

## Terms and Conditions

An increasing number of employment tribunal claims are now claiming compensation for failure to provide written terms and conditions of employment.

Providing employees with written terms and conditions is important for employers to ensure that the rights and obligations of employees are made clear, and is essential if the employer wishes to reserve the right to make deductions from the employee's pay in certain circumstances.

However, failure to provide terms and conditions, and even a failure to provide details of changes in writing can have financial consequences if an employer is taken to a Tribunal.

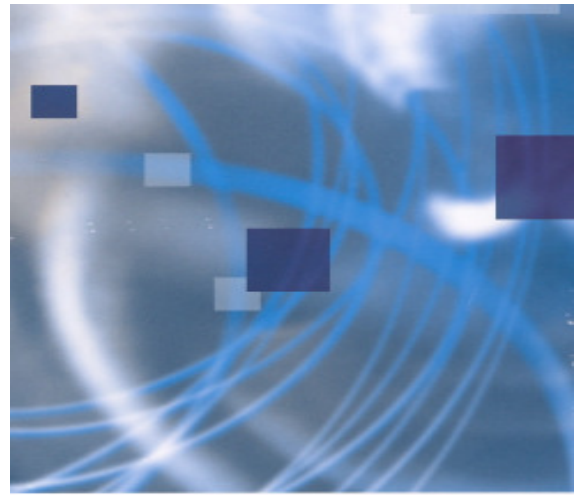
Section 1 of the Employment Rights Act (ERA) provides that an employer has an obligation to provide the employee with written terms and conditions within 2 months of the start of their employment covering a number of issues including:-

- The names of the employer and employee
- The date when the employment began
- The date on which the employee's period of continuous employment began
- The scale or rate of remuneration and whether paid weekly, monthly etc
- Hours or work
- Holidays
- Job title
- Place of work
- Sickness or incapacity
- Pensions
- Notice required for employee or employer to terminate the contract
- Period of employment (if not permanent)
- Collective agreements
- Terms linked to any requirement to work outside the UK for more than 1 month

Section 4 provides that if any of these terms and conditions change, written notice needs to be given to an employee within 1 month of the change.

If the employer fails to do this an employee can apply to an Employment Tribunal for an order declaring what particulars ought to have been included in the terms and conditions to comply with these requirements. Failure to provide these terms and conditions does not, on its own, give the employee the right to compensation.

However, if an employee brings a claim against the employer for something else then a Tribunal has the power to award either 2 or 4 weeks pay compensation if an employer has failed to provide written terms and conditions at the date the claim was started. So an employee might bring a claim for half a day's holiday pay and tag onto it a claim for £1,520 for failure to provide written terms and conditions!



Employers are therefore advised to regularly check that for each employee they have provided up to date and complete terms and conditions covering all the points set out in section 1 of the ERA.

### Changes from 6<sup>th</sup> April 2010

#### Whistleblowers

The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010 will provide that Employment Tribunals can refer protected disclosure allegations made in a claim to the relevant regulatory authorities when the claim is received, i.e. before any determination of the claim by an Employment Tribunal. A full article on the law relating to Whistleblowers follows.

#### Time off for Training

There will be a new Part 6A, subsection 47F and subsection 104E to the Employment Rights Act 1996, providing that an employee who has more than 26 weeks' service, and who works in a business with 250 or more employees, will be eligible to request unpaid time away from their normal duties to undertake study or training (or both) that they believe will improve their effectiveness at work and the performance of their employer's business. This right will be extended to cover all employers irrespective of the number of employees in 2011.

#### Sickness Absences

GP's "sick notes" will be replaced by a Statement of fitness for work ("Fit note"). This enables a GP to state that the employee may be fit for work if certain changes such as a phased return to work, altered hours, amended duties or workplace adaptations.

# Whistleblowing

There is a wide definition of “whistleblowing” and the fact that an employee who alleges that they have been dismissed for having made a “protected disclosure” can bring a claim without having accrued a year’s service means employers must be aware of the circumstances in which such a claim can be made.

The law makes it unlawful to victimise or dismiss someone by reason of the fact that they have made a protected disclosure.

## Legal definition

A protected disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed

## What is the extent and limit to the definition?

To be protected the disclosure must be made in good faith to either the employer or the person or organisation who is accused of being in the wrong.

Paragraph (b) above includes a legal obligation that an employer has to its employees, so a complaint or grievance to an employer alleging that they are not complying with the employee’s contract could amount to a “protected disclosure” and an employee who believes they are being penalised for this could bring a claim to an Employment Tribunal

## Can a disclosure to someone outside the workplace count?

If an employee believes the information comes within the responsibility of any of a number of specified bodies, a disclosure to one of those bodies will count as a protected disclosure.

They are listed in the Schedule to the Public Interest Disclosure (Prescribed Persons) Amendment Order. <http://www.opsi.gov.uk/si/si2003/20031993.htm>

Sometimes a disclosure will be protected if made to someone other than the employer or one of the prescribed bodies.

In order to qualify for protection it must have been reasonable to have made the disclosure and it must be the worker’s reasonable belief that if he made it to the employer he would be subjected to a detriment, that evidence will be concealed, or that he has already disclosed it to the employer.

## Protection of workers who make a protected disclosure

A worker has the right not to be subjected to a detriment in their work if they make a protected disclosure.

An employee who is dismissed for making a protected disclosure is regarded as unfairly dismissed.

There is no minimum qualifying period of employment required for an employee to bring a claim in the Employment Tribunal.

It is important to consider, when dismissing an employee with under 1 years continuous service whether that employee could allege that the dismissal was due to the making of a “protected disclosure.”

## Useful Information at a glance

### National Minimum Wage

	From October 2010
Age 22+	£5.80
Age 18 - 21	£4.83
Age 16 - 17	£3.57

### Statutory Sick Pay

£79.15 per week up to 3 April 2010. From 4 April 2010 £79.15 (for up to 28 weeks in any 3 year period)

### Parental Payments

Type of Payment	Up to 03.04.10	From 04.04.10	Maximum Period
Statutory Maternity Pay (higher rate)	90% of weekly earnings	90% of weekly earnings	6 weeks
Statutory Maternity Pay (basic rate)	£123.06 per week (or 90% of earnings if lower)	£124.88 per week (or 90% of earnings if lower)	33 weeks
Maternity Allowance	£123.06 per week (or 90% of earnings if lower)	£124.88 per week (or 90% of earnings if lower)	39 weeks
Statutory paternity pay	£123.06 per week (or 90% of earnings if lower)	£124.88 per week (or 90% of earnings if lower)	2 weeks
Statutory adoption pay	£123.06 per week (or 90% of earnings if lower)	£124.88 per week (or 90% of earnings if lower)	39 weeks

### Maximum weekly pay for redundancy calculation

£380 (Will remain the same until February 2011)

This newsletter does not provide a full statement of the law and readers are advised to take legal advice before taking any action based on the information contained herein. For further information please contact: Stephen Woolley (Head of Employment) or Rachel Mills, Robinsons Solicitors, St James Court, Friar Gate, Derby, DE1 1BT. Tel: (01332) 254 185, Email: [rachel.mills@robinsons-solicitors.co.uk](mailto:rachel.mills@robinsons-solicitors.co.uk)  
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