Arc Legal Group provide advice to thousands of businesses and individuals each year through its Legal Assistance Helpline. The vast majority of calls to the helpline come from businesses seeking help on employment related matters.

Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool.

The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.

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Recruitment and selection

Recruitment

Most successful businesses find that people are their most important assets. Hopefully, with a good recruitment process you can find the right people at the outset and avoid problems in the future.

The aim of any recruitment process should be to attract people who are qualified for the role and will fit well within the organisation.

How you go about recruiting will generally depend on the role you are looking to fill:

Advertising

For an entry level or low skilled job, advertising yourself could be the most cost effective approach. It is often possible to advertise on certain websites for free. The downside with adverts is that there is no guarantee of success, even when you pay.

The Equality Act 2010, which deals with discrimination, can still apply during a recruitment process. For this reason, it will be important that any adverts don't appear to discriminate against certain people or groups of people, for more information on discrimination see our Discrimination Guide.

Recruitment consultants

This will usually be more appropriate for senior or highly skilled jobs. Recruitment consultants tend to be expensive, although you normally only pay once you have found the right candidate.

The most important thing here will be your selection/interview process. Usually once the candidate starts work you will need to pay the consultant's fee, regardless of whether or not the employee stays long term.

Agencies

Agencies are usually able to supply workers for all kinds of jobs at short notice. This can be really useful when dealing with unforeseen demand such as sickness, holiday absence, maternity leave or just during busy periods.

The downside will be the premium paid, you will normally pay the agency a percentage on top of the employee's salary. This may not be cost effective when looking for a permanent position.

Internal candidates

Don't underestimate the potential of the staff you already have. There will be no advertising costs and you would expect them to have a good background knowledge of the business, which will save time and training costs.

It is, however, likely to lead to vacancies elsewhere within the organisation, that may counter the original cost savings.

Job description

Whichever way you decide to recruit it is important to ensure the job description accurately describes the position and the factors you are looking for. If the description isn't accurate, you're unlikely to get the right applicants.

Selection

How do you pick the right person from the pool of applicants you've received?

As you would expect there is no set answer, much will depend on what you are looking for and who will fit within your organisation.

From a legal point of view, it is important to keep detailed records of the reasons for making decisions. If someone makes an allegation that you have discriminated against them for a particular reason, usually it falls on you to prove you haven't. Without records this can be a challenge.

Usually, if you have a reasonable reason, i.e., one that isn't discriminatory in itself, that will be enough to rebut any presumption of discrimination.

Consistency is important. If you have too many CVs or applications, it could be reasonable to filter them, for example, by not offering an interview to anyone without a particular qualification.

Formulate interview questions and try to score candidates consistently. This way, if you are ever asked to disclose evidence about the reason a person wasn't selected, you will ideally have clear documented evidence as to why they weren't the best person for the job.

Most employment related claims have a limitation period of three months, although it is usually appropriate to retain recruitment records for at least twelve months.

References

References can be an invaluable aid during the recruitment process and should ideally be sought whenever an offer is made.

It is possible to make an offer of employment subject to satisfactory references, so if the references are poor or not forthcoming the offer can be withdrawn.

Medical questions

It is worth pointing out that since the introduction of the Equality Act 2010, it has been unlawful to ask questions about someone's health prior to making an offer of a job.

The following exceptions apply, so you can ask for information if:

- You need to establish whether the applicant will be able to comply with a requirement to undergo an assessment (i.e., an interview or selection test)
- You need to establish whether the applicant will be able to carry out a function that is intrinsic to the work concerned
- You want to monitor diversity in the range of people applying for work
- You want to take positive action towards a particular group – for example, a guaranteed interview scheme
- You require someone with a particular disability because of an occupational requirement for the job

Employment status

The statutory definition of an employee can be found in the Employment Rights Act 1996 (ERA). Section 230 (1) of the ERA defines an employee as "an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment".

Section 230 (2) of the ERA defines a contract of employment as "a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing".

Only an Employment Tribunal can determine the status of an individual who undertakes work, therefore there is a plethora of case law where the courts have tried to determine what a 'contract of service' actually means.

There are generally three categories of individuals who undertake work:

Employees

- Those who work under a contract of service as defined by case law

Self-employed

- Those who work under a contract for service

Workers

- These are a hybrid; not quite employees, but not completely self-employed

Employees are entitled to the most legal rights, workers have some rights and the self-employed have very limited rights.

In general, to determine an individual's status, a tribunal will look at the following:

- Are there mutual obligations on the employer to provide work for the individual engaged and on the individual engaged to perform work for the employer?
- Can the individual subcontract or delegate their duties?
- Is the individual performing services for others as an individual in business on his own account?
- Is the individual working under the orders of the supplier of services who control when, how and what he must do?
- Does the individual provide his own machinery and equipment?
- Does the individual hire his own helpers?
- Does the individual take a degree of financial risk, i.e., who pays the tax, NI etc.?
- Does the individual receive sick pay; holiday pay etc.?
- Is the individual subject to the disciplinary code in force?
- Is the individual a member of the pension scheme?

The greater the degree of personal responsibility the individual engaged undertakes in any of the above, the more likely they will be considered to be self-employed.

Very generally, if someone can subcontract or delegate their duties they will usually be self-employed. An employment relationship will almost always require a mutuality of obligations. Workers will perhaps be those who don't have a mutuality of obligations, but cannot go as far as subcontracting their work.

Employment rights

Statutory rights

Employees have various statutory rights. These rights are usually granted through Government legislation (Acts of Parliament) however, rights can also be developed through the courts.

Some of the main rights employees have are:

- The right to a written statement of terms
- The right not to be unfairly dismissed (subject to qualification)
- The right to written reasons for dismissal (subject to qualification)
- The right to receive a minimum wage
- The right to a minimum notice period
- The right to a written statement of terms
- The right not to be unfairly dismissed (subject to qualification)
- The right to written reasons for dismissal (subject to qualification)
- The right to receive a minimum wage
- The right to a minimum notice period
- The right to an itemised pay statement
- The right to a redundancy payment (subject to qualification)

- The right not to be unlawfully discriminated against because of a Protected Characteristic
- The right to a safe working environment
- The right to at least 5.6 weeks paid holiday a year (including bank holidays)
- The right to time off in certain circumstances (examples include; maternity leave, paternity leave, shared parental leave, time off for trade union activities, emergency time off for dependants, time off for public duties and time off for antenatal care)
- The right to maximum working hours and rest breaks (subject to certain opt-out rules)
- Protection on the transfer of a business or a service provision change

Length of service	Less than 1 month	1 month to 2 years	2 years to 12 years	12 years+
Notice given my employer	No notice	1 week	1 week for each year of service (2 years = 2 weeks, 3 years = 3 weeks etc.)	12 weeks
Notice given by employee	1 week	1 week	1 week	1 week

Of course, there are many other rights employees will have and the above is only intended to give an indication of some of the main rights. If you need further detail and have access to one of our legal expenses policies, then give one of our expert advisors a call.

Unfair dismissal

Generally

Unfair dismissal is the most well-known statutory right that applies to employees. It is also the most common claim brought before employment tribunals. If you are facing a potential unfair dismissal claim, then you should seek legal advice from our Helpline as soon as possible. In order for an employee to pursue a claim, their employment must have first come to an end.

Termination

An employment relationship can be brought to an end in a number of different ways. The most common ways are:

Termination by the employer with or without notice

Notice may be express or implied, but must never be less than the statutory minimum. Failure to give adequate notice could give rise to a wrongful dismissal or breach of contract claim from the employee. An employer may decide to dismiss without notice where they consider, following a fair procedure, an employee has committed an act of gross misconduct.

Resignation by the employee with or without notice

Notice again may be express or implied, but must never be less than the statutory minimum. Failure to give adequate notice could give rise to a breach of contract claim from the employer. An employee may decide to resign without notice where they feel the employer has already breached the contract, this could be referred to as a 'constructive' dismissal.

A fixed term contract expires

If an employee works under a fixed term contract that is not renewed, a dismissal will occur. In certain circumstances employees will be entitled to a redundancy payment.

Termination by mutual agreement

The relationship can end when both parties agree, they may decide to waive notice periods and sometimes this will be done with a settlement agreement, whereby an employee may waive one or a number of rights.

It is important that whenever considering termination, the correct procedures are followed and specific legal advice is taken.

Unfair dismissal

Under Section 94 of the Employment Rights Act 1996 (ERA) an employee has the right not be unfairly dismissed. If, as an employer, you have to terminate an individual's employment, a tribunal may have to consider if the dismissal was fair or not. A tribunal would generally consider the following:

- Has there been a dismissal? - (See termination above, or Section 95 ERA)
- Does the employee qualify for unfair dismissal? - (Section 108 ERA, generally two years' service, but there are a number of exceptions)
- Did the employer have a potentially fair reason to dismiss the employee? - (The potentially fair reasons are detailed in Section 98 (1) and (2) of the ERA)

  The potentially fair reasons are:
  - Conduct
  - Redundancy
  - Illegality or statutory restriction
  - Some other substantial reason
- Did the employer act reasonably or unreasonably in treating the potentially fair reason as a sufficient reason for dismissing the employee? (Section 98 (4) ERA, this question has to be considered taking into account all the circumstances, including the size and resources of the employer, and must be determined in accordance with equity and the substantial merits of the case)

Usually the final question involves looking at the procedures that have been followed (was the dismissal procedure fair?) and considering if the decision to dismiss was reasonable in all the circumstances.

The tribunal will decide whether the employer's decision to dismiss fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted.

Compensation

If an employment tribunal decides a dismissal was unfair it can award an employee:

- A basic award of up to £16,140 (as at 6 April 2020)
- A compensatory award of up to £88,519 or 52 weeks' actual gross pay if lower (as at 6 April 2020)

A tribunal has the power to issue other remedies and sanctions and a claim for unfair dismissal may be accompanied by any number of other claims including wrongful dismissal and discrimination.

Health and safety in the workplace

Health and safety within the workplace is highly regulated, this guide is only intended to look at some of the general duties that apply.

The Health and Safety Executive is an executive non departmental public body set up to regulate and enforce health and safety laws.

Their website here is a useful source of information. There you can find lots of useful guidance and advice along with template risk assessments that can be used in various situations.

Employers' obligations

Employers have a common law duty to take reasonable care for the safety of their employees. This will include a duty to ensure reasonable care is taken to provide them with a safe place to work, safe tools and equipment, and a safe system for working.

The Health and Safety at Work Act 1974 imposes a duty for employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all its employees.

This will include:

- Ensuring they secure the health, safety and welfare of persons at work
- Ensuring they protect persons other than those at work against risks to health and safety arising out of, on in connection with, the activities of persons at work
- Ensuring they control and keep the use of explosive or highly flammable or otherwise dangerous substances, and generally the unlawful acquisition, possession and use of such substances

The Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) also creates the following duties:

- An employer needs to undertake suitable and sufficient risk assessments in relation to the health and safety risks that employees may be exposed to at work
- Where an employer implements measures as the result of a risk assessment they must apply the principles of prevention. This generally involves looking to:
  - Avoid risks
  - Combat risks at source
  - Give appropriate instructions to employees
  - An employer needs to provide information to employees about the risks that have been identified in the assessment and the measures that will be implemented as a result

There are many other obligations, some important ones to mention are:

- Having Employers Liability Insurance (this is usually mandatory)
- Keeping accident records (an accident book)
- Displaying health and safety posters
- A duty to report certain accidents to the Health and Safety executive

Risks

The Health and Safety Executive has powers to penalise employers for failure to comply with health and safety obligations. There can also be criminal sanctions (fines or imprisonment) that can result from enforcement action taken by the Health and Safety Executive.

Employees will generally only have a right to take action if something happens as a result of an employer's failure to comply with its duties. The failure to comply with the duties may assist the employee in establishing negligence if, for example, they were to suffer an injury as a result of the employer's failure to comply with certain duties.

Employment contracts

An employment contract will usually be a written agreement between an employer and an employee. As with any other contract the terms of the contract set out each parties' rights and obligations.

For any contract to exist there must be:

- An offer
- Acceptance
- Consideration (pay), and
- An intention to create legal relations

It is possible that these elements could exist without a written contract. When that happens and a dispute arises a court usually has to look at the parties' intentions to determine the terms of the contract. For that reason, having a clear written agreement is always preferable.

Section 1 of the Employment Rights Act 1996 (ERA) tells us that all employees must at the very least be provided with a written statement of particulars of employment and that has to be given to them within the first two months of their employment.

To summarise, this written statement must, at least, include the following information:

- The names of the employer and employee
- The date when the employment began
- The date the employee's continuous employment began
- The rate or scale of pay and any method for calculating payments
- When the employee will be paid (intervals e.g., weekly, monthly etc.)
- Any terms relating to hours of work
- Entitlement to holiday, including details of public holiday and holiday pay
- Terms and conditions related to incapacity for work due to sickness/injury and any provision for sick pay
- Notice periods
- Job title and description
- If the job is not permanent details of when any fixed term will end
- Either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer
- Details of any collective agreements that affect the terms and conditions of employment
- Where an employee is required to work outside the United Kingdom full details of pay and duration etc.

**If drafting an employment contract you should always take specific legal advice and refer to the ERA directly.*

**See Template 1.*

Express and implied terms

An employment contract will usually be a mixture of express and implied terms. Anything written into the contract will be an express term.

There will be certain implied terms in any contract of employment.

For example, an employer will always be expected to:

- Act reasonably
- Pay wages
- Co-operate with the employee and maintain trust and confidence

- Take reasonable care for health and safety
- Deal reasonably and promptly with grievances
- To exercise pension rights in good faith

An employee will always be expected to:

- Work for the employer with due diligence and care
- Co-operate with the employer and obey lawful orders
- Follow a duty of fidelity, i.e., not compete with the employer
- Take reasonable care for his own health and safety

Implied terms could also arise due to the passage of time, if something is custom and practise and becomes expected it may become implied into the contract.

Fixed-term contracts

Occasionally there will be a requirement for employers to use fixed-term contracts. They can allow flexibility and give a business and an employee certainty about the length of the relationship. They will usually be appropriate in the following circumstances:

- To provide cover for someone on maternity leave of long term sick
- Where the role is reliant on certain funding and will not be renewed after a fixed period
- To deal with a specific task or project

It is important to understand that employees on fixed-term contracts will still have various rights. For this reason, they should only be used in appropriate circumstances and any additional rights employees may have should be taken into consideration.

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (The Regulations) came into force in October 2002. The Regulations only apply to employees on fixed-term contracts and not to workers (see our Employment Status Guide).

A fixed-term contract means a contract of employment that, will terminate:

- On the expiry of a fixed-term
- On completion of a particular task, or
- On the occurrence or non-occurrence of any other specific event

It will always be the expiry, or the end-point, which is the defining feature of a fixed-term contract.

If notice is required to bring the contract to an end, without which the contract would continue, the contract will not be a fixed-term contract.

The Regulations provide protection from less favourable treatment when compared to comparable permanent employees. There is a defence, if any less favourable treatment can be objectively justified.

Less favourable treatment could occur when an employee on a fixed-term contract doesn't receive the same benefits or has less favourable terms than permanent employees.

Objective justification would have to be looked at on an individual basis. Generally, when looking at objective justification employers should ask themselves whether there is a good reason for the difference in treatment. A balancing exercise should then be undertaken, between the rights of the employee and the business objectives.

If an employee on a fixed-term contract believes that they have been treated less favourably they can pursue a stand-alone claim to an employment tribunal.

If an employee is dismissed as a result of seeking to enforce their rights under The Regulations, then the dismissal will be automatically unfair. This will apply even if the employee in question has been employed for less than two years.

Successive fixed-term contracts

Under The Regulations, employees who have been continuously employed for four years or more on a series of successive fixed-term contracts are automatically deemed to be permanent employees unless the use of a fixed-term contract can be objectively justified.

Termination

The expiry and non-renewal of a fixed-term contract will be deemed to constitute a dismissal. It is therefore important to note that if an employee has worked for more than two years, the employer will need to establish a fair reason for the dismissal. This is because the employee will have acquired the usual rights for protection from unfair dismissal (see our Employment Rights Guide).

Often this reason will be redundancy, because the term will have been linked to work that will now no longer continue. In these circumstances the employee will usually still be entitled to a redundancy payment.

Changing employment contracts

Given the nature of an employment relationship and the fact that it is possible for someone to continue in employment for decades, it becomes inevitable that occasionally employment contracts will need to change.

This isn't an issue when both parties agree. Like with any contract, the terms can be changed by mutual agreement of the parties. This could be as a result of a promotion or a pay rise or an agreed change in working patterns.

However, difficulties often arise when one party wishes to make a change and the other party refuses. Technically, as an employer if you change an employee's contract without consent, you will be at risk of a number of claims.

Getting agreement

If it becomes necessary to make changes to an employment contract, the first step will usually be to seek agreement with the employee or employees in question.

Usually the best way to do this will be to consult with the employee or employees in question and explain fully the reasons you are having to make a change. Hopefully, with an understanding of why it would be in the best interest of the business to make a change, the employee will be supportive and prepared to assist.

Consider the possibility of a compromise – for example, if you have decided to remove an entitlement to contractual sick pay, could you offer an extra holiday entitlement?

Bear in mind that when you are dealing with a number of employees, it might be that only one will refuse to agree. Asking for individual agreement, rather than collective agreement, can avoid issues that could arise where one employee is refusing to accept the change.

Any meetings should be documented and if agreement is achieved, then the employee should confirm their agreement in writing.

Failure to get agreement

If you are unable to get agreement you could leave things as they are and continue with the original terms and conditions.

If, however you decide to go ahead and change the contract without an employee's consent you will be in breach of contract. Therefore, you will be at risk of potential claims.

If you are prepared to take that risk, there are generally two ways to go about making the change:

- Forcing the change upon the employee by explaining that from a specific date, the change will apply
- Terminating the employee's contract, usually on the ground of 'some other substantial reason', and offering to re-instate the employee if they sign a new contract

If you decide to force the change through, there will be a risk that the employee resigns arguing the change amounts to a fundamental breach of their contract. The employee could then pursue a claim for constructive unfair dismissal. If the change relates to a reduction in pay, there is also a chance that the employee could pursue an ongoing unlawful deduction from wages claim.

There is also a chance that the employee could work under protest and bring a breach of contract claim for damages and or seek an injunction to prevent the change.

Terminating and offering new terms will usually prevent unlawful deduction claims, so it may be more appropriate when making changes that have an impact on pay. It should also prevent the employee from working under protest. However, if the employee doesn't accept the new contract, they could pursue a claim for unfair dismissal. You would then have to persuade a tribunal that you had a fair reason to terminate, i.e., some other substantial reason and that you followed a fair process.

Unfair dismissal claims can only be brought if the employee has been working with you for at least two years.

Disciplinary

Procedures

Naturally the majority of employment related disputes arise from disciplinary related matters. Therefore, it is vitally important to have a disciplinary procedure in place. This procedure should be clear, accessible and in writing. It should set clear standards for behaviour and performance and set out the procedures you will follow if those standards are not upheld. Having a clear procedure should mean employees are aware of what standards are expected of them, how they should behave in the workplace, how rules will be enforced and how they could be dismissed if the rules are broken.
We usually recommend the procedures are kept separate to the employment contract and are non-contractual in nature. This will allow you to adopt a flexible approach in circumstances where a rigid application would be inappropriate or could cause hardship or unfairness in its own right. If possible employees and their representatives should be involved in the development of rules and procedures.

The ACAS Code of Practice for Disciplinary Procedures (The Code)

Any disciplinary procedure has to at least comply with the requirements of The Code; it sets out principles for handling disciplinary situations in the workplace.

Disciplinary situations are defined as including misconduct and poor performance.

Fairness and transparency is promoted throughout The Code. If matters need to be dealt with formally, what action is reasonable or justifiable will depend on all the circumstances of the particular case and matters should:

- Be dealt with promptly and without any unreasonable delay
- Be dealt with consistently
- Give the employee the opportunity to defend themselves by providing them with all the information
- Allow employees to be accompanied at disciplinary meetings
- Have an opportunity for the employee to appeal to someone independent

The disciplinary process should have three distinct stages an investigation, a hearing and an appeal. Each of these stages should be dealt with by separate independent managers and their seniority should increase throughout the process.

The Code has statutory authority and must be taken into account by an Employment Tribunal when considering fairness in relevant cases. An unreasonable failure to comply with The Code could result in a dismissal being deemed unfair and a tribunal may increase an award for compensation by up to 25%.

The disciplinary process

Dealing with matters informally

The first thing to consider once an employee has breached a rule or policy should be whether the matter should be dealt with formally or informally. If possible The Code suggests you should try and deal with matters informally. It would be appropriate to give a verbal warning to an employee without following a formal procedure. If the matter is likely to lead to a sanction greater than a verbal warning a formal procedure will need to be instigated.

Suspension

Suspension should be considered in the most serious cases of misconduct or if you consider a matter to be gross misconduct. Suspension would usually be appropriate if you have a situation where, should the allegation be founded, the outcome may lead to dismissal or if the employee's presence in the workplace could hinder the investigation. If you do decide to suspend, it should be on full pay and you should inform the employee of the terms of the suspension making it clear it is not a disciplinary act or an assumption of guilt but rather a neutral act to allow for a full investigation to take place.

**See Letter 1.*

Investigation

An independent manager should be appointed to carry out an investigation into the allegations against the employee. Separate managers will be needed to hold the disciplinary hearing and if necessary an appeal meeting.

The investigation should be fair and balanced, so the investigating manager should be looking for evidence that could prove innocence as well as guilt. The investigation is essentially a fact finding exercise to gather all the facts.

The amount of investigation needed will depend on all the circumstances but should always be thorough enough to allow the person holding a disciplinary hearing to establish if they have reasonable grounds for believing or disbelieving the allegations against the employee. It should also be thorough enough to allow the case to be put to the employee in a manner that makes it clear exactly what is being alleged. Where there are allegations of misconduct, it is likely that witness statements will be required and therefore the person investigating the matter will want to speak with the witnesses and gather appropriate written statements.

An investigation meeting will most likely need to take place with the employee and usually this can be done at an early stage to get the employee's initial response to the allegations. This is not the disciplinary hearing and therefore there is no statutory right for the employee to be accompanied by a work colleague or trade union representative. You may decide to provide evidence at this point depending on the circumstances and nature of the allegations.

Any investigation meetings held with the employee or witnesses should be done in private and notes should be taken.

Once the investigation is complete you may decide no further action is needed and this will be the end of the process. If, however, the investigating officer considers there is a case to answer, a disciplinary hearing will need to be arranged.

Letter

When dealing with a formal disciplinary process it is important to invite the employee to a disciplinary hearing in writing, as a minimum this letter should:

- Inform the employee of the time and place of the disciplinary hearing. This should be reasonable and allow the employee sufficient time to prepare their case. As a minimum the employee should be given 48 hours' notice
- Explain fully the allegations against the employee
- Warn the employee of the potential consequences of the disciplinary hearing, if dismissal is a potential outcome this should be made clear

- Explain that the employee has the right to be accompanied at the hearing by a work colleague or a trade union representative
- Enclose all evidence that will be relied upon at the disciplinary hearing. This will include any witness statements and other documents

**See Letter 2 or Letter 3.*

Disciplinary hearing

A separate manager should be appointed to chair the disciplinary hearing, this manager should be independent and should not have been involved in the investigation. This manager should be more senior than the manager who dealt with the investigation. Bear in mind another manager, preferably more senior, may be needed to conduct any subsequent appeal meeting.

The employee should be given a reasonable opportunity to prepare for the disciplinary hearing and the hearing should be held in private during the employees normal working hours.

There should be someone at the meeting who can take notes, these notes will usually be provided to the employee following the disciplinary hearing.

It is useful at the start of the disciplinary hearing for the chair to ask if the employee is satisfied with the procedure so far and check if the employee has received all the information provided. The chair should also introduce those present, explain the complaint against the employee and the purpose of the meeting.

The chair should go through each of the allegations and make reference to all relevant evidence. The employee should be allowed the opportunity to make representations, ask questions and challenge the evidence as appropriate.

Usually all witnesses will have provided statements prior to the hearing and there will be no need to call witnesses. If the employee wants to call witnesses to the hearing this should be allowed although there is no legal right for the employee to demand a court room style cross-examination. If the employee does have appropriate questions that need to be asked of the witnesses, the hearing should be adjourned.

The employee's companion should be there to support the employee and should be allowed to make statements or put forward questions on the employee's behalf. The companion should not be allowed to answer questions that are put directly to the employee.

The chair should be sensitive to the fact that an employee involved in a disciplinary process could be under a significant amount of stress. If the employee seems distressed or becomes aggressive during the hearing an adjournment could be used to allow the employee to regain composure.

Once all the allegations have been addressed and the employee's case has been presented, the chair should take the time to summarise and seek clarification from the employee where appropriate. The hearing should then be adjourned for the chair to make a decision.

The decision

The chair will need to consider the following:

- Are the allegations founded?
- If they are founded, what is an appropriate sanction?

When considering whether the allegations are founded the chair will need to decide if he genuinely believes the allegations are founded and he will need to demonstrate there are reasonable grounds on which to base that belief.

It is not a criminal trial so there is no requirement the allegations are proven beyond all reasonable doubt. A genuine belief could be based on the fact the chair thinks it is more likely than not that the allegations are founded.

If the chair doesn't believe the allegations are founded, the employee should be informed and this will be the end of the process. If the chair genuinely believes the allegations are founded an appropriate sanction must be considered.

Careful consideration should be given to what would be an appropriate sanction. Options will generally involve; an informal warning, additional training, a written warning, a final warning or dismissal. Dismissal and final warnings will usually only be appropriate in cases of serious or gross misconduct.

If dismissal is considered an option, consideration should be given to any alternatives. Only in cases of gross misconduct should employees be dismissed without any prior warning.

The chair should consider what sanctions have been imposed on other employees for similar misconduct. If the employee has 'live' warnings on file for previous inappropriate conduct these should be taken into account. The chair should also consider if there is any appropriate mitigation.

It can be useful for the chair to make a note of the decision making process. Why does he genuinely believe the employee is guilty of the misconduct? Why does he think this is an appropriate sanction? This could be an extremely useful piece of evidence if the matter led to an Employment Tribunal.

Once the chair has made a decision, it will need to be communicated to the employee. This must be done in writing and it is also advisable to communicate the decision verbally either by telephone or ideally by reconvening the hearing.

The employee should be advised of the sanction, the reason for imposing it and the fact that they have the right to appeal against the decision. If a warning is imposed, the length of time the warning will remain 'live' should be explained and the consequences of further misconduct or failure to improve must be made clear. The employee should be given a reasonable opportunity to appeal.

**See Letter 4 or Letter 5.*

Appeals

If the employee appeals against the decision made at the disciplinary hearing, an appeal meeting should be arranged. The employee will again have the right to be accompanied by a work college or a trade union representative.

**See Letter 6.*

Another independent manager should be appointed to deal with the appeal. This manager should be more senior than the disciplinary chair so they are in a position to overrule any decisions made. Often the person hearing the appeal will be the most senior manager in the organisation.

The appeal should be treated, firstly as a review of the procedures:

- Has a thorough investigation been carried out?
- Has the organisation complied with The Code and/or its own procedures?
- Has the employee raised any procedural issues?

And secondly, as a review of the decision:

- Were the allegations proven?
- Was the decision reasonable?

Any additional information or mitigation provided by the employee should be taken into account. If the employee raises any additional points these should be considered fully.
If the original hearing was flawed procedurally then the matter should either be dropped or if appropriate the appeal may be conducted as a full rehearing of all the evidence.

The chair will either uphold the decision, reduce the sanction or remove the sanction altogether. The sanction should never be increased at appeal.

Once the decision has been made it should be communicated to the employee and a letter should be sent confirming the outcome. This will be the end of the internal process and that should be made clear to the employee.

**See Letter 7.*

Dealing with absence

Absence from work

As an employer you will no doubt at some point have to deal with sickness absence. Staff are going to be ill from time to time and it will have an adverse impact on your business.

Managing sickness absence effectively can reduce the impact on your business and the starting point is to have a clear sickness policy in place.

A sickness policy would generally include:

- Reporting procedures
- Requirements to evidence sickness
- Details about sick pay (including statutory sick pay)
- Details about keeping in touch during absences
- Details about procedures that will be followed (return to work etc.)
- Where appropriate general details about expected attendance levels

General reporting requirements

Most employers will expect employees to contact them within a reasonable time before the start of their shift if employees are sick or unable to attend work.

If employees fail to attend work without explanation, it is important to try and contact the employee as soon as possible.

**See Letter 8.*

There is no legal requirement for a medical certificate during the first seven days of absence. You can ask employees to fill in a form confirming their illness on their return, if they are off for seven days or less. This is referred to as 'self-certification'.

Employees must give you a 'fit note' if they are off sick for more than seven days in a row (this includes non-working days i.e., weekends, bank holidays and days employees wouldn't usually be expected to work). Doctors or GPs can provide 'fit notes'.

A 'fit note' will only confirm one of two situations:

- Employees are not fit to work, or
- Employees may be fit to work

If an employee may be fit for work a Doctor or GP will usually suggest amendments to the employee's duties that could be made to enable the employee to return to work. If you as an employer are unable to make those amendments the employee will be deemed not fit for work.

When considering amendments, you must take into account your obligations under the Equality Act 2010, including the obligation to make 'reasonable adjustments' in appropriate cases, failure to do so could lead to a disability discrimination claim.

Discrimination can be a complicated area so it is important to take specific legal advice.

Types of absence

There will usually be two types of sickness absence that could have an impact on your business:

- Long term ill health
- Intermittent ill health

Dealing with long term ill health

There is no specific definition of long term ill health but generally it will involve absence that lasts or is likely to last for at least two months.

The first step will be to establish the reason for the sickness and the likely prognosis. The reason for the absence may be clear from the employee's 'fit note', although the prognosis could be more difficult to ascertain.

If it is clear at the outset the sickness is related to the workplace, then it would be worth encouraging the employee to utilise your grievance procedure to try and resolve any outstanding issues.

Obtaining a medical opinion is usually the best way to get detailed information about the nature of the employee's illness and may be able to give you an understanding of the prognosis. It should also give you an indication of whether there is anything you can do to assist a return to work.

The Governments 'Fit for Work' scheme may be able to assist as it allows you, GPs and employers throughout England and Wales to refer employees or patients who have been, or are likely to be, off sick from work for four weeks or more for a voluntary occupational health assessment.

Alternatively, you can ask your employee for consent to contact their GP. The Access to Medical Reports Act 1988 has to be taken into consideration as it gives employees certain rights when such a report is requested.

**See Letter 9 (this should include a consent form and a summary of the employee's rights under the Access to Medical Reports Act 1988. These can be found immediately after Letter 9).*

Once you have consent from the employee you can write to their GP to obtain a report.

*See Letter 10.

Once you have a report it will normally be appropriate to meet with the employee to discuss the content and establish if the employee agrees with the report.

*See Letter 11.

At this point you should be in a position to understand why the employee is absent, how long they are likely to continue to be absent and if there is anything you can do to assist a return to work.

When considering amendments, you must take into account your obligations under the Equality Act 2010, including the obligation to make 'reasonable adjustments' in appropriate cases, failure to do so could lead to a disability discrimination claim.

If at this point you consider the employee is unlikely to be able to return for the foreseeable future and you are unable to make any adjustments to enable a return you may be able to consider termination on Capability grounds. Before going down this route you should consider any alternatives and we would suggest that you take specific legal advice to explore your options and consider any potential risk factors. If you decide termination may be an option a formal capability meeting will need to be held before the decision is made.

*See Letter 12.

Dealing with intermittent ill health

Often intermittent absence will be disruptive and can be more difficult to deal with than long term absence. It can be useful to have a 'trigger' or a 'mechanism' in place to ensure certain levels of absence are investigated fully.

An example of this is a Bradford Factor scoring system – absence is effectively scored; more points are accumulated by short spells of absence than long spells of absence. The formula used is D (Days) x S (Spells of absence) x S (Spells of absence).

Therefore:

- If an employee takes five days off in a row (one Spell) the calculation would be 5 x 1 x 1 = 5 points
- If an employee takes five days off on five separate occasions (five Spells), so for example every Friday for five weeks, the calculation would be 5 x 5 x 5 = 125

Usually employers will set their 'trigger' point and then any employee who goes above that 'trigger' score will have their absence investigated.

Of course, employees may be able to manipulate a system of this nature and therefore it has to be appropriately managed.

If concerns are raised about an employee's attendance the first step will be to investigate the reason for the absence. Usually an informal meeting will need to be help with the employee to establish if there is any underlying reason for the high level of intermittent absence.

If there is an underlying issue consideration should be taken as to whether or not any reasonable adjustments could be made to assist the employee. If the issue is disability related, then consideration should be given to obligations under the Equality Act 2010.

It may be that further investigation is needed in which case it may be appropriate to seek a medical opinion. It could be appropriate to obtain a medical report and consideration should be given to the Access to Medical Records Act 1988 as outlined above.

If the matter cannot be resolved informally you may have to consider formal action. This will need to be done in accordance with a disciplinary procedure. When dealing with intermittent absence you will usually be following the staged warnings.

It will usually be inappropriate to skip warning stages and employees should be given clear warnings with details about what level of absence is acceptable, what will happen if there is a failure to improve and what you will do to assist with an improvement. Obligations under the Equality Act 2010 must be considered.

Ultimately if attendance doesn't improve you may be able to consider termination on the grounds of capability and/or conduct and/or some other substantial reason, depending on the circumstances. It would be advisable to take specific legal advice before considering termination.

Grievances

Grievances are defined by the ACAS Code of Practice for Grievance Procedures (The Code) as concerns, problems or complaints raised by an employee.

The Code explains that if a grievance cannot be resolved informally, employees should raise their grievance in writing to their immediate line manager (unless the grievance is about that manager when it should be raised to another manager).

If an employee doesn't raise a grievance in writing it wouldn't prevent them pursing a tribunal claim about their matter, if appropriate.

However, the employee may recover less compensation than they would have done if they had raised the grievance in writing.

Employees should be encouraged to raise concerns informally in the first instance and should be made aware of how they can raise concerns formally or informally in a grievance procedure.

Once an employee raises a grievance formally, a hearing will need to be held. This hearing should be conducted by an independent manager and the employee will have a statutory right to bring a work colleague or trade union representative to the meeting (S.10 Employment Relations Act 1999).

**See Letter 13.*

This meeting should be done to establish exactly what the grievance is, how the employee considers it can be resolved and what evidence the employee has, or where can the employee direct the manager, to prove their concerns. As always it is important to make notes and it could be useful to have someone at the meeting to take these notes.

Once the hearing has been held, the manager who has listened to the grievance will want to adjourn to investigate the grievance fully. Depending on the circumstances further meetings may need to be held with the employee. At this point the employee should be given an indication of likely timescales for investigating the grievance.

After a full investigation of the grievance, the manager will need to decide if they consider the grievance to be founded or not. If founded the manager will need to consider implementing appropriate measures to resolve the grievance.

[Note: if you have concerns that a founded grievance may give rise to a legal claim, you should seek legal advice immediately. You may be able to consider alternatives that could avoid the need for litigation.]

If the grievance is not founded the manager will need to explain why.

**See Letter 14.*

Regardless of the outcome the employee will need to be given the right to appeal. The appeal should be dealt with by another independent manager, preferably someone more senior than the person that heard the grievance. Again the employee will be entitled to bring a work colleague or trade union representative to the hearing.

Discrimination

The Equality Act 2010 makes it unlawful to discriminate against employees based on the following Protected Characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race, religion or belief
- Sex and sexual orientation

Discrimination can occur in a number of different ways, the most common are:

Direct discrimination
This generally occurs when an employer treats one individual less favourably than another individual because of a Protected Characteristic.

Indirect discrimination
This generally occurs where a provision, criterion or practice that applies to everyone, disadvantages a group of people who share a particular Protected Characteristic and that provision, criterion or practice cannot be justified as a proportionate means of achieving a legitimate aim.

Harassment
This is generally unwanted conduct related to a Protected Characteristic that has the effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Victimisation
This is generally where an individual is subjected to a detriment because of a protected act, including making an allegation someone has breached the Equality Act 2010, or because that individual is believed to have done a protected act.

It is also worth noting employers are obliged to make 'reasonable adjustments' for employees considered disabled under the Equality Act 2010 and must not treat disabled employees unfavourably because of something arising from their disability, unless they can show that treatment is a proportionate means of achieving a legitimate aim.

Discrimination is a very complicated area and the above is simply an outline of general points that should be considered. Compensation for unlawful discrimination can be unlimited so it is important to seek specific legal advice if you have concerns about discrimination.

Flexible working

Originally flexible working was introduced as a concept whereby employees who had caring responsibilities or children could make a request to work more flexibly to help them to provide care.

On the 30 June 2014 the right was extended to all employees and from the 6 April 2024 employees can make a request from the first day of their employment. Employees can make up to two requests in any 12-month period.

Essentially, the employee will be making a request to change their working pattern and/or hours of work and the employer will need to consider whether or not they can agree. If the employer agrees, the changes become permanent, if not the employee continues to work under their original terms and conditions.

There are set grounds on which an employer can refuse a request. These grounds are however very wide. The most important thing, from an employer's point of view, is making sure the right procedures are followed.

Making a request

To make a flexible working request the employee must make a written request that explains:

- The date of the request
- The change they are requesting to their terms of employment including details of the changes to their hours and place of work
- The date on which they want the change to start

Once a request in received

If you receive a flexible working request, as an employer, you have a duty to manage the request in a reasonable manner. The request must be dealt with within two months, this includes making a decision and dealing with any appeal. It is possible to extend the time limit by agreement.
There is no set procedure to follow, however, it would be reasonable to meet with the employee to discuss the request as soon as possible. Unless the request is fully agreed, it is the employers duty to consult with the employee which should involve a formal meeting.

It will usually be appropriate to give the employee the opportunity to be accompanied by a work colleague or trade union representative at any meetings.

If you are unable to accommodate the request, you will need to rely on one or more of the following grounds:

- The burden of additional costs
- There would be a detrimental effect on the ability to meet customer demand
- There would be an inability to reorganise work amongst existing staff
- There would be an inability to recruit additional staff
- There would be a detrimental impact on quality
- There would be a detrimental impact on performance
- There would be insufficient work during the periods the employee proposes to work
- There are planned structural changes

If you refuse the request, it would be reasonable to offer the employee the right to appeal against the decision. The appeal should be managed by someone who is independent and ideally holds a more senior role than the person who made the original decision.

Possible risks

While there is no obligation to give anything more than the ground for refusal, it would be advisable to give a full explanation as to why the request cannot be granted. If an employee is unhappy with the decision, they can pursue a legal claim to an employment tribunal on the following grounds:

- The request wasn't dealt with in a reasonable manner
- The request wasn't dealt within two months of the date of the application being made
- The statutory grounds for refusal were not used to decline the request
- The application was refused on the basis of incorrect facts
- The employer has treated the request as withdrawn when it was not entitled to do so

It is possible for a tribunal to order an employer to reconsider the request and can award compensation of up to a maximum of eight weeks pay, subject to the usual statutory maximum.

Employees have, in certain circumstances, been successful in pursuing constructive unfair dismissal claims and indirect sex discrimination claims that have been directly related to a flexible working refusal.

If there is any risk that discrimination could arise – for example, if an employee is returning from maternity, paternity or shared parental leave, objective justification as to the refusal will be crucial.

If in doubt, contact the advice line for assistance.

Redundancy

Dealing with redundancies

Dealing with a redundancy situation can be a daunting task both for employers and employees.

Employers need to ensure that a genuine redundancy exists and follow the correct procedures in a fair and consistent manner.

Employees have a number of rights and it is important that all parties understand what these rights are.

What does 'redundancy' mean?

A redundancy situation can arise in the following circumstances:

- Where there is a closure of a business for which the employee was employed
- Where there is a closure of business at the place where the employee was employed to work
- Where there is a reduced requirement for employees to carry out work of a particular kind

It is always important to remember that it is the 'job', not the person, that is redundant.

Interestingly, if there is any reduction in the employee's hours of work, then dismissal for that reason can be a redundancy.

Planning a redundancy

Before doing anything else, management should put a plan in writing to document the business case for considering a redundancy. This will be important if the redundancy situation is ever questioned in the future, as it will give a tribunal an insight into why the business felt the need to make a job redundant.

The business should be able to clearly identify why a redundancy is necessary. It may be that some of the following apply or there may be other reasons:

- Completion of a contract
- Lower demand for services or products
- Transfer of work somewhere else or the loss of work to a competitor
- An introduction of new technology
- Changes in work methods

Given the nature of a redundancy situation and the potential hardship that can be caused, a tribunal will always expect to see evidence that the business looked at alternatives to avoid the need for a redundancy situation to arise, dismissal for redundancy should be seen as a last resort.

What is the 'job' in question?

Identifying employees and selecting them appropriately for redundancy is an important part of the redundancy process.

Once the business has established a potential redundancy exits, it will need to consider which employees will fall within the 'pool'.

This can be a difficult task for an employer. It can be hard to get the right balance between having a 'pool' too wide or a 'pool' too narrow. It's possible that two employees could pursue two different arguments about the same selection.

There is no clear rule of law that tells an employer how to define the 'pool'. Again planning is important and a paper trail explaining why management felt it was the best way to define the job in question for the interests of the business.
It can also be useful to agree the 'pool' with employees and/or their representatives at an early stage in the consultation process.

If there is only one employee doing the 'job' in question, then it is possible to have a 'pool' of just one employee.

Consultation

If 20 or more redundancies are being proposed in a 90-day period, then collective consultation obligations will arise.

An employer proposing to dismiss as redundant between 20 and 99 employees must notify the Department for Business, Innovation and Skills 30 days before the first dismissal takes effect. If 100 or more employees are to be dismissed the period is 45 days.

See more information in relation to collective consultation here.

Where the redundancy situation involves less than 20 employees, consultation will need to take place in good time before any dismissals take effect. Importantly, the consultation should be long enough to be considered 'fair' and 'meaningful'.

A consultation will generally involve:

- Informing employees of the potential redundancy situation 'putting employees at risk'
- Selection (where appropriate)
- Individual consultation
- Looking for alternatives to avoid the redundancy, including suitable alternative employment
- Confirming the decision, including giving notice and a breakdown of any redundancy payment

*See Letter 17.

Selection

Where selection is required, as you may have expected, there is no set way to pick which employees are to stay and which will be made redundant.

You can find a template selection matrix here.

We would suggest using this as a starting point and trying to ensure the selection matrix best suits the business needs to retain the most effective staff. Ideally the selection matrix should be objective, although sometimes an element of subjective judgement will be appropriate. Judges are aware that not everything is measurable or can be determined in a 'tick box' manner.

It may be possible to avoid a selection matrix in its entirety, especially in a business restructure. I t has become more and more common for employers to define the 'pool' and dismiss everyone involved, employees will then be invited to apply for the new jobs that have been created in the restructured business.

It will always be important to agree the selection criteria with employees and/or unions at an early stage, before any scoring or selection takes place.

Individual consultation

*See Letters 19 and 20.

Individual consultation will generally involve informing the employees that they have been provisionally selected for redundancy, this will also include informing them of their rights and entitlements.

While informing employees is important, consultation should also be a genuine attempt to explain the reasons to the employees and also look at any ways the redundancy could be avoided. The employees should be given the opportunity to put forward suggestions as to how they feel the redundancy could be avoided.

It is very important that the consultation is meaningful and other options are genuinely considered in consultation with the employees.

You should consider the following guidance:

- Consultation shouldn't be rushed. Any employees should be given the opportunity to be accompanied by a work colleague or a union representative
- The employee should be given an explanation as to why their role has been affected
- Don't give notice until the consultation has been properly concluded

- If a matrix has been used for selection, ensure the scores and the reasoning is fully explained to the employee in question
- Give the employees time to come back with their own views and ensure these views are properly and genuinely considered
- Hold a separate final meeting with the employees if no alternative solution can be found. Only at this stage should notice of dismissal be given
- Hold a separate final meeting with the employees if no alternative solution can be found. Only at this stage should notice of dismissal be given

**See Letter 21.*

Alternative employment

The question of alternative employment will be important not only during the consultation but also once notice has been given.

If an offer of suitable alternative employment is unreasonably refused by an employee, they can lose their right to a redundancy payment.

An offer of suitable alternative employment can be made at any time before termination takes place (the end of a notice period) and the alternative role can start up to four weeks after the date of termination. Seeking suitable alternative employment is part of a fair procedure and you should take reasonable steps to look for work within the organisation. It isn't appropriate to eliminate certain jobs on the assumption the employee in question would not be interested. When considering alternative employment all things should be considered not only salary and conditions but also the level of skill required.

The question of an unreasonable refusal will be assessed by a tribunal from the point of view of the employee. For example, it may be more reasonable for someone who is unable to drive to refuse a role in an area with limited public transport than it would be for someone who could drive.

Appeals

An opportunity to appeal against the decision should always be given when an employee is made redundant.

Employees should be given a reasonable amount of time to confirm if they wish to appeal. The employee should be asked to confirm their intention to appeal in writing and they should provide reasons as to why they attend to appeal.

A meeting should be arranged to hear the appeal and the chair should be someone independent who hasn't been involved in the redundancy process. Ideally this will be the most senior person within the organisation, this way there should be no bias or fear of repercussions if decisions are overturned.

As well as any individual points raised, ideally the appeal will involve a review of the entire process – Was the procedure fair? Was the selection appropriate and fair? Was the consultation meaningful and were alternatives considered appropriately?

Employees should be given the opportunity to be accompanied by a work colleague or a union representative.

Employee rights

Employees who are made redundant are entitled to:

Redundancy payment

Employees who have been employed for more than two years will be entitled to:

- 0.5 week's pay for each full year worked under the age of 22
- One week's pay for each full year worked between the age of 22 and 41
- 1.5 week's pay for each full year worked from 41 onwards

*Pay is capped at £479 per week and length of service is capped at 20 years – the maximum amount of statutory redundancy pay is £14,370.

You can calculate a redundancy payment here.

Contractual rights

Employees will be entitled to any notice as provided by the contract subject to the statutory minimum (see our Employment Guide).

There may be contractual procedures that give employees the right to more comprehensive consultation processes – if this is the case it is important to follow these procedures.

There may be an entitlement in the contract to enhanced redundancy payments – if this is the case they will need to be paid in accordance with the contract.

Time off to look for alternative work

Employees who have worked continuously for at least two years have the right to paid time off to look for alternative work. Paid time off is limited to 40% of a week's pay, however employees can have more time off if it is reasonable to look for alternative work.

Pregnancy and maternity

Pregnant employees and new mothers get various additional rights to protect them in the workplace and safeguard their continued employment, the following are some of the key rights that will apply:

- Paid time off for antenatal appointments
- Health and safety protection while pregnant
- Up to 52 weeks' maternity leave
- Statutory maternity pay
- The right to return to the same job
- Priority for suitable alternative employment in a redundancy situation
- Protection from dismissal, detriment or discrimination because of pregnancy or maternity

It is also important for employers to carry out a health and safety risk assessment once they become aware an employee is pregnant.

Employers should inform employees of their entitlements and how to take advantage of them. This can usually be done in a staff handbook.

The period of protection

The period of protection begins when a woman becomes pregnant and will end:

- If she has the right to maternity leave, at the end of the maternity leave period or (if earlier) when she returns to work after pregnancy
- Is she does not have the right to maternity leave, at the end of the period of two weeks beginning with the end of the pregnancy

Paid time off for ante-natal care

A pregnant employee has the right to paid time off to attend ante-natal classes. This can include relaxation or parent classes, provided they are recommended by the employees doctor or midwife.

Employees are entitled to a reasonable amount of time off and they are entitled to their normal rate of pay.

The employee does not need to provide evidence for the first, appointment but can be asked for evidence of subsequent appointments.

Compulsory maternity leave

All employees have to take a minimum of two weeks' maternity starting on the day childbirth occurs. Factory workers have to take a minimum of four weeks'.

If an employer allows an employee to work during compulsory maternity leave the employer will be guilty of a criminal offence.

Ordinary maternity leave (OML)

All employees are entitled to 26 weeks OML regardless of length of service. OML will begin on whichever of the following is sooner:

- On an agreed date but not before the start of the eleventh week before the beginning of the week in which the baby is due, or
- Birth, or
- Absence with a pregnancy related illness during the four weeks before the week in which the baby is due

Additional maternity leave (AML)

All employees are also entitled to AML regardless of length of service.

Length of AML is also 26 weeks. No notice needs to be given by the employee of her intention to take AML. It is presumed she will take it unless she notifies otherwise.

Rights during maternity leave (OML and AML)

During maternity leave, employees are entitled to benefit from all their normal terms and conditions of employment excluding remuneration (monetary wages or salary).

Returning from maternity leave

At the end of OML, employees have the right to return to the original job.

At the end of AML generally an employee is entitled to return from leave to the job she left. However, where it is not reasonably practicable, for a reason other than redundancy, the employer can offer her another job which is both suitable for her and appropriate for her.

If a redundancy situation arises during OML or AML and the employee is selected for redundancy, she must be given priority for any suitable alternative employment that may be available.

Notification

The employee should notify you of her intention to take maternity leave by the end of the 15th week before the baby is due (EWC). As well as confirming the pregnancy and the EWC, the employee should inform you when she intends to start her maternity leave.

Employees are entitled to request to start maternity leave up to eleven weeks before the EWC.

Upon receiving this notification an employer is required to give a written response within 28 days. This response must confirm the date AML will end and explain that the employee would be expected to return to work from that date. The end of AML will be 52 weeks from the start of maternity leave.

Employers should presume, unless they hear otherwise, that the employee will take the full 52 weeks of maternity leave.

If an employee wants to return to work early, she will need to give at least eight weeks' notice of her intention to do this.

Statutory Maternity Pay (SMP)

Employees will qualify for 39 weeks of SMP if they:

- Had 26 weeks' continuous service at the 15th week before the EWC, and
- Earn on average at least £123.00 a week

Employees will still be entitled to SMP if their baby is:

- Born early – regardless of when
- Is stillborn after the start of the 24th week of pregnancy
- Dies after being born

Current rates of SMP are:

- 90% of your average weekly earnings (before tax) for the first 6 weeks
- £172.48 or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks

Rates are correct as of August 2023. The latest rates of SMP can be found here.

If an employee is not entitled to SMP you must supply the SMP1 form and inform her that she may be entitled to maternity allowance, usually claimed from the local job centre.

Keeping in touch days

Normally during maternity leave, an employee cannot undertake work for her employer without bringing the maternity leave to an end. However, if both the employee and the employer agree, it is possible for an employee to work up to ten days during maternity leave. These ten days are known as keeping in touch days.

- On any keeping in touch day the employee will be entitled to be paid at their normal basic pay rate
- Keeping in touch days cannot be taken during compulsory maternity leave (see above)
- An employee cannot be treated less favourably for refusing to carry out keeping in touch days

Working time

The Working Time Regulations 1998 (The regulations) were introduced as a result of the European Working Time Directive 93/104/EC. The regulations are in place to protect the health and safety of workers by placing restrictions on the amount of time people can work, the regulations provide rules relating to:

- The 48-hour working week
- Night working
- Daily rest periods
- Daily rest breaks
- Weekly rest periods
- Holiday entitlements

Breaches, by an employer, of the rules relating to the 48-hour working week and night working can lead to criminal prosecution by the Health and Safety Executive. The remaining rules are simply individual entitlements.

Therefore, if employees want to enforce these entitlements they would need to make a complaint to an employment tribunal.

Workers

The Regulations give protection to 'workers', this means they apply to and provide protection to a wider group of people than 'employees'. For more information in relation to the distinction between 'employees' and 'workers' see our Employment Status Guide.

The 48-hour working week

Workers should not work on average more than 48 hours a week. Employers have an obligation to monitor staff and keep records to ensure that the weekly average is not exceeded. The average is usually calculated over a period of 17 weeks.

Workers can choose to waive this right under an individual opt-out agreement with their employer.

The agreement must be in writing and the worker must be able to terminate the agreement on notice (this notice period must not exceed three months).

Night workers

The Regulations limit the amount of time night workers can spend on a shift, require employers to offer regular health assessments for night workers and can require employers to transfer night workers to day work if that is advised by a doctor.

A night worker is any person who works for at least three hours during 'night time' (generally 11pm to 6am) on the majority of their shifts, or does so 'as a normal course'.

The definition is slightly more complicated in The Regulations and case law has suggested that three hours of night work per shift only has to be a regular feature of a worker's pattern of working time.
The following limits apply to night workers:

- An eight hour average limit on normal hours of work per day
- An eight hour actual limit for each day where the work involves a special hazard or heavy physical or mental strain

Rest periods and breaks

Under The Regulations workers are generally entitled to:

- A daily rest period of eleven hours per day
- A weekly rest period of 24 hours per week
- A rest break of 20 minutes when a day's working time is more than six hours
- 'Adequate' rest breaks for workers carrying out monotonous work, where this can put the worker's health and safety at risk

Holidays

Under The Regulations workers have right to a minimum of 5.6 weeks paid leave per year. A full time employee working 5 days per week will therefore be entitled to 28 days paid leave per year (5 x 5.6 = 28). This entitlement is inclusive of bank holidays, if applicable.

As above, the entitlement in days is always calculated by multiplying the number of days in a worker's normal week by 5.6 and rounding up to the nearest half day.

Generally paid leave must be taken within the leave year and payments in lieu of leave are only allowed on termination of employment.

Exclusions and exceptions

All of the above rights are subject to certain exclusions and exceptions, there are also special provisions that apply in certain circumstances. For more information, contact our Legal Assistance Helpline.

Paternity leave

For an employee to be entitled to paternity leave they must:

- Have at least 26 weeks' service by the beginning of the 15th week before the expected week of childbirth
- Be the father of the child or married to or the partner (of either sex) of the child's mother, and
- Expect to have responsibility for the upbringing of the child

Employees can take either one or two consecutive weeks of paternity leave. This can be taken at any time from birth or up to 56 days later. The employee must give notice of their intention to take paternity leave by the 15th week before the expected week of childbirth, unless it is not reasonably practicable to do so.

If the employee wants to change the start date, they will need to give their employer 28 days' notice.

Paternity pay

If an employee qualifies for paternity leave, they will also qualify for paternity pay if they earn at least £123.00 a week before tax.

The statutory weekly rate of paternity pay is £172.48, or 90% of average weekly earnings (whichever is lower).

Rates are correct as of August 2023. The latest rates of statutory paternity pay can be found here.

Antenatal appointments

Employees are able to take unpaid leave to accompany a pregnant woman to antenatal appointments if they are the baby's father, the expectant mother's spouse or civil partner or in a long term relationship with the mother. Employees are able to accompany the expectant mother to appointments of up to 6.5 hours each.

Time off for dependants

All employees have the right to take a 'reasonable' amount of unpaid time off work in order to take action which is necessary:

- To provide assistance when a dependant falls ill, gives birth or is injured
- To make arrangements for the provision of care for a dependant who is ill or injured
- In consequence of a dependant's death
- Because of unexpected disruption or termination of arrangements for the care of a dependant
- To deal with an unexpected incident which occurs when an employee's child is at school or on a school trip

Employees must inform you as soon as is reasonably practicable of the reason for their absence and how long they expect to be absent as a result.

Dependant is defined widely in the legislation. A 'dependant' is defined as a spouse or civil partner, child or parent of the employee, or a person who lives in the same household as the employee who reasonably relies on the employee to assist if they fall ill or are injured, or who reasonably relies on the employee to make arrangements to provide care.

Reasonable' time off

What is a reasonable amount of time off will depend on the nature of the situation and a tribunal would also take into account the individual circumstances of the employee. As an employer it is important to consider the circumstances fully and if necessary question the employee as to why they feel they need that amount of time off.
If an employee is taking more than a reasonable amount of time off their absence could become unauthorised, although it may be worth taking legal advice from our Helpline before considering taking disciplinary action.

Remedy

If an employee is unreasonably refused this right, then they can make a complaint to an employment tribunal. If a tribunal considers the complaint well founded, it can make a declaration to that effect and may award such compensation as it considers would be just and equitable in the circumstances.

An employee may have additional claims if they are treated differently or dismissed as a result of making a request under this right.

Performance and appraisals

When it comes to dealing with performance in the workplace, it is always important to set clear standards and ensure those standards are communicated effectively to staff.

Once clear standards have been set, staff will be aware of what is expected of them and what they need to do to ensure they do their job to the correct standard. They should also be given encouragement to improve and develop additional skills to help the business thrive.

Ideally, any standards should be fair and measurable to ensure consistency within the workplace. It can be easier to justify objective standards than relying on subjective opinions.

The line manager

The employee's line manager will usually be responsible for ensuring that employees reporting to them are performing to the required standards.

Therefore, it will be important for managers to be fully aware of their responsibilities and they will need

to be given adequate training on the business appraisal systems and understand what objectives they have in relation to ensuring adequate performance from staff members.

The line manager should be familiar with all the relevant policies and procedures that relate to performance and appraisals.

Appraisals

In order to ensure adequate ongoing performance, it can be beneficial for any organisation to put in place an appraisal system and make sure appraisals are undertaken on a regular basis (at least yearly). It can be appropriate to link an appraisal system to a benefits package or a bonus scheme to give employees an added incentive to do what is expected of them, or more.
While a formal appraisal might only take place yearly, regular meetings between the line manager and the employees will make sure everyone is aware of what is expected. This is also a good way for the line manager to keep track of how the employee is progressing.

Regular meetings can also be useful for identifying any performance or training needs that are required and can be a useful tool to address those issues before they become more serious.

If there are any serious concerns they should be addressed as soon as they arise and where necessary, the disciplinary procedure should be invoked (for further information see our Disciplinary Guide).

Allowing performance issues to continue without being addressed may have an impact on your ability to take action at a later date.

When dealing with poor performance it is important that employees are made aware of the concerns from an early stage and are given an adequate opportunity to improve. Where necessary additional training should be provided.

Termination for poor performance would usually only be appropriate following a series of staged warnings. If you are considering taking disciplinary action as a result of a performance issue you should contact our Legal Assistance Helpline.

If an appraisal system is used correctly, you will have access to detailed records of how employees are, and have been performing throughout their employment. This can be very useful in a redundancy situation. Often managers will have a good idea who they think the best and worst performing employees are, but without documented appraisals they may not be able to demonstrate why they feel that way.

Key points

- Set clear objective standards that are reasonable and measurable
- Ensure managers are provided with adequate training on managing performance
- Consider rewarding good performance through an appraisal system and/or giving incentives for employees to do even more than just a good job
- Ensure employees have regular meetings/reviews with their line managers
- Address performance concerns without delays
- Ensure the disciplinary procedures are followed when dealing with serious performance concerns
- Ensure employees are aware of what is expected of them and when they are not doing something adequately
- Ensure where there are performance concerns employees are given a fair and reasonable opportunity to improve and provided with appropriate training
- Termination for poor performance will only be appropriate as a last resort

Employment Guide letters and templates

Disciplinary

Letter 1: Suspension

Dear [Employee]

Suspension

I write to confirm the decision to suspend you from work, with effect from [date].

The reason for your suspension is to allow us to investigate allegation(s) made against you, we will contact you shortly regarding the nature of the allegation(s).

I would like to make it clear that suspension should not been seen as a disciplinary sanction or an indication that the matter will progress beyond our investigating the allegation(s) made against you. We will endeavour to keep the suspension as brief as possible and will regularly review the suspension.

During your suspension:

- Your employment will continue and you must comply with your terms and conditions of employment
- You will continue to receive your normal salary and benefits
- You must not attend the workplace unless specifically invited to do so by me
- You must not contact any other employees unless specifically authorised by me
- You must co-operate fully with our investigation and attend any investigatory or disciplinary meetings arranged

If you are aware of any documents, witnesses or information relevant to the investigation or allegation(s) please let me know as soon as possible.

Yours sincerely

Letter 2: Invite to disciplinary hearing (misconduct)

Dear [Employee]

Disciplinary hearing

I am writing to inform you that you are required to attend a disciplinary hearing at [time] on [date] at [location]. The hearing is to consider the following allegation(s):

[List full allegations]

If the allegation(s) are founded, you may be issued with a verbal, written or final warning that could remain on your file for up to twelve months.

Please find enclosed copies of all evidence, including witness statements and other documentation that will be used at the disciplinary hearing.

The hearing will be conducted by [name] and [name(s)] will also be present. You have the right to be accompanied at the hearing by a work colleague or a trade union representative. If you wish to exercise this right, please provide me with details of your companion as soon as possible.

Yours sincerely

Letter 3: Invite to disciplinary hearing (gross misconduct)

Dear [Employee]

Disciplinary hearing

I am writing to inform you that you are required to attend a disciplinary hearing at [time] on [date] at [location]. The hearing is to consider the following allegation(s):

[List full allegations]

The allegation(s) are considered to amount to gross misconduct and if founded, you may be dismissed with immediate effect.

Please find enclosed copies of all evidence, including witness statements and other documentation that will be used at the disciplinary hearing.

The hearing will be conducted by [name] and [name(s)] will also be present. You have the right to be accompanied at the hearing by a work colleague or a trade union representative. If you wish to exercise this right, please provide me with details of your companion as soon as possible.

Yours sincerely

Letter 4: Disciplinary outcome (misconduct)

Dear [Employee]

Disciplinary outcome

On the [date] you were invited to attend a disciplinary hearing. A hearing, conducted by [name] was held on the [date].

The meeting was held to discuss the following allegation(s):

[List full allegations]

The conclusion is that the allegation(s) are founded and therefore you have been issued with a [verbal/ written/final warning (delete as appropriate)].

This warning will remain on file indefinitely but will be disregarded for disciplinary purposes after [number months]. Any further misconduct in the next [number months (as above)] may lead to further disciplinary action that could include [a written warning/ a final warning/ dismissal] (delete as appropriate)].

You have the right to appeal against this decision. If you wish to exercise your right of appeal you should inform [name] by [date] and a meeting will be arranged.

Yours sincerely

Letter 5: Disciplinary outcome (gross misconduct)

Dear [Employee]

Disciplinary outcome

On the [date] you were invited to attend a disciplinary hearing. A hearing, conducted by [name] was held on the [date].

The meeting was held to discuss the following allegation(s):

[List full allegations]

The conclusion is that the allegation(s) of gross misconduct are founded and therefore you have been dismissed with immediate effect. Your effective date of termination (last day of employment) was [date].

You have the right to appeal against this decision. If you wish to exercise your right of appeal you should inform [name] by [date] and a meeting will be arranged.

Yours sincerely

Letter 6: Appeal invite

Dear [Employee]

Appeal hearing

I understand you wish to appeal against the decision made following the disciplinary hearing held on [date]. You are invited to an appeal hearing at [time] on [date] at [location], where your appeal will be considered.

The hearing will be conducted by [name] and [name(s)] will also be present. You have the right to be accompanied at the hearing by a work colleague or a trade union representative. If you wish to exercise this right, please provide me with details of your companion as soon as possible.

I must make you aware that the decision made at this hearing will be final and there will be no further right of appeal.

Yours sincerely

Letter 7: Appeal outcome

Dear [Employee]

Appeal outcome

You appealed against the outcome of a decision made at a disciplinary hearing held on [date]. An appeal meeting was held on [date].

[Name (chair)] has concluded the decision made at the disciplinary hearing to [issue a verbal warning/ issue a written warning/issue a final warning/terminate your employment (delete as appropriate)] should [[stand] [be revoked]].

This decision is final and you have no further right of appeal.

Yours sincerely

Absence

Letter 8: Absence without leave (AWOL)

Dear [Employee]

Unauthorised absence

I write with regards to your recent absence from work. You have not attended work since [date] and you have failed to provide an explanation for your absence. [As our sickness policy explains, you should contact us by [time] on your first day of absence; you are currently in breach of this procedure.] I have attempted to contact you by telephone.

Please contact me as soon as possible, or at the very latest by 4pm on [date]. My telephone number is [number].

If I do not hear from you by the above mentioned time your absence will be considered unauthorised and we may invoke our formal disciplinary procedure. Unauthorised absence is considered a matter of gross misconduct.

Yours sincerely

Letter 9: Consent to approach GP

Dear [Employee]

Consent to approach GP

We write in relation to your current absence from work.

You have been absent since [date] and as you have not yet returned to work we would like to obtain a written report regarding your fitness to work from your GP or consultant. In order to obtain a report, we need your written consent under the Access to Medical Reports Act 1988.

You are not obliged to give your consent, but doing so will help us understand the nature of your illness and if there is anything we can do to assist you in returning to work. It will also help us make decisions about your future employment, which, if you refuse to give consent, will have to be made on the basis of information available to us.

A report should help us understand:

- The impact your illness has on your day to day activities
- How long the illness is likely to last
- The impact your illness has on your ability to carry out your duties
- If there is anything we can do to assist with a return to work

We enclose the following:

- A summary of your rights under the Access to Medical Reports Act 1988
- A consent form
- A stamped envelope for you to return the consent form to us

You should read the explanation of your statutory rights carefully before deciding which option to choose. Please then complete and return the enclosed consent form using the envelope provided within the next seven days.

Once we receive a report from your GP or consultant we will invite you to a meeting to discuss the reports contents.

Yours sincerely

A summary of your rights under the Access to Medical Reports Act 1988

The Access to Medical Reports Act 1988 sets out the procedure for obtaining medical reports for employment or insurance purposes from a doctor (this is usually your General Practitioner (GP) or a specialist consultant responsible for your care).

We are seeking your consent to apply to your GP or consultant, [name], for a report on your current health and its effect on the work we employ you to undertake.

You have three options:

Option 1

You may consent to the application for the report and indicate that you do not wish to see a copy before it is supplied to us.

If you change your mind after the application has been made, you will still be able to contact your GP or consultant in writing to see a copy of the report. If the report has not already been sent to us, your GP or consultant must delay sending it for 21 days, to allow time for you to arrange to see it.

Whether or not you decide to see the report before it is sent, you still have the right to ask your GP or consultant for a copy of the report at any time up to six months after the report has been supplied to us. Your GP or consultant is entitled to make a reasonable charge for this.

Option 2

You may consent to the application, but indicate that you wish to see the report before it is supplied to us. If you choose this option, you must contact your GP or consultant directly to request the report, as it will not be sent to you automatically.

Once we receive the consent from, we will inform your GP or consultant in writing that you wish to see the report, and will forward a copy of the letter to you. The GP or consultant will allow 21 days for you to see the report before it is sent to us. If you have chosen this option, you should contact your GP or consultant directly to make arrangements to see the report after you return the enclosed forms to us.

Your GP or consultant is entitled to make a reasonable charge for giving you the opportunity to see the report before it is sent to us.

If the GP or consultant has not heard from you in writing within 21 days after we have asked them to prepare the report, they will assume you do not wish to see the report and that you consent to it being supplied directly to us.

If you arrange to see the report before it is sent to us and there is anything in the report you consider to be incorrect or misleading, you can write to your GP or consultant and ask them to amend the report. If they refuse to amend it, you may:

- Withdraw your consent for the report to be issued to us
- Ask the GP or consultant to attach to the report a statement setting out your objections/views, or
- Agree to the report being issued to us unchanged

You must be aware your GP or consultant is not obliged to show you any parts of the report that they believe might cause serious harm to your physical or mental health or that of others. Neither do they have to show you information about other people without their permission. If your GP or consultant limits your access to the report for any of these reasons, they will tell you.

Option 3

You may refuse your consent to our application for a report from your GP or consultant.

Please complete and return the enclosed consent form indicating your decision. You should keep this summary for future reference.

Consent form

To: [Doctor/consultants name]

I have been informed of my statutory rights under the Access to Medical Reports Act 1988 and; I consent for my employer [employer name], applying to my GP or consultant with responsibility for my care [name], for a written medical report (and any verbal or written updates subsequently required).

I also consent to my employer processing sensitive personal data about me for these purposes, and:

I do not wish to see a copy of the report before it is sent by my GP or consultant to my employer.

I wish to see a copy of the medical report before it is supplied to my employer.

I understand that I must contact my GP or the consultant within 21 days of the date of my employer's application for the report to make arrangements to see it.

or

I do not consent for my employer, [name], applying to my GP or the consultant with responsibility for my care, [name], for a medical report.

*Delete as applicable

I understand a copy of this consent from will be sent to my GP or the consultant with responsibility for my care, [name].

Name:

Signed:

Dated:

Letter 10: Request for a medical report

Dear [GP/Doctor/consultants name]

[Employee name]: Request for medical report

I write to request a medical report in relation to the above named employee of ours. As you are aware [Employee name] has been absent from work since [date].

We require a report to understand what impact the illness has on; [Employee name]'s ability to carry out day to day activities, their ability to carry out the role they are employed by us to do, how long the illness is likely to last and if there is anything we can do or implement to assist a return to work.

Please find enclosed a copy of their written consent to access such a report under the Access to Medical Reports Act 1988. We have informed [Employee name] of their statutory rights.

[Employee name] has indicated that they wish to see the medical report before it is sent to us. We have explained to them that they need to contact you within 21 days to view the report. We have copied this letter to them.]

or

[Employee name] has indicated that they do not wish to see the medical report before it is supplied to us. We have explained that they have the right to change their mind within 21 days of this request.]

To assist you in completing your report we enclose details of [Employee name]'s role and their sickness record for the past year.

[Note: role details should include any management responsibility, effort required/is it heavy manual work/, are they required to sit or stand for long periods, details of shift work, details of normal day to day activities. You should provide as much information as possible about the job and duties]

I have [Employee name]'s permission to enquire:

- What is the likely date of return to work?
- Do you consider the illness amounts to a disability under the Equality Act 2010?
- How long is the illness likely to last?
- Is the illness temporary or permanent?
- Is [Employee name] likely to be able to fulfil the full duties set out in our attachment in the foreseeable future?
- Do you consider [Employee name] would be able to fulfil any of the duties set out in our attachment?
- Is [Employee name] capable of carrying out any work now or in the foreseeable future?
- Are there any specific recommendations you could make that would help us accommodate a return to work?
- Are there any recommendations you could make which would help us find alternative employment?
- Is [Employee name] on any medication that could have an impact on the role and how long is [Employee name] likely to require that medication?
- Do you have any further comments?

Please notify us of the likely fees for the preparation of your report. Please would you also provide an estimate of the likely timescale for the preparation of the report.

Please contact me if you require any further information or clarification of this request.

Yours sincerely

Letter 11: Invite to consultation meeting following receipt of a medical report

Dear [Employee]

Review of medical report dated [date]

I write further to previous correspondence in relation to your absence. I have now received a report from [GP or Consultant's name].

Before any decisions are made about your employment we would like to discuss the report with you and consider if we can make any adjustments to assist your return to work. You are invited to attend a meeting at [time] on [date] at [location]. The meeting will be conducted by [name].

You may be accompanied at the meeting by a work colleague or trade union representative.

If you are unable to attend or would prefer for the meeting to be dealt with by telephone or at your home, please let me know as soon as possible.

Yours sincerely

Letter 12: Invite to capability hearing

Dear [Employee]

Capability hearing

I write further to a consultation meeting that took place on [date]. We have now had the opportunity to review your ongoing absence.

We understand from the consultation meeting that you agree with the contents of the medical report dated [date] and you have told us you have difficulties undertaking [job duties]. You have agreed that there are no further adjustments that could be made to assist your return to work.

We have heard what you have to say and now we have to consider your future employment with the organisation. Before making any decision, you are invited to attend a hearing which will take place at [time] on [date] at [location]. At the meeting your ongoing absence will be discussed in full.

The hearing will be conducted by [name]. If you are unable to attend or would prefer the meeting to be dealt with in a different format, please let us know as soon as possible.

While we are prepared to listen to and consider any further views you may have, we must warn you that the hearing may result in your dismissal.

You have the right to be accompanied at the hearing by a work colleague or trade union representative.

Yours sincerely

Grievances

Letter 13: Invite to grievance meeting

Dear [Employee]

Grievance meeting

Further to your letter dated [date] I would like to invite you to a meeting to discuss the concerns you have raised in relation to your employment.

To summarise, in the above-mentioned letter, you raised the following:

[Set out details of the grievance]

In order to discuss these concerns, I would like you to attend a meeting at [place] on [date] at [time]. The meeting will be held in accordance with our grievance procedure, which I attach for your attention.

The meeting will be conducted by me and the following people will also be in attendance [provide details]. The meeting will help me establish the full details of your concerns before I undertake a thorough investigation.

You are entitled to bring a fellow employee or a trade union representative to the meeting in accordance with our procedures. I would be grateful if you could confirm the details of your companion to me prior to the meeting.

Please confirm receipt of this letter and that you are able to attend the meeting at the time stated above. If you or your companion are unable to attend for any reason, please let me know as soon as possible.

If you have any questions in the meantime, please don't hesitate to contact me.

Yours sincerely

Letter 14: Grievance outcome

Dear [Employee]

Grievance findings

I write further to our meeting on [date].

At the meeting we discussed your concerns about:

[Provide full details of the grievance]

I have now undertaken a full investigation and given full consideration to your concerns, my findings are:

[Set out findings]

I hope the above will resolve the matter, but if you are not satisfied with my conclusions, you have the right to appeal. Any appeal must be submitted to [name] within five working days.

Yours sincerely

Flexible working

Letter 15: Flexible working meeting

Dear [Employee]

Flexible working request

Thank you for your letter [dated, requesting to change your work pattern.

I would like to invite you to a meeting at [place] on [date] at [time]. You are entitled to be accompanied at the meeting by a work colleague or a trade union representative.

I would be grateful if you could confirm if you will be able to attend the above-mentioned meeting and provide me with details of your companion as soon as possible.

If you have any questions in the meantime, please don't hesitate to contact me.

Yours sincerely

Letter 16: Flexible working outcome

Dear [Employee]

Flexible working request

I write further to our meeting on [date] where we discussed your request to change your work pattern.

either

[I am pleased to confirm that we are able to accommodate your requested working pattern of:

[Provide full details – specify any changes in hours, place and/or time of work. Also specify any changes to remuneration, pensions or benefits in kind that will be impacted as a result]

Your new working arrangements will begin from [date] and these changes will constitute a permanent change to your employment contract. The remainder of your terms and conditions will remain the same.]

or

After considering your request fully and carefully I regret to inform you that, on this occasion, we are unable to accommodate for the following business reasons:

*Select at least one
[There would be a burden of additional costs]
[There would be a detrimental effect on the ability to meet customer demand]
[There would be an inability to reorganise work amongst existing staff]
[There would be an inability to recruit additional staff]
[There would be a detrimental impact on quality]
[There would be a detrimental impact on performance]
[There would be insufficient work during the periods the employee proposes to work]
[There are planned structural changes]

[Provide details of why the above reasons apply]]

If you are unhappy with this decision you have the right to appeal. If you wish to appeal you should write to [name] setting out the grounds for your appeal, within five working days of receiving this letter.

Your sincerely

Redundancy

Letter 17: At risk of redundancy

Dear [Employee]

Warning of possible redundancy situation

Further to our meeting [today/date] I write to confirm the following situation facing the business.

[Explain fully the circumstances that have given rise to the need to consider possible redundancies]

We have considered all options; however, in light of the above we have to inform you that your position is at risk of being made redundant.

We are continuing to explore ways to avoid having to make redundancies. We will be consulting with [the union/representatives and] all employees who may be effected by this situation. If you have any suggestions as to how we can avoid having to make redundancies, please let me know as soon as possible.

[If selection is required, explain the proposed pool and provide details of the proposed selection criteria. We would be grateful if you could let us know if you are in agreement with the proposed pool and selection criteria by no later than [date].

Following further consultation, if we are unable to find ways to avoid having to make redundancies [selection will be undertaken and] we will arrange individual meetings with affected employees where we will continue to look at all possible options and explain fully how our proposals may impact them personally.

We envisage that the consultation will take [timescale], although this is only a rough estimate and may be subject to change. Should you have any questions please don't hesitate to contact [name] on [contact details].

We would like to thank you for your continued hard work during this difficult period.

Yours sincerely

Letter 18: Requests for voluntary redundancy

Dear [Employee]

Requests for voluntary redundancy

As you are aware from our previous meetings and the letter dated [date] we are considering making redundancies within the organisation.

We would like to avoid where possible having to make compulsory redundancies. We are therefore writing to all employees who undertake [role] to ask for applications for voluntary redundancy on the following terms [details of proposals].

We must make it clear that while you can apply for voluntary redundancy we have the right not to accept applications. It may be that there are more applications than the proposed number of redundancies or it may be in the interests of the organisation to retain certain employees.

If you would like to apply for voluntary redundancy on the above basis then please confirm this in writing to [name] as soon as possible, and in any event by [date]. We will fully consider all applications and will let you know if your application is successful by date.

It is important to point out that if you apply for voluntary redundancy:

If you not selected, the fact that you have volunteered will not affect any aspect of your future employment with the organisation.

You can change your mind and withdraw your application at any time prior to entering into a formal written agreement relating to voluntary redundancy.

If you have any questions, please do not hesitate to contact [name] on [contact details].

Yours sincerely

Letter 19: Individual consultation (invite 1)

Dear [Employee]

Provisional selection for redundancy

As you are aware from meetings on [date] our letter [dated], [details of reasons the organisation needs to make redundancies]. As a result, we made you aware that there was a risk the organisation may have to make redundancies.

We have taken steps to try and avoid having to make redundancies including, [include details of steps takes]. Unfortunately, despite our efforts, at the moment, we have been unable to avoid the need to make redundancies.

We regret to inform you that you have been provisionally selected for redundancy in accordance with the agreed selection criteria. Please find enclosed your score, together with a breakdown of how this was arrived at.

It is important to note that this is only a provisional selection and we will consult with you to continue to identify ways in which we can avoid having to make you redundant. We will also try and identify alternative positions within the organisation that may be appropriate for you, please find enclosed a list of current vacancies within the organisation. Please let [name] know if you are interested in any of the current vacancies or if you think there are any ways we can avoid having to make you redundant.

In order to discuss the above fully, you are invited to attend a consultation meeting at [location] on [date] at [time]. You may bring a work colleague or trade union representative to the meeting as your companion.

We need to point out that any employees that are made redundant will be entitled to:

- The notice period as set out in their contract of employment or an equivalent payment in lieu
- Pay in lieu of any accrued but unused holiday entitlement
- A statutory redundancy payment, which is calculated on the basis of the employee's age, length of service and weekly salary (subject to the current maximum of £[amount])

[Any employees who are made redundant will also be entitled to a reasonable amount of paid time off during their notice period to look for a new job or arrange training for future employment.]

We appreciate that this must be a difficult time for you and if you have any questions or issues that you would like to discuss please don't hesitate to contact [name] on [contact details].

Yours sincerely

Letter 20: Individual consultation (invite 2)

Dear [Employee]

Follow-up to individual consultation

We write to confirm the points that were discussed at the meeting on [date] in relation to your provisional selection for redundancy.

[Explain details of the redundancy situation, the pool, the selection and the reasons the employee was provisionally selected for redundancy].

[At the meeting on you were unable to provide any suggestions as to how the redundancy situation could be avoided.

or

[At the meeting on you suggested [details of suggestions]. We have considered these suggestions and [details of response]].

Unfortunately, as we confirmed with you at the meeting, there are currently no appropriate alternative positions within the organisation.

We explained that if you were to be made redundant it would be on the following terms:

[Provide breakdown of redundancy calculation]

We would be grateful if you could attend a further consultation meeting at [location] on [date] at [time].

While we will continue to discuss all options with you at this meeting and give full consideration to any ideas you have about avoiding the redundancy or alternative employment, we must make you aware that this meeting may lead to the termination of your employment by reason of redundancy.

If you have any questions in the meantime, please do not hesitate to contact [name] on [contact details].

Yours sincerely

Letter 21: Redundancy dismissal letter

Dear [Employee]

Notice of termination of employment

Further to the meeting on [date] we write to confirm that [organisation name] has decided to make you redundant.

As you know there was a meeting with all employees who could have been affected on [date], at which we explained why the organisation was considering making redundancies. [Provide details of the reasons the redundancy was required].

We then met with you individually on [date] and [date] to consult with you.

We have explored ways to avoid having to make you redundant and considered the possibility of alternative employment. Unfortunately, despite our efforts, we have been unable to identify any ways to avoid the redundancy or find any suitable alternative employment for you.

You are entitled to [weeks] notice under your employment contract with the organisation. As such, this letter constitutes notice of termination, by reason of redundancy, and your employment with the organisation will end on [date].

Following termination of your employment, you will receive:

- Full redundancy calculation, and
- Holiday entitlement, [and
- Ex-gratia payment]

[You are entitled to a reasonable amount of paid time off during your notice period to look for a new job or arrange training for future employment. If you would like to take any time off, in accordance with this right, please contact [name] to arrange this].

Please ensure any expenses claims are submitted by [date] and return any property of the organisation to [name] by [date].

We very much regret having to make redundancies and that this has affected you. We would like to thank you for all your hard work and wish you the best for the future.

You have the right to appeal against our decision to make you redundant. If you would like to appeal, please confirm this in writing by [date], specifying the grounds on which you are appealing.

Yours sincerely

Templates

Template 1: Written statement of terms

[Employee's name and address]

[Date]

Dear [Employee]

This letter contains a statement of the applicable terms of your employment as required by Section 1 of the Employment Rights Act 1996.

1. Your employer is [name] (the business). Your employment with the business began on [date]. * (If appropriate, you must confirm if any employment with a previous employer counts towards the employee's period of continuous employment with the business).
2. You are employed as a [job title] your duties involve [include job description].
3. Your normal place of work is [address] or such other place within [area] as we may reasonably determine.
4. [You will not be expected to work outside the UK for any continuous period of more than one month during your employment with the business or you will be required to work [details of work outside the UK, including full details of pay, duration and conditions relating to returning to the UK]].
5. Your pay will be [provide full details of the scale of pay and the method for calculating payments].
6. You will be paid [weekly or monthly].
7. Your hours of work are [full details of normal working hours].
8. The business's holiday year runs between [date] and [date]. If your employment starts or finishes part way through the holiday year, your holiday entitlement during that year will be calculated on a pro-rata basis.
9. You are entitled to [number] days' paid holiday each year or the pro rata equivalent if you work part time. This is inclusive of all public holidays.
10. If you are unable to attend work due to incapacity, you must notify [name] of the reason for your absence, by no later than [time] on the first day of absence.
11. Full details of any terms relating to incapacity for work, including details for the provision of sick pay can be found [set out where these details can be found and how the employee can obtain access (usually a staff handbook)].
12. [Provide full details of pensions or pension scheme].
13. The amount of notice of termination of your employment you are entitled to receive from the business is [provide details].
14. The amount of notice you are required to give to the business to terminate your employment is [provide details].
15. The business shall be entitled to dismiss you at any time without notice if you commit a serious breach of your obligations as an employee, or if you cease to be entitled to work in the UK.
16. [Your employment is permanent (subject to clauses 13, 14 and 15 above). Or your employment is for a fixed term and will end on [date]]. Or your employment is temporary and is expected to continue for [likely duration]].
17. [There is no collective agreement which directly affects your employment. Or your employment is subject to the following collective agreements [details]].
18. The business's disciplinary and grievance procedures can be found [set out where details can be found]. These procedures do not form part of your contract of employment.

Please indicate your acceptance of these terms by signing and returning to me the attached copy of this letter.

Yours sincerely

Name: _____
For and on behalf of [business]

I agree to the above terms:

[Employee] _____ Date: _____

Template 2: Flexible working application

[Date]

Dear [employer]

Request for flexible working pattern

I would like to make an application, for flexible working, under Section 80F of the Employment Rights Act 1996 in order to amend the terms of my employment. I confirm that I am eligible to make this application, as:

1. I have worked continuously as an employee of the organisation for at least 26 weeks.
2. I have not made a request to work flexibly under this right during the past twelve months.

[I have previously made applications for flexible working on the following dates:

[Provide dates if this applies]]

[Describe current working pattern and the pattern you would like to work in future]

I would like this working pattern to commence from [date].

I believe the change in my working pattern will have the following effect on the business [provide details].

I think the effect, as outlined above, on my employer and colleagues can be dealt with as follows [provide details].

Yours sincerely

[Employee]

Employment interview form

This template is designed for conducting structured interviews with potential employees.

Prior to conducting an interview, the recruiting manager should review the job description and create a set of questions that are relevant to the role in question. In order to keep the process fair and consistent the interview questions and the people conducting the interviews should remain the same for all applicants. You should also keep notes of any additional questions asked of individual candidates.

Guidance

- Ensure any CV and/or application has been reviewed fully prior to the interview taking place. Any additional questions relevant to the CV and/or application should be noted. In particular consideration should be given to any gaps on the CV/application and explanations provided for those gaps
- Ensure the candidate has provided confirmation and documentary evidence of their right to work in the UK
- The candidate should be informed of the process that will be followed and how long the interview likely to last
- Ensure the candidate has an understanding of the role they are applying for and explain all responsibilities and key requirements of the role
- Try to relax the candidate as much as possible prior to the formal interview taking place. Ask the candidate some straightforward social questions and give them an early opportunity to speak
- Explain to the candidate that they will be given the opportunity to any questions they may have at the end of the interview
- Consider any period of notice the candidate will need to provide to any current employer and if the candidate has any pre-arranged holidays

Scoring

5 – Exceptional, 4 – Very Good, 3 – Adequate, 2 – Minor Shortfalls, 1 – Poor, 0 - Inadequate

Date of interview:	
Candidate's name:	
Main interviewer:	
Other interviewers:	

Question 1: [Insert appropriate question relevant to the position]?

Question 1 score:	
Additional notes/comments (why this score was appropriate)	

Employment application Form

Please complete this form using block capitals.

Role details

Position:

Location:

Personal details

Title:

Full name:

Address:

Postcode:

Email address:

Home telephone:

Mobile number:

Do you have the right to work in the UK? Yes ☐ No ☐

You will be required to provide original documents to prove your eligibility at any interview and/or assessment.

Do you have a current driving licence? Yes ☐ No ☐

Have you been convicted of a criminal offence which is not spent under the Rehabilitation of Offenders Act 1974? Yes ☐ No ☐
For and on behalf of [BUSINESS]

If yes, please provide details:

Employment history

Please provided your employment history for the last five years, starting with the most recent period of employment

Most recent employment:

Start date:	
End date:	
Employer name:	
Address:	
Postcode:	
Position held:	
Reason for leaving:	

Previous employment:

Start date:	
End date:	
Employer name:	
Address:	
Postcode:	
Position held:	
Reason for leaving:	

Previous employment:

Start date:	
End date:	
Employer name:	
Address:	
Postcode:	
Position held:	
Reason for leaving:	

Previous employment:

Start date:	
End date:	
Employer name:	
Address:	
Postcode:	
Position held:	
Reason for leaving:	

Previous employment:

Start date:	
End date:	
Employer name:	
Address:	
Postcode:	
Position held:	
Reason for leaving:	

Previous employment:

Start date:	
End date:	
Employer name:	
Address:	
Postcode:	
Position held:	
Reason for leaving:	

Previous employment:

Start date:	
End date:	
Employer name:	
Address:	
Postcode:	
Position held:	
Reason for leaving:	

Previous employment:

Start date:	
End date:	
Employer name:	
Address:	
Postcode:	
Position held:	
Reason for leaving:	

Education

Please provide full details of the school and/or college and/or university you have attended and include any qualifications attained.

Please start with your most recent education and qualifications:

Establishment name	Dates (from/to)	Subject and level	Qualification

Membership of professional organisations

Please provide details of any professional bodies that you are a member of:

Additional information

Please use the space below for any additional information you wish to provide in support of your application:

References

Reference 1:

Full name:	
Job title:	
Company:	
Address:	
Postcode:	
Telephone:	
Email:	
Relationship to you:	

Do you consent to us contacting reference 1? Yes ☐ No ☐

Reference 2:

Full name:	
Job title:	
Company:	
Address:	
Postcode:	
Telephone:	
Email:	
Relationship to you:	

Do you consent to us contacting reference 2? Yes ☐ No ☐

Special requirements

Do you have any special requirements if you were invited to an interview and/or assessment?

Yes ☐ No ☐ If yes, please provide details:

Applicant declaration

The information provided on this Employment Application Form will be held and used by us in accordance with the provisions of the Data Protection Act 1998 and any relevant subsequent legislation.

Name: Date:

Signature:

I confirm the information provided on this form is correct and that any false information may disqualify me from employment and/or render me liable for summary dismissal.

Tick to agree: ☐