeker's Allowance (JSA) to support them during their job search.

The amount they can receive is capped, with the entitlement varying based on their age:

- For those under 24: up to £67.20
- For those 25 or over: up to £84.80.

Typically, all benefits, pensions, and allowances are deposited into the employee's bank, building society, or credit union account.

If an employee has filed a request for extraordinary termination of employment due to conduct of his employer, he is entitled to unemployment benefit. To qualify for New Style Jobseeker's Allowance (JSA), the employee must meet the following criteria:

- Be 18 years or older (with exceptions for those aged 16 or 17, who should contact Jobcentre Plus for guidance)
- Be below the State Pension age
- Not be enrolled in full-time education
- Be ready and available to work
- Currently not employed or working less than an average of 16 hours per week
- Not hindered from working due to illness or disability
- Reside in the UK.

## Severance pay

Severance pay is a financial sum aimed at providing income and alleviating the adverse effects of terminating the employment contract. The employee is typically eligible for statutory redundancy pay if they have worked for their current employer for at least two years. The amount they receive is calculated based on their age and length of service:

- Half a week's pay for each full year under 22
- One week's pay for each full year aged 22 or older, but under 41
- One and a half week's pay for each full year aged 41 or older

However, the length of service considered is capped at 20 years. The weekly pay is determined by averaging the employee's earnings per week over the 12 weeks preceding the day they received their redundancy notice.

Weekly pay should also encompass:

- 'Guaranteed overtime' as stipulated in the employee's contract – referring to overtime that the employer is obligated to offer and the employee is obliged to work
- Any bonuses or commission. The employer is obligated to provide the employee with a written explanation of how their redundancy pay was calculated.

In computing redundancy pay, the employer must determine the duration of the employee's tenure based on the 'relevant date'. If the employee has received 'Payment in lieu of notice', the relevant date is the date the employee's employment would have concluded had they fulfilled the entire statutory notice period.

The employee may pursue any outstanding redundancy claims within six months of the termination of their employment.

## Restrictive covenants

### Prohibition of competition

Non-compete clauses restrict employees from competing with former employers, typically barring them from soliciting clients or joining competitors for a set period post-employment. In the UK employment law framework, including Northern Ireland, there's no specific provision for non-compete clauses. Consequently, there's no statutory definition. However, these clauses are governed by the common law principle of 'restraint of trade'. This principle upholds that an employee should have the freedom to pursue their trade and utilize their skills without unjustifiable hindrance.

Therefore, any contractual term, such as a non-compete clause, aiming to restrict this freedom is deemed void unless it:

- Serves to safeguard legitimate business interests; and

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- Is not broader than reasonably necessary.

The government aims to strike a balance between facilitating labour market mobility and fostering entrepreneurship while safeguarding business interests to ensure their sustainability.

Employers may include non-compete clauses in employment contracts to limit an employee's capacity to compete with their previous employer also upon departure. This safeguards the former employer's confidential data or client relationships for a defined duration. Such clauses are often accompanied by provisions addressing confidential information and intellectual property.

In broad terms, non-compete clauses typically encompass:

- Limits on a former employee's capacity to work for a rival enterprise, including establishing their own
- Prohibitions on engaging with the former employer's customers or clients
- Bans on hiring personnel from the previous employer
- Constraints on launching a business in a geographic area that could harm the former employer.

When assessing the enforceability of non-compete clauses in employment contracts, courts scrutinize whether the clause aims to protect a 'legitimate business interest' and if it's reasonably necessary. Mere concerns about increased competition don't suffice as a legitimate business interest.

Courts consider various factors to determine reasonableness, including:

- The employee's role and influence
- Geographical scope of the restriction
- Duration of the post-termination restriction
- The nature of the business interest being safeguarded.

## Remote working

### Remote working policy

Remote work, a flexible arrangement, allows employees to work from locations beyond the traditional workplace. Remote work, whether permanent, temporary, or occasional, can be arranged upon mutual agreement between the employer and the employee, provided that the nature of the work and occupational safety regulations permit. This option is available to all employees, not just parents or caregivers, after completing at least 26 weeks of employment with the same employer.

Upon reaching an agreement, the employer must formally notify the employee, outlining the agreed-upon changes and specifying the commencement date for remote work. Additionally, the terms and conditions of the employee's contract should be updated accordingly. These actions must be taken promptly, within 28 days of the approval of the request. When an employee requests a

modification to their employment contract to incorporate remote work arrangements, the employer must respond in writing, providing a reasoned response if the request is denied.

The employer can only refuse the request based on one of eight specific grounds outlined in the legislation. These include:

- The burden of additional costs
- The detrimental effect on ability to meet customer demand
- The inability to reorganise work among existing staff
- The inability to recruit additional staff
- The detrimental impact on quality
- The detrimental impact on performance
- The lack of work during the periods when the employee proposes to work and
- Planned structural changes to the organization.

The employer must render a decision and notify the employee within three months, unless a longer period is agreed upon. If the request is denied, the employee may appeal internally, with the appeal process to be completed within three months, unless an extension is mutually agreed upon.

## Responsibilities within a remote work arrangement

By fulfilling obligations, employers and employees can create a supportive and productive remote work environment that benefits both employees and the organization as a whole. The salary and benefits of employees working remotely should not be lower than those of employees working at the employer's premises in similar roles.

Employers must ensure that remote work arrangements allow employees to take their entitled daily, weekly, and annual leave without hindrance.

Furthermore, employers are equally accountable for the health and safety of remote employees as they are for those working onsite.

Employers must ensure that remote work arrangements comply with all relevant employment laws, regulations, and contractual obligations. This includes adhering to minimum wage requirements, maintaining accurate records of working hours, and addressing any legal concerns related to remote work.

The employee must actively engage with their employers and peers to meet their legal obligations. This entails maintaining consistent communication with managers, colleagues, and clients as necessary for their role, utilizing suitable communication platforms.

Furthermore, employees are expected to be present during agreed-upon working hours and reachable via appropriate communication channels, unless alternative arrangements have been made with their employer.

The employer should arrange for alternative work locations if it's determined that the employee's home isn't suitable or if it's not feasible to implement reasonable safety measures to ensure their protection.

Employers should offer remote training opportunities and professional development resources to support employees' skill development and career progression. This may include virtual training sessions, online courses, and mentoring programmes.

Employers should establish performance metrics and expectations for remote employees, providing regular feedback and performance evaluations to ensure accountability and productivity.

It's imperative for employees to uphold confidentiality agreements and safeguard confidential company data, even while working remotely, to uphold data privacy and security protocols.

Additionally, employees may need to meticulously track their working hours, tasks accomplished, and other pertinent details in accordance with company policies or legal mandates.

## Health and safety at home

Employers and employees share responsibility for health and safety, whether working remotely or in a traditional workplace. Employers hold the same responsibility for the health and safety of employees working from home as they do for those in the workplace.

Ensuring the safety of home workers typically involves assessing risks and taking simple measures to mitigate them.

Factors to consider in the risk assessment for home workers include stress levels, mental health, safe use of equipment such as computers, and the overall working environment.

Employers should engage in dialogue with their employees regarding their home working arrangements, recognizing that it may not suit everyone. Some individuals may lack suitable workspace or prefer office attendance for various reasons, including mental well-being.

While direct visits to employees' homes are generally unnecessary, employers must ensure that their remote workers have a safe and healthy working environment. The employer may choose to conduct home visits under specific circumstances, such as accommodating employees with disabilities or when the work involves significant hazards like tools or chemicals.

It's imperative for employers to address stress in the workplace, including for remote employees, through comprehensive risk assessments and appropriate actions.

When managing remote work, employers should consider communication methods, the nature and duration of tasks, safety protocols, and the necessity for control measures. This can be achieved through various means such as providing guidance on home office setups, utilizing self-assessment tools, and engaging in regular communication via phone or video calls.

If the risk assessment identifies the need for action, employees should not bear any associated costs.



## Complementary terms

### Intellectual property rights

In the UK, the ownership of intellectual property (IP) rights is a significant concern for employers, particularly in industries focused on innovation and creativity.

Under English law, the default rule is that IP rights created by an employee during the course of their employment belong to the employer. This applies to various forms of IP, including copyright and patents. For instance, the Copyright, Designs and Patents Act 1988 specifies that if an employee creates a copyrightable work as part of their job, the employer is the first owner of the copyright.

Employment contracts often reinforce these statutory provisions and may even extend employer rights over employee-created IP. It's common for contracts to include clauses waiving employees' moral rights and explicitly stating that all IP generated during employment belongs to the employer.

Determining whether IP was created "in the course of employment" can be complex. Factors such as the nature of the work, the employee's duties, and any contractual obligations come into play. Even work done outside normal working hours or using the employee's resources may still be considered within the course of employment if it aligns with the employee's job responsibilities.

Employees should also be mindful of their duties to their employers, including the duty of trust and confidence and fiduciary duties. Engaging in activities that could harm the employer's business or competing directly with it may constitute a breach of these duties. In the UK, IP created by an employee in the course of their employment is generally presumed to belong to the employer. This applies to a wide range of IP types, including:

- Copyright: Protects original expressions in literary, dramatic, musical, or artistic works, such as software code, designs, and user interfaces.
- Patents: Safeguard inventions that are new, inventive, and have industrial application.
- Trademarks: Distinguish the source of goods or services, such as logos, brand names, and slogans.
- Designs: Protect the visual appearance of a product, including its shape, configuration, and ornamentation.
- Confidential Information: Protects trade secrets and other commercially valuable information that is not publicly known.

In practice, disputes over IP ownership often hinge on the specifics of each case. Courts consider factors such as the employee's job description, the employer's industry, and the extent to which the IP relates to the employer's business.

One landmark case illustrating the complexities of IP ownership is "Pennwell Publishing (UK) Ltd v Ornstien". In this case, an employee developed software outside of normal working hours but using company resources. Despite the employee's argument that the work was not within the scope of his employment, the court ruled in favor of the employer, emphasizing the significant overlap between the employee's personal project and his job duties.

To safeguard their interests, employers should ensure that employment contracts clearly outline IP ownership rights and confidentiality obligations. Non-disclosure agreements can further protect sensitive information from being misappropriated or disclosed.

For employees, keeping detailed records of their innovative work and understanding the implications of their employment contracts are essential. Seeking legal advice before embarking on personal projects that may intersect with their job duties can help mitigate risks of IP disputes.

By understanding the nuances of IP ownership in the employment context, both employers and employees can navigate potential conflicts and protect their respective interests in innovation and creativity.

## Employee data privacy

Data protection laws in the United Kingdom, particularly the GDPR and the UK Data Protection Act 2018, are crucial for safeguarding the rights and privacy of employees. Understanding Employee Data Protection in the UK

1. **Definition of Personal Data:** Personal data in the UK encompasses any information that identifies or can identify an individual, including names, addresses, National Insurance numbers, and biometric data.
2. **Roles of Data Controller and Data Processor:** Employers serve as data controllers, responsible for determining the purposes and means of processing employee data. Third-party service providers, like payroll processors, may act as data processors under specific contractual arrangements.
3. **Lawful Basis for Processing:** Employers must have a valid lawful basis for processing employee data, such as fulfilling contractual obligations, complying with legal requirements, pursuing legitimate interests, or obtaining employee consent.
4. **Employee Rights under GDPR:** Employees in the UK are entitled to several rights under GDPR, including the right to access their personal data, rectify inaccuracies, erase data (right to be forgotten), and restrict processing. They also have rights related to data portability and the ability to object to processing under certain circumstances.
5. **Data Security Obligations:** Employers are obligated to implement appropriate technical and organizational measures to ensure the security of employee data. This includes measures like encryption, access controls, and regular data audits. Additionally, GDPR mandates prompt reporting of any data breaches to the Information Commissioner's Office (ICO) and affected individuals. GDPR Compliance in the UK: GDPR, reinforced by the UK Data Protection Act 2018, establishes the legal framework for data protection in the UK. Employers must adhere to GDPR principles, including transparency, fairness, and accountability, when processing employee data.

**Employee Monitoring:** Employers must ensure that any monitoring activities, such as email monitoring or video surveillance, comply with GDPR requirements. Transparent policies should be established, outlining the purpose, scope, and legal basis for monitoring, and employees should be informed of their rights in this regard.

**Sensitive Data Processing:** Special categories of personal data, such as health information, require additional protection under GDPR. Employers must have lawful grounds for processing such data and adhere to stricter safeguards to protect employees' sensitive information.

**Data Retention Policies:** Employers should establish clear data retention policies specifying the duration for which different types of employee data will be retained and the purposes for which it will be used. Compliance with GDPR's data minimization principle is essential to avoid unnecessary data retention.

**Employee Training:** Regular training sessions on data protection policies and procedures can help employees understand their rights and responsibilities regarding data protection. Training should cover topics such as data handling, security best practices, and recognizing potential data breaches.

**Data Subject Access Requests (DSARs):** Employers must have efficient processes in place to handle DSARs. Employees have the right to request access to their personal data, and employers must respond to such requests promptly, providing the requested information free of charge within one month.