Willis Towers Watson

Employment Terms and Conditions Report

Sample country

2020

Employment Terms and Conditions

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Start of Employment

Contract of Employment

Overview

Although the country is a unitary state, separate legal systems operate in England and Wales, in Northern Ireland (Ulster) and in Scotland. The bulk of the law described here applies in full to the whole of Great Britain - that is, England, Wales and Scotland - but only partially to Northern Ireland. In any other instances, the law is that of England and Wales. The Isle of Man and the Channel Islands are separate jurisdictions, not covered here. The devolution of some powers from the parliament in Westminster to a Scottish parliament and a Welsh assembly has not affected employment law, which remains Westminster's prerogative. However, the current government is reviewing the devolution of such powers.

Legislation

Common law has evolved over centuries from judicial precedent (i.e., decisions of the Courts) and is a vital part of British legal systems. The main influence of common law in the employment context is the law of contract. This governs the nature and extent of the relationship between the contracting parties, for example limitations set on the ability of an employer to restrain the worker's activities during and after the employment relationship. In addition, the law of tort, and in particular the law of negligence, applies to the employment relationship (e.g., liability of an employer who fails to provide for the physical safety of their workers). Legislation takes the form of Acts of Parliament (statutes), supplemented by regulations (statutory instruments).

The country has no written constitution. However, the Human Rights Act was intended to fill part of the gap by giving direct legal force in the country to the European Convention on Human Rights, which guarantees individual liberties against encroachment by the public authorities. The country's Courts can now hear cases arising from alleged breaches of the Convention, and award damages. However, Courts are not able to strike down primary laws judged incompatible with the Convention. Instead, incompatible laws are subject to accelerated amendment by Parliament. Only public-sector employees can enforce the Convention directly in the country, although the Act can help employees in the private sector as all legislation must be interpreted in accordance with the Act.

Other Sources of Influence

Influences on the employment environment include collective bargaining agreements, work agreements, codes of practice, work regulations, case law and custom and practice, and internal company rules.

Codes of Practice, which provide guidance on how the regulator considers employers should interpret existing statutory rules, are not legally binding. However, they have an influence on the outcome of cases in Employment Tribunals and, sometimes, in the Courts.

Work rules are issued by almost all employers, either at the time of engagement or subsequently. In some industries, employers are legally bound to display the rules at the place of work. The handbooks or notices of the rules set out terms and conditions covering most facets of employment. On the ordinary principles of contract law, such rules may become part of a contract of employment.

Work Rules

There is no general statutory requirement for employers to develop internal work rules or handbooks (certain exceptions may apply in some industries where employers are legally bound to display the rules at the place of work) but the use of both is common as a method of establishing uniform rules of employment. The provisions of staff handbooks and internal work rules concerning the employment relationship are often expressly incorporated into individual contracts and employers may also refer, in the written statement of terms, to other documents such as collective agreements or disciplinary and grievance procedures so long as they are easily accessible to employees (although certain of the particulars must be included in one document).

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Active Employment

Pay

Overview

While legislation establishes minimum wage entitlements for most employees, overall it imposes relatively few mandates on employers regarding compensation for normal work. In practice, terms governing compensation are typically established by employment contracts or - where they exist - collective agreements. Wages are defined by the Employment Rights Act as 'any sums payable to the worker in connection with their employment' which includes: base pay, bonus, commission, holiday pay, statutory sick pay, and statutory maternity/paternity/adoption pay.

In recent years, the manner in which employers manage pay has come under increased scrutiny, resulting in the introduction and revision of a variety of reporting and transparency requirements. The Corporate Governance Code (CGC) sets out standards of good practice for the country listed companies in relation to issues such as leadership, effectiveness, remuneration, accountability and shareholders' 'say on pay'. Since 2017, companies with 250 employees or more must disclose specific gender-based compensation statistics relating to their workforce on their websites and report the information to the government. The fixed annual reporting date of April 5 applies to all private-sector employers. Results reported to the authorities are compiled in a public database. Companies whose results expose a pay gap are encouraged to provide an action plan to reduce gender pay differences.

Furthermore, the country's listed companies with more than 250 local-based workers are now required to publish the ratio of the total annual remuneration (inclusive of cash compensation, benefits and equity) paid to their CEO versus their aggregate workforce. Reporting will be required for financial years beginning on or after January 1, 2019 (i.e., initial publication in 2020 based on 2019 data) with results calculated no more than three months prior to the end of the financial year. In addition to the specific ratios that mandated companies are required to include, companies must also provide narrative explaining the methodology used (according to three approved methods as set out in the draft regulations) and the relationship between the ratios and the companies' reward policies, among other things. Additional information pertaining to any changes in the ratios over time are required in subsequent reporting years.

Among multinational companies, cash compensation packages are comprised mainly of 12 monthly base salaries and an annual performance bonus opportunity.

Minimum Wage

National minimum wage rates are established on an hourly basis and updated as of April 1 of every year. Rates vary according to the worker's age and nature of employment. The National Living Wage for workers age 25 and older is $ 8.21 from April 1, 2019. Reduced rates apply to younger workers ranging from $ 4.35 for minors ages 16 and 17 to $ 7.70 for workers ages 21 to 24). Under certain conditions, a reduced rate of $ 3.90 is applicable to apprentices.

Base Pay Increases

There is no mandatory indexation of wages. Willis Towers Watson's survey data show that the median salary increase budget for companies was 2.9% for 2018, while inflation over the same period was 2.3% (Economist Intelligence Unit data). The median projected salary increase budget for 2019 is 3.0%.

Guaranteed Payments

There are no statutory requirements for the payment of fixed bonuses or allowances and the voluntary provision of allowances (excluding car allowances) is rare.

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Working Hours

Overview

Statutory Workweek

There is no general statute specifying basic weekly work-time. Basic hours per week fixed by collective agreement mostly range from 35 to 40. The most commonly reported workweek among companies surveyed is 37.5 hours in both offices and plants.

Workers are generally entitled to daily rest intervals of at least 11 consecutive hours in every 24 hours and weekly rest intervals of at least 24 hours every seven days and uninterrupted rest-breaks of at least 20 minutes for work periods lasting more than six hours.

Statutory Workday

There is no general statute specifying a basic daily work-time.

Maximum Working Week (Including Overtime)

Under the Working Time Regulations, maximum weekly working hours including overtime are 48 in any reference period, averaged over a rolling reference period of 17 weeks in most cases. The period can be fixed (instead of rolling) and reduced or extended by a collective or workforce agreement. However, it cannot be longer than 52 weeks. The reference period is also up to 52 weeks where people are required to work in concentrated bursts, for example, to cope with a sudden surge in demand or an emergency outside the employer's control in order to maintain continuity of production or to perform security or surveillance duties.

Opt-Out

Any adult worker may voluntarily opt out of the 48-hours limit, provided there is no coercion and the arrangement with the employer is put in writing. Exemptions to voluntarily opt-out include transportation (airlines, ships and road over a certain tonnage limit) and security guards. Staff who travel in or operate vehicles covered by EU rules are also exempt but must oblige to a different set of rules on driving hours (i.e., a maximum of nine hours per day, 56 hours per week or 90 hours in any two consecutive weeks).

The opt-out can be for a fixed period or indefinite, and may be ended by the individual with advance notice in writing. The notice is usually agreed to be (and can be no more than) three months. Even with the opt-out, the provisions on daily and weekly rest intervals set an effective maximum workday of 13 hours and a maximum working week of 78 hours.

On-Call or Stand-by

On-call or stand-by time constitutes working time if the worker is required to be in the workplace rather than at home, even if the worker is allowed to sleep. There are no statutory provisions concerning on-call or stand-by payments.

Overtime

Legal Provisions

Overtime is generally defined as time worked in excess of the employee's normal daily or weekly working hours as set by employment contract, collective agreement or work rules. Paid overtime is more usual for hourly workers than salaried workers, who are often expected to work overtime without further remuneration. A requirement to carry out unpaid overtime where necessary is often in the contract of employment.

Statutory Maximum

The maximum working hours per week including overtime are 48 in any reference period, averaged over a rolling reference period of 17 weeks in most cases. A worker can agree with their employer to work longer but it must be in writing.

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Termination of Employment

Types of Termination

Overview

The contract of employment may be terminated by either party at any time, subject to the terms of the contract. However, employees also have certain statutory rights in respect of dismissal, including, those with more than one year's service, the right not to be unfairly dismissed.

The potentially fair reasons for dismissal are:

- Lack of capability or qualifications for performing the work;
- Persistent or gross misconduct;
- Redundancy (e.g., closure of a business or reduction of the workforce);
- Continued employment is itself illegal; and
- Other substantial reasons.

In addition, dismissal must be fair in all the circumstances (i.e., based on fair procedures). Workers who are dismissed for whatever reason are entitled to demand the reasons in writing from the employer if they have been in the job for one year or more. Failure by the employer to provide written reasons, within 14 days, may ultimately result in an award to the employee by an Employment Tribunal of an amount equal to two weeks' pay. Further, any person dismissed while pregnant or during maternity leave must be given the reasons in writing, irrespective of the length of service or contracted hours, provided the individual has duly informed their employer of her condition.

Grounds for Termination

Termination with Notice

Statute implies minimum periods of notice, depending on the employee's length of service. A contract of employment may be terminated by the employer by the provision of notice as specified in the contract or by minimum statutory requirements, whichever is longer.

Employers often reserve the right to make a payment in lieu of giving proper notice. If the company seeks to pay in lieu of notice without having such a right under the contract, this gives rise to a breach of contract claim.

Termination without Notice

Where there is a serious breach of the basic obligations of the contract, the innocent party may be justified in terminating it without giving advance notice. The reason must be shown to be acceptable in principle and fair in fact. Serious breaches on the part of an employee would include:

- Fraud or theft at the workplace;
- Deliberate destruction of the employer's property;
- Violent assault on another member of staff;
- Serious breach of an employer's policy (e.g., on internet misuse); and
- Acts of harassment or discrimination towards colleagues.

Failure to give proper or any notice in circumstances where there has not been a serious breach by the employee gives rise to a claim for wrongful dismissal, which is considered below.

Redundancy

Redundancies are defined as dismissals wholly or mainly attributable to: the employer's decision to stop carrying on business in the place where the person was employed, or the fact that the work for which the employee was hired has ceased or diminished at that place.

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Resignation

Employees who resign should observe their contractual notice requirements or, in the absence of either express or implied contractual notice, statutory notice of one week. Failure to give notice is a breach of contract, but may be justified in response to a fundamental breach of contract by the employer. In these circumstances, the individual may be able to claim unfair constructive dismissal against their previous employer. In practice, among companies surveyed, the median notice requirement for staff below the level of manager or senior professional is four weeks. For employees at or above that level, the median notice requirement ranges from 12 to 13 weeks.

Protected Categories

Employees in certain categories are protected against dismissal by an automatic presumption of unfair dismissal in the event of termination. Dismissal for reasons connected to any of the following could be deemed to be automatically unfair:

- Pregnancy;
- Union membership or non-membership;
- Actual or pending transfer of business ownership, except on economic, technical or organizational grounds;
- Exercise of legitimate functions as a health and safety or employee representative or pension fund trustee. The health and safety rules extend dismissal protection to any employee who leaves work in the belief that there is serious and imminent danger;
- Attempting to assert a statutory right (such as paternity leave or exercising the right to be accompanied to a disciplinary or grievance hearing);
- In the case of protected shop workers, declining to work Sundays;
- Exercising the right to make a disclosure protected under the Public Interest Disclosure Act (whistleblowing);
- Failure to follow statutory disciplinary procedures;
- Refusal to forego or breach the Working Time Regulations, or failing to sign a workforce agreement;
- Seeking to obtain or prevent union recognition or bargaining arrangements;
- Activities as a member of a special negotiating body or European Works Council.

Furthermore, the one-year service qualification is not applicable for unfair dismissal claims arising from the automatically unfair reasons listed above (with the exception of failure to follow statutory disciplinary procedures, which still requires one year's service) or alleged discrimination of the basis of sex, disability, sexual orientation, religion and belief, race or age.

The Enterprise and Regulatory Reform Bill removes the unfair dismissal qualifying period where the reason for dismissal relates to the employee's political opinions or affiliation. Also, individuals may not bring a whistleblowing claim if disclosure is 'not in the public interest'. The good faith requirement for a protected disclosure has also been removed; however, Tribunals have new powers to reduce compensation by up to 25% if the disclosure was not made in good faith. The same legislation protects employees suffering any other detriment short of dismissal as a result of making a protected disclosure.

The government began a consultation on January 25, 2019 on extending redundancy protection for pregnant women and new parents on maternity leave for up to six months after they return to work. In addition, the consultation seeks views on extending the same protection to parents returning from adoption leave or shared parental leave. The outcome of the consultation, which concluded on April 5, 2019, is expected to be made available later in 2019.

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Unfair Dismissals

Under the Employment Rights Act, all employees with at least two years' service are protected against unfair dismissal. When dismissing an individual, the employer must show that they had a fair reason for dismissal and followed a fair procedure. If the person deems their dismissal to be unfair, they may apply to be heard by an Employment Tribunal. Claims for unfair dismissal must normally be lodged within three months of the effective date of termination. Any settlement agreed between the parties before the Tribunal hearing will not exclude the right to go to the Tribunal unless approved by an ACAS officer or unless the employee enters into a Compromise Agreement which complies with the relevant provisions under the Employment Rights Act.

There are no upper age limits on unfair dismissal. The burden of proof generally requires employees to show they were dismissed unfairly which the employer must rebut. The Tribunal will then decide whether the employer's conduct was reasonable, for example, whether it has followed a fair procedure, e.g., by issuing warnings before dismissing the employee for an act not amounting to gross misconduct.

Awards for unfair dismissal are calculated on age and length of service, plus a compensatory amount to offset losses incurred as a result of the dismissal. Compensation for unfair dismissals was amended to introduce an additional, alternative limit on awards, replacing the fixed amount limit ($ 86,444 in 2019) with the lesser of the fixed amount or 52 weeks' pay.

There is no cap where the dismissal is on the grounds of sex, race, disability, sexual orientation, religion or belief, age discrimination or for making a protected disclosure (whistleblowing). In such claims, Tribunals may also award an additional sum for injury to feelings.

Unfair dismissal awards may be reduced by factors such as the employee's conduct or other relevant factors such as failing to take reasonable steps to mitigate loss. Reinstatement or re-engagement may be ordered and the compensation increased if reinstatement is not implemented. However, in practice reinstatement and/or re-engagement orders are rare.

Information and Consultation

Outside the requirement to generally follow a fair procedure, there are no general notification consultation obligations imposed on employers, except with respect to collective redundancy dismissals.

Notice

Overview

Where an employment contract is terminated by either of the parties without a serious breach of contract by the other, a notice period must be observed. Unless longer notice periods have been agreed in the individual contract, the statutory minimum notice period must be given.

Notice of termination may be either written or oral (subject to any contractual terms to the contrary) and may be given at any time. The basic requirement is that the notice must clearly indicate an intention to end the contract at a given date. In practice, notice is nearly always given in writing. Even if it is not, employees with more than one year's continuous service are entitled to demand written reasons for their dismissal.

Notice Periods

The Employment Rights Act lays down minimum periods of notice, based on length of service with the same employer:

Length of Service	Notice Period
Four weeks to two years	One week
Two years up to 12 years	One week per completed year of service
From 12 years and over	12 weeks

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The statutory notice periods are minimum notice periods. If the contract expressly or by implication provides that either or both parties must give longer notice, the Act does not apply. However, if the contract specifies a period shorter than the statutory minimum, the provision is void, and replaced by the statutory notice period. The statutory minimum does not apply to those who have been continuously employed with the same employer for less than four weeks; or to those who perform their duties outside the country In practice, companies surveyed reported providing only four weeks' notice for staff below the level of manager or senior professional. Among surveyed companies, the median notice requirement provided for employees in higher categories is 12 to 16 weeks, depending on position.

An employee who is not required to work during their notice period must receive payment in lieu (unless the individual was dismissed by reason of gross misconduct i.e., a serious breach of the contract). If the contract does not provide for a payment in lieu of notice, the employer is technically in breach of contract regardless of whether such a payment is made. Although the worker may not have suffered any financial loss as they will have received a payment in lieu, the company will not be able to rely on any restrictive covenants which are intended to apply following the termination of employment.

The tax treatment of payments in lieu of notice, and in particular whether the employer should make the payment net or gross, is complex. As a matter of general principle, where the company can make a payment in lieu of notice as a contractual right, tax and National Insurance contributions should be made in the usual way. However, where there is no contractual right to make a payment in lieu of notice (and the payment is, in effect, being made in breach of contract), a payment in lieu becomes effectively damages for a wrongful dismissal claim; as such it currently escapes liability for tax up to $ 30,000 and can be paid gross.

Termination Indemnity/Severance Payment

Overview

There is no legal right to severance payments other than as set out in the contract or in case of redundancy.

Employers often offer enhanced severance payments to departing employees on a without prejudice basis if the person signs an agreement waiving their rights to make a claim against the employer. This document, a Compromise Agreement, is only binding if in a particular form and signed by an independent adviser, who is usually a solicitor but can also be a member of a labor union or a volunteer at an advice center. Roughly two-fifths of surveyed companies provide severance payments for employer-initiated dismissals. The median lump sum provided is four weeks of salary per year of service for non-management level staff (two weeks for executive and management staff).

Redundancy Payment

Redundant employees with two years' service are entitled to an employer-paid lump sum statutory redundancy payment based on their service with the same employer (in addition to their notice pay).

The amount of redundancy payment is based on age and service, as follows:

Age	Redundancy Payment
Under 22	Half a week's pay per year of service
22 - 40	One week's pay per year of service
41 and over	One and a half weeks' pay per year of service

Maximum Length of Service and Week's Pay

In the redundancy payment calculation, the maximum length of service taken into account is 20 years and, effective April 6, 2019, pay is capped at $ 525 per week, giving a maximum lump sum payment under the statutory formula of $15,750 (30 weeks).

A claim for redundancy pay must be made in writing to the employer within six months of the redundancy (if it has not already been paid). If the employer disputes the employee's claim, the matter is referred to an Employment Tribunal for a decision.

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Statutory redundancy and other termination payments up to $ 30,000 (in total) are not taxable to the employee as income (and are not subject to employer NICs). Amounts in excess are taxable. Employees are exempt from paying NICs on statutory redundancy payments (even if over $ 30,000). From April 6, 2018, all payments in lieu of notice and certain other contractual termination payments are fully taxable as earnings and also subject to NICs. From April 6, 2020 (deferred originally from April 6, 2018 and again from April 6, 2019), payments exceeding $ 30,000 will be subject to employer NICs. Currently, no employer NICs are due on any such payments exceeding $ 30,000.

Enhanced Redundancy Payments

Enhanced redundancy payments, which exceed the statutory minimum, vary widely and are paid at the employer's discretion. Some simply cover staff not eligible for statutory payments, while others pay more generous amounts. Most schemes link benefits with age or length of service, or both. Under the Equality Act, such schemes are exempt from an age discrimination challenge if certain conditions are met. To qualify for the exemption, the calculation of the enhanced payment must follow the basic structure of the statutory scheme. Employers may increase the multipliers (proportionately) applied to the weekly payment (for example, 1, 2 and 3 rather than 1/2, 1, 1 1/2), or ignore the statutory limit of $ 525 in respect of weekly pay (for example, by calculating the payment based on actual weekly pay or monthly pay) or by applying a multiple to the total statutory redundancy payment.

Among companies surveyed, most (91%) indicated that they provide severance in excess of legal requirements at least on occasion or almost always where termination is involuntary. In those cases, the most common practice was to pay additional weeks of service; two weeks per year of service at the median.

Termination at Retirement

Overview

Under employer-provided retirement plans, normal retirement age (NRA) is generally 65 for both men and women. Historically, plans with NRAs of 60 were not uncommon but the advent of anti-age discrimination legislation and the gradual increase in SPA for women has resulted in most plans increasing NRA to 65. Employers can stipulate minimum and maximum ages for entry to occupational pension plans, as well as a minimum age for entitlement to benefits from such a plan.

Employers cannot use a Default Retirement Age to compulsorily retire employees. Retirement is not a fair reason for dismissal, and any termination on the grounds of age will have to be objectively justified or else it may be considered unfair and discriminatory.

Termination Indemnity

There is no statutorily required retirement termination indemnity.

Organizational Change

Alternatives to Layoffs

There are few statutory measures which employers can use as an alternative to redundancy. In practice, some of the alternatives being used by employers on a voluntary basis include:

- Flex-time;
- Short-time working;
- Early retirement;
- Reducing pay and benefits;
- Sabbaticals.