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INDIVIDUAL RIGHTS AND RESPONSIBILITIES OF EMPLOYEES

A guide for employers and employees

October 2006

Individual rights and responsibilities of employees: a guide for employers and employees

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Preface

This guide outlines *employees'* and *workers'* individual rights and responsibilities and the corresponding obligations for employers. It is written in general terms and is not a complete or authoritative statement of the law. You should be alert to the possibility that developments in case law may affect these rights.

Except where the booklet says that a right applies to workers, it applies only to employees.

The precise definition of who is an employee and who is a worker differs slightly from one area of legislation to another but usually *workers* include those who have a contract of employment but also a wider group who have any other contract where an individual undertakes to do or perform personally any work or services but are not in business on their own account. They are entitled to core rights. These include entitlement to at least the National Minimum Wage and Working Time rights, including paid annual leave.

Those who are employed on a contract of employment – *employees* – are additionally entitled to all minimum statutory rights, including unfair dismissal, redundancy rights etc – some of which are subject to a qualifying period of employment.

Genuinely self-employed people are not usually defined as workers or employees. If there is a dispute about an individual's status, an employment tribunal will make its decision based on all the circumstances of the case.

Most of the provisions covered by this booklet were consolidated into the Employment Rights Act 1996. Since then there have been some additions and amendments to the Act, principally by the Employment Relations Acts 1999 and 2004, the Employment Act 2002 and the Work and Families Act 2006.

Some rights outlined in this guide are contained in other legislation, including subsequent amendments, in particular in the following, although this is not intended as a definitive list:

- Disability Discrimination Act 1995;
- Employment Act 2002 (Dispute Resolution) Regulations 2004;
- Employment Equality (Age) Regulations 2006;
- Employment Equality (Religion or Belief) Regulations 2003;
- Employment Equality (Sexual Orientation) Regulations 2003;
- Employment Tribunals Act 1996;
- Equal Pay Act 1970;
- Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002;
- Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002;
- National Minimum Wage Act 1998;
- National Minimum Wage Regulations 1999;

- Maternity and Parental Leave etc. Regulations 1999;
- Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
- Paternity and Adoption Leave Regulations 2002;
- Public Interest Disclosure Act 1998;
- Race Relations Act 1976;
- Rehabilitation of Offenders Act 1974;
- Right to Time Off for Study or Training Regulations 2001;
- Safety Representatives and Safety Committees Regulations 1977;
- Sex Discrimination Act 1975;
- Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002;
- Trade Union and Labour Relations (Consolidation) Act 1992;
- Transfer of Undertakings (Protection of Employment) Regulations 2006;
- Working Time Regulations 1998.

Further information and advice on the legislation are available from the Advisory, Conciliation and Arbitration Service (Acas), which has a general duty to promote the improvement of employment relations and is independent of Government. Enquiries about redundancy payments should be made to a Redundancy Payments Office.

More detailed information on many of the rights and responsibilities can be found in other employment legislation guidance. For **employees** seeking advice there is the employee section of the Directgov website (www.direct.gov.uk/employees) which provides a single, comprehensive source of information for employees about their rights and responsibilities. For **employers** there is the

Business Link website (www.businesslink.gov.uk), which provides practical advice for business. DTI guidance, mainly for intermediaries and practitioners, is available on the DTI website www.dti.gov.uk/employment/employment-legislation/employment-guidance/index.html

Note: the rights and obligations of employers and employees are also affected by statutory provisions which are outside the scope of this document. You are advised to approach the relevant organisations for details of, for instance, health and safety legislation (the Health and Safety Executive), taxation, National Insurance (HM Revenue and Customs) and Statutory Sick Pay (Department for Work and Pensions).

Qualifying conditions, contracts and written statements

The contract

The legal relationship between employer and employee is one of contract, based on common law principles. Statutes have established a number of further rights for employees.

A contract of employment exists when an employer and employee agree the terms and conditions of employment. This is often shown by the employee's starting work on the terms offered by the employer. Both are bound by the agreed terms. A contract of employment need not be in writing, although contracts of apprenticeship must be. Employees are entitled to a written statement of the main particulars of their employment. This statement is not in itself a contract but provides information on the contract's main terms.

Many statutory employment rights are minimum terms. The employer and employee are free to agree better terms between themselves in a contract of employment or collective agreement.

When the terms of a contract of employment are not adhered to, either the employee or the employer may have grounds to make a complaint of breach of contract. Brief details of this are set out in the *Complaints and remedies* section of this booklet. There is more information in the document *Contracts of employment: changes, breach of contract and deductions from wages*
www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16161.html

Written statement of employment particulars

Generally employers must give employees a written statement of the main particulars of employment within two months of the beginning of the employment. It should include, amongst other things, details of pay, hours, holidays, notice period and an additional note on disciplinary and grievance procedures.

Employees who are not given a written statement of employment particulars by their employer or notification of a change in those particulars, or who contest the accuracy of the written statement, may refer the matter to an employment tribunal. Employers also may refer a dispute about the accuracy of a written statement to an employment tribunal. If the employment has come to an end, the reference must be made within three months of the end of the employment. The tribunal will decide what particulars the employee should have been given.
For further details see the document *Written statement of employment particulars*
www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16367.html

Continuity and calculation of payments

Some of the individual employment rights described in this booklet depend on an employee having worked a qualifying period of continuous employment.

Normally only employment with the present employer counts towards continuous employment. But there are certain circumstances in which a change of employer does not break continuity.

Whether those on Government-assisted courses of training in the workplace are employees or workers will depend on the nature of the relationship they have with the employer. If it is an employment relationship, then their period of training may count towards the period of continuous employment necessary for certain employment rights.

The rules for reckoning continuous employment, and also for calculating a week's pay and tribunal awards arising from employment rights, are summarised in the document *Continuous employment and a week's pay: rules for calculation* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page14391.html

Entitlement and time limits

Normally various qualifying conditions must be fulfilled before a right may be claimed. Some rights apply to all employees as soon as they start work; others depend on factors such as length of service and continuity of employment. For certain rights, various groups of people are excluded.

If an employment right is denied or infringed, an employee can normally claim a remedy by making a complaint to an employment tribunal. This must be done within the time limit specified for the particular right. In most cases, the time limit for a complaint is three months after the date of the infringement of the right.

You should always check the rules on who qualifies for the right and its time limit by referring to the relevant employment legislation document. You must also consider whether the statutory grievance procedures apply to your case and ensure that you have taken the necessary steps prior to making an employment tribunal claim. See the section *Complaints and remedies*, which explains a little more about these procedures, and provides links to more detailed information.

Pay

National Minimum Wage

Workers are entitled to be paid at least the level of the statutory National Minimum Wage (NMW) for every hour they work for an employer. From 1 October 2006:

- The main NMW rate for those 22 or over is £5.35 an hour;
- The development rate for those aged 18-21 years old inclusive is £4.45 an hour;
- The youth rate for those under 18 and who are above school leaving age is £3.30 an hour.

The following do not qualify for the NMW: the genuinely self-employed, genuine volunteers, apprentices under 19, apprentices over 19 who are still within the first 12 months of their apprenticeship, students doing work as part of their undergraduate or post-graduate course, workers on certain training schemes, residents of certain religious communities, prisoners, the armed forces and share fishermen.

However, there are no exemptions according to size of business or by sector, job or region. All workers including homeworkers, agency workers, commission workers, part-time workers and casual workers must receive at least the NMW.

Other than money, the only benefit that counts towards the NMW is accommodation provided by the employer. From 1 October 2006 the amount that can be 'offset' is a maximum of £29.05 per week (£4.15 per day).

Employees may complain to an employment tribunal of unfair dismissal, regardless of length of service, if they are dismissed because they qualify for the NMW or because they seek to enforce their right to it. Workers who are not employees may complain that they have suffered a detriment if their contracts are terminated for any of these reasons. Both employees and other workers are also protected from other detrimental action or deliberate inaction by their employer.

For further information, contact the NMW helpline on 0845 6000 678 or visit www.direct.gov.uk/Employment/Employees/Pay/fs/en or the NMW website www.dti.gov.uk/employment/pay/index.html

Itemised pay statement

All employees are entitled to an individual written pay statement, at or before the time they are paid. The statement must show gross pay and take-home pay, with amounts and reasons for all variable deductions. Fixed deductions must also be shown, with detailed amounts and reasons. Alternatively, fixed deductions can be shown as a total sum, provided a written statement of these items is given to each employee in advance – or at the time – of issue of the first pay statement showing the total sum, and after that at least once a year.

A dispute relating to the itemised pay statement provisions may be referred to an employment tribunal by either an employer or an employee. If the employment has come to an end, the reference must be made within three months of the end of the employment.

Further details can be found in the document *Pay statements. What they must itemise*
www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16359.html

Unlawful deductions from wages

The law protects individuals from having unauthorised deductions made from their wages, including complete non-payment. This protection applies both to employees and to some other workers.

One of three conditions has to be met for an employer lawfully to make deductions from wages or receive payments from a worker. The deduction or payment must be:

- Required or authorised by legislation (for example, income tax or national insurance deductions); or
- Authorised by the worker's contract – provided the worker has been given a written copy of the relevant terms or a written explanation of them before it is made; or
- Consented to by the worker **in writing** before it is made.

Protections for individuals in retail work make it illegal for an employer to deduct more than ten per cent from the gross amount of any payment of wages (except the final payment on termination of employment) if the deduction is made because of cash shortages or stock deficiencies. Workers who believe they have suffered an unlawful deduction from wages can make a complaint to an employment tribunal.

Further details can be found in the document *Contracts of employment: changes, breach of contract and deductions from wages* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16161.html

Guarantee payments

Certain employees are entitled to a guarantee payment for up to five days in any three-month period. This is payable for days on which they would normally be expected to work under their contract of employment, but throughout which their employer has not provided them with any work (because of, say, reduced demand or lack of raw materials). Payment does not have to be made if:

- The employee has not completed one month's continuous employment with the employer;
- The employee unreasonably refuses suitable alternative work;
- The employee does not comply with the employer's reasonable requirement to be available to work;
- The short-time or lay-off results from a strike, lock-out or other industrial action involving any employee of the employer or of an associated employer.

If the employer makes a payment in respect of the workless day under the employee's contract of employment, it is offset against the liability to make a guarantee payment for that day.

Further details can be found in the document *Guarantee Payments* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16319.html

The current level of guarantee payment is given in the document *Limits on payments and awards* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page19310.html
An advice leaflet on Lay-offs and short-time working can be obtained from Acas www.acas.org.uk

Redundancy pay

Employers have to make a lump-sum 'redundancy payment' to employees dismissed because of redundancy. The amount is related to the employee's age, length of continuous service with the employer, and weekly pay up to a maximum – the current maximum is shown in the document *Limits on payments and awards*. The employer must also provide a written statement showing how the payment has been calculated, at or before the time it is paid.

Employees who have not completed two years' continuous employment are not entitled to a redundancy payment. The maximum number of complete years' service used in calculating redundancy payments is 20.

Redundant employees may not be entitled to a payment if they are offered a new job with the same employer, an associated employer or a successor employer who takes over the business – provided the new job is offered before the old employment contract expires and starts within four weeks. If the new job differs, wholly or partly, in capacity, place, terms or conditions, an employee can put off the decision to accept it for a four-week trial period; where retraining is necessary, this period may be extended by written agreement.

At the end of the trial period, if the employee is still in the job, he or she is regarded as having accepted it. Employees who reject the new job before the end of a trial period, because it turns out not to be a suitable alternative to the old job, or for good personal reasons, are considered to be redundant from the date the original employment ended. But if a redundant employee unreasonably refuses a suitable offer of alternative employment, no redundancy payments will be due.

Any dispute about whether a redundancy payment is due, or about its size, can be determined by an employment tribunal.

There are special provisions for employees whose remuneration under their contract of employment depends on their being provided with work and who are laid off or kept on short time.

If the employer makes a satisfactory redundancy payment at or soon after the date of dismissal, there is no need for the employee to submit a formal claim. In any other case,

if the employee does not make a written claim for a redundancy payment to the employer or make an application to an employment tribunal within six months from the date the employment ended, then in most cases the employer is no longer obliged to make a payment.

Further details can be found in the document *Redundancy entitlement – statutory rights. A guide for employees* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page15686.html

Insolvency of the employer

Employees who have been dismissed can receive payments of certain debts (within limits) owed to them by an employer who is **formally** insolvent, as defined in the legislation, from the National Insurance Fund.

These debts include arrears of pay for a period of at least one week but not exceeding eight weeks in all; holiday pay for up to six weeks; compensation for the employer's failure to give them proper statutory entitlement to notice, and any basic award of compensation for unfair dismissal. 'Pay' includes commission, overtime and bonus payments if these are contractual payments; guarantee payments; statutory payments for time off work or suspension on medical or maternity grounds; and any protective award made by an employment tribunal because the employer failed to inform or consult the employee's representative about a collective redundancy. All these debts are subject to a maximum weekly limit which is revised each year – details are given in the document *Limits on payments and*

awards www.dti.gov.uk/employment/employment-legislation/employment-guidance/page19310.html

The employee should normally first apply for payment to the insolvency practitioner (for example, the liquidator, receiver or trustee) who will provide the necessary forms and will then pass the completed application to the relevant Redundancy Payments Office. Payment is normally made direct to the employee.

There are also some safeguards for occupational pension rights: trustees of occupational pension schemes may apply to the employer's representative for payment from the National Insurance Fund, within certain limits, in respect of relevant contributions which remain unpaid at the date of the employer's insolvency.

Further details can be found in the document *Redundancy and insolvency: a guide for employees* available from www.insolvency.gov.uk

Dismissal and notice periods

Written reasons for dismissal

Employees who are dismissed and have completed at least one year's continuous employment are entitled to receive, on request (orally or in writing), a written statement of reasons for dismissal within 14 days. An employee dismissed during:

- Her pregnancy or her ordinary or additional maternity leave;
- His or her ordinary or additional adoption leave.

is entitled to a written statement of the reasons regardless of his or her length of service and regardless of whether or not he or she has requested it.

There are further details about the written reasons for dismissal provisions in the document *Rights to notice and reasons for dismissal*
www.dti.gov.uk/employment/employment-legislation/employment-guidance/page18474.html

Notice of termination

Both the employer and employee are normally entitled to a minimum period of notice of termination of employment. After one month's employment, an employee must give at least one week's notice; this minimum is unaffected by longer service. An employer must give an employee at least one week's notice after one month's employment, two weeks after two years, three weeks after three years and so on up to 12 weeks after 12 years or more. However, the employer or the employee will be entitled to a longer period of notice than the statutory minimum if this is provided for in the contract of employment.

Most employees, subject to certain conditions, are entitled to certain payments during the statutory notice period.

Employees can waive their right to notice or to payment in lieu of notice; employers can also waive their right to notice. Either party can terminate the contract of employment without notice if the conduct of the other justifies it.

Further details about notice provisions can be found in the document *Rights to notice and reasons for dismissal*.

Unfair dismissal

Employees have the right not to be unfairly dismissed. In most circumstances they must have at least one year's continuous service before they have this right. However, there is no length of service requirement in relation to a number of 'automatically unfair grounds' (see below). Also, the requirement is reduced to one month for

employees claiming to have been dismissed on medical grounds as a consequence of certain health and safety requirements that should have led to suspension with pay rather than to dismissal.

A complaint of unfair dismissal must be received by an employment tribunal **within three months** of the effective date of termination of the employment (usually the date of leaving the job) unless the tribunal considers this was not reasonably practicable. However, since 1 October 2004 the time limit for submitting some tribunal claims has been be extended in certain circumstances to allow statutory minimum dismissal, disciplinary and grievance procedures to be followed.

If both the employer and employee agree, instead of going to an employment tribunal, the case may be heard by an arbitrator under the Acas Arbitration Scheme. For further details see section *The Acas Arbitration Scheme*.

When hearing the complaint, a tribunal will first need to establish that a dismissal has taken place. Once dismissal is established, it is normally for the employer to show that it was for a legitimate reason (see the section *Fair dismissal*). Having established the reason for dismissal, the tribunal must then in most cases decide whether in the circumstances the employer acted reasonably in treating that reason as a sufficient one for dismissal. The circumstances taken into account include the size and administrative resources of the undertaking; but these considerations do not apply if the tribunal finds that the reason for the dismissal was one of those regarded as 'automatically unfair', which include:

- Pregnancy or any reason connected with maternity;
- Taking, or seeking to take, parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants;
- Failure to return from maternity or adoption leave because the employer did not give or gave inadequate notice of when the leave period should end;
- Grounds relating to making a statutory request for flexible working;
- Taking certain specified types of health and safety action;
- Refusing or proposing to refuse to do shop or betting work on a Sunday;
- Grounds related to rights under the Working Time Regulations 1998;
- Performing or proposing to perform any duties relevant to an employee's role as an employee occupational pension scheme trustee or as a director of a trustee company;
- Grounds related to acting as a representative for consultation about redundancy or business transfer, or as a candidate to be a representative of this kind, or taking part in the election of such a representative;
- Making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998;
- Asserting a statutory employment right;
- Grounds related to the National Minimum Wage;
- Qualifying for Working Tax Credit or seeking to enforce a right to it (or because the employer was prosecuted or fined as a result of such action);
- Trade union membership or activities, or non-membership of a trade union;

- Failure to accept an unlawful inducement to give up trade union rights or to disapply collective agreements, or an offer to induce the employee to become a trade union member;
- Refusal to make (or to have deducted from wages) a payment in lieu of trade union membership;
- Taking lawfully organised official industrial action lasting 12 weeks or less (or more than 12 weeks, in certain circumstances);
- Performing or proposing to perform any duties relating to an employee's role as a workforce representative or as a candidate to be such a representative for the purposes of the Transnational Information and Consultation of Employees Regulations 1999, or for taking, proposing to take or failing to take certain actions in connection with these Regulations;
- Grounds related to trade union recognition procedures;
- Exercising or seeking to exercise the right to be accompanied at a disciplinary or grievance hearing, or to accompany a fellow worker;
- Grounds related to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
- Grounds related to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002;
- A failure to follow the statutory dismissal procedure;
- Grounds related to the European Public Limited-Liability Company Regulations 2004;
- Grounds related to the European Cooperative Society (Involvement of Employees) Regulations 2006;

- From 6 April 2005, grounds related to the Information and Consultation of Employees Regulations 2004 for undertakings with at least 150 employees (from 6 April 2007 for undertakings with at least 100 employees and from 6 April 2008 for undertakings with at least 50 employees);
- Grounds related to jury service (except where the absence will cause substantial injury to the business, the employer tells the employee that and the employee unreasonably refuses to apply to be excused or defer the service);
- From 1 October 2006, exercising or seeking to exercise the right to be accompanied at a meeting to consider a request not to retire, or exercising or seeking to exercise the right to accompany a fellow employee at such a meeting.

If the employment tribunal finds the dismissal was unfair, it will order one of three possible remedies: reinstatement, re-engagement or compensation. Orders for reinstatement or re-engagement normally include an award of compensation for the loss of earnings.

Further details of the law on unfair dismissal and the remedies available, including how awards are calculated, can be found in the documents Unfairly dismissed? www.dti.gov.uk//employment/employment-legislation/employment-guidance/page30728.html and Dismissal – fair and unfair: a guide for employers www.dti.gov.uk/employment/employment-legislation/employment-guidance/page30726.html

Fair dismissal

Dismissal is normally fair only if the employer can show that it is for one of the following reasons:

- A reason related to the employee's conduct;
- From 1 October 2006, the retirement of the employee;
- A reason related to the employee's capability or qualifications for the job;
- Because the employee was redundant;
- Because a statutory duty or restriction prohibited the employment being continued;
- Some other substantial reason of a kind which justifies the dismissal.

Where the employer shows that the reason was one of these, the tribunal has to consider whether the employer acted reasonably in the circumstances by treating this reason as sufficient to dismiss the employee (except in the case of retirement, where the fairness of the dismissal will depend on whether the employer complied with the duty to consider working beyond retirement). Among the circumstances it takes into account are the size and administrative resources of the employer's undertaking.

It will also take account of whether the employer followed appropriate disciplinary procedures. From 1 October 2004, when statutory dismissal and disciplinary procedures came into force, where those procedures apply and are not treated as having been complied with, a dismissal will be unfair if an employee is dismissed without the procedure having been followed.

However, if an employer fails to follow a disciplinary procedure which goes beyond the statutory procedure, that failure will not by itself make the dismissal an unfair one - provided that properly following the procedure would have made no difference to the decision to dismiss, and that the dismissal was fair in all other respects.

Dismissal on the grounds of redundancy is unfair if the employee is selected for redundancy (when others in similar circumstances are not selected) for any of the reasons listed in the *Unfair dismissal* section as 'automatically' unfair (except dismissals in connection with the right to be accompanied). It may also be unfair for some other reason, such as the employer failing to give adequate warning of the redundancy, or to consider the employee for alternative employment.

Parental legislation

Maternity protection

All women are protected from unfair treatment, including dismissal, for reasons relating to pregnancy and maternity leave. The DTI's guidance pages *Maternity entitlements and responsibilities: a guide - babies due on or after 1 April 2007* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page34031.html bring together information on protection against unfair treatment, time off for ante-natal care, maternity leave, return to work, maternity pay, and the health and safety at work of new and expectant mothers.

Time off for antenatal care

All pregnant employees are entitled to time off **with pay** to keep appointments for antenatal care made on the advice of a registered medical practitioner, midwife or health visitor. Antenatal care may include relaxation classes and parentcraft classes. Except for the first appointment, the employee must show the employer, if requested, a certificate from a registered medical practitioner, midwife or health visitor, confirming the pregnancy and an appointment card or some other document showing that an appointment has been made.

Maternity leave

Women whose **expected date of childbirth is on or after 1 April 2007** are entitled to 52 weeks' maternity leave – made up of 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave – regardless of how long they have worked for their employer.

Women whose **expected date of childbirth is on or before 31 March 2007** are entitled to 26 weeks' ordinary maternity leave regardless of how long they have worked for their employer. Those with 26 weeks' continuous service with their employer by the end of the 15th week before their expected week of childbirth are also entitled to 26 weeks' additional maternity leave.

Ordinary maternity leave

A woman must tell her employer no later than the end of the 15th week before the expected week of childbirth:

- That she is pregnant;
- The expected week of childbirth, by means of a medical certificate if requested;
- The date she intends to start maternity leave; this can normally be any date which is no earlier than the beginning of the 11th week before the expected week of childbirth up to the birth. Her employer should in turn notify her of the date on which her leave will end within 28 days of receiving her notification. If the employer fails to do this, the employee may have protection against detriment or dismissal if she does not return to work on time.

An employee can change the date she wants her leave to start as long as she notifies her employer 28 days before the date she originally chose or, if it is earlier, 28 days before the new date she wants her leave to start.

During the 26 weeks, she is entitled to benefit from all her normal terms and conditions of employment, except for remuneration (monetary wages or salary).

Additional maternity leave

The 26 weeks' additional maternity leave period begins at the end of ordinary maternity leave. This means a woman is entitled to be away from her job for 52 weeks in total. She does not have to notify her employer before the start of her ordinary maternity leave that she also intends to take additional maternity leave. However, when her employer notifies her of the end date of her leave, they will have based their calculation on the assumption that, if she is entitled to additional maternity leave (which is in all cases for women with an expected date of childbirth on or after 1 April 2007), she will be taking it, and if she wishes to return before she has taken her full 52 weeks' maternity leave she must give the correct notice – see section on *Return to work after maternity leave*.

The contract of employment continues but with limited terms and conditions.

Return to work after maternity leave

A woman wishing to return before the end of her full maternity leave entitlement, or wishing to change a previously notified return date, must give notice to her employer. If insufficient notice is given an employer is entitled to postpone the woman's return until the end of the correct notice period. A woman whose expected date of childbirth is on or after 1 April 2007 must give her employer eight weeks' notice of any change in her date of return to work. A woman whose expected date of childbirth is on or before 31 March 2007 must give her employer 28 days' notice of a change.

A woman returning during or immediately after ordinary maternity leave is entitled to return to her original job on terms and conditions as if she had not been away.
A woman returning during or after additional maternity leave is also entitled to return to the original job on terms and conditions as if she had not been away unless, it is not reasonably practicable for her to return to the same job, in which case she is entitled to be offered a suitable alternative job on terms and conditions which are no less favourable. If the employer cannot offer suitable alternative work, she may be entitled to redundancy pay; but if she unreasonably refuses a suitable offer, she could forfeit her right to redundancy pay.

If a redundancy situation arises during maternity leave, she must be offered a suitable alternative vacancy if one is available. If the employer cannot offer suitable alternative

work, she may be entitled to redundancy pay; but if she unreasonably refuses a suitable offer, she could forfeit her right to redundancy pay.

Statutory Maternity Pay

A woman is entitled to Statutory Maternity Pay (SMP) if she has been employed by her employer for at least one day in the 15th week before the expected week of childbirth (the qualifying week); has been employed by that employer for a continuous period of at least 26 weeks into the qualifying week and has average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SMP can be paid for up to 39 weeks (26 weeks for women whose babies are due up to and including 31 March 2007). SMP is paid by the employer but is partly (or, for small firms wholly) reimbursed by the state.

More information for **employees** on SMP can be obtained from the Department for Work and Pensions leaflet *A guide to maternity benefits* (NI17A), available through the Department's website www.dwp.gov.uk/advisers/ni17a/ HM Revenue and Customs (HMRC) provides more information for employers in their help booklet E15 *Pay and time off work for parents*, available from its Employer's Orderline on 0845 7646 646 and from the HMRC website www.hmrc.gov.uk/employers/employee_pregnant.htm Employers may call HMRC's Employers' helpline on 0845 7143 143.

Maternity Allowance

Women who do not qualify for SMP may be entitled to Maternity Allowance (MA). MA may also be paid to the self-employed and women who have recently left their jobs. MA can be paid for up to 39 weeks (26 weeks for women whose babies are due up to and including 31 March 2007). MA is paid by Jobcentre Plus offices. To qualify, women must have been self-employed and/or employed in at least 26 weeks out of the 66 weeks before the expected week of childbirth and have average weekly earnings of at least £30. More information on MA, can be obtained from the Department for Work and Pensions leaflet *A guide to maternity benefits* (NI17A), available through the Department's website www.dwp.gov.uk/advisers/ni17a/

Dismissal or detriment in connection with pregnancy

An employer may not treat a woman less favourably, dismiss her or select her for redundancy on grounds related to her pregnancy or maternity leave. Such treatment is sex discrimination under the Sex Discrimination Act.

A woman dismissed for reasons related to her pregnancy or maternity leave may make a complaint of unfair dismissal or sex discrimination, regardless of her length of service. More information about protection against sex discrimination can be found on the Women and Equality Unit website
www.womenandequalityunit.gov.uk/legislation/discrimination_act.htm

Information on dismissal procedures can be found in the document *Dismissal – fair and unfair: a guide for employers* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page30726.html

Protecting the health and safety of pregnant women and new mothers at work

Employers must take account of health and safety risks to new and expectant mothers when assessing risks in work activity. If the risk cannot be avoided, the employer must take steps to remove the risk or offer suitable alternative work (with no less favourable terms and conditions); if no suitable alternative work is available, the employer must suspend the mother on full pay for as long as necessary to protect her health and safety or that of her baby.

The Health and Safety Executive booklet *Management of health and safety at work* (L21) contains the relevant Regulations and supporting Code of Practice, available from www.hsebooks.co.uk as a priced publication (ISBN 0 7176 24889) and the HSE booklet *New and expectant mothers at work* (HSG122) gives further guidance to employers about assessing health and safety risks to pregnant employees. This is available on their website at www.hse.gov.uk/mothers/index.htm

Parental leave

Employees who have completed one year's service with their employer are entitled to 13 weeks' unpaid parental leave for each child born or adopted. The leave can start once the child is born or placed for adoption with the

employee or as soon as the employee has completed a year's service, whichever is later. It may be taken at any time up to the child's fifth birthday (or until five years after placement in the case of adoption). Parents of disabled children can take 18 weeks up to the child's 18th birthday.

Employees remain employed while on parental leave and some terms of their contract, such as contractual notice and redundancy terms, still apply. At the end of parental leave where leave is taken for a period of four weeks or less, the employee is entitled to go back to the same job, where more than four weeks' parental leave is taken they have the right to return to the same job as before or, if that is not practicable, a similar job which has the same or better status, terms and conditions as the old job.

Employees should give 21 days' notice of their intention to take parental leave. The employer is entitled to postpone the leave for up to six months if it would seriously affect their business. Parental leave may not be postponed where it is to be taken immediately after a birth or the placement of a child for adoption.

Wherever possible, employers and employees should make their own agreement about how parental leave will work in a particular workplace. Such agreements can improve upon the key elements set out above but they may not offer less.

After having followed internal grievance procedures, employees can complain to an employment tribunal if their employer prevents or attempts to prevent them from taking parental leave. They are also protected from

dismissal or detrimental treatment for taking or seeking to take it. Further details can be found in the documents *Parental leave: a short guide for employers and employees* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page18480.html and *Parental leave: a guide for employers and employees* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page18479.html

Paternity leave

Employees who have worked continuously for their employer for 26 weeks leading into the 15th week before the baby is due and also continue to work for the same employer up to the birth of the child are entitled to take one or two consecutive weeks' paternity leave. To qualify, an employee must be the biological father of the child or the mother's husband or partner and must have or expect to have responsibility for the child's upbringing. Leave must normally be completed within 56 days from the birth of the child and must be taken to care for the child or support the mother. Where the child is born early leave can be taken up to 56 days after the Sunday at the start of the week in which the baby is due.

The partner of an individual who adopts, or the member of a couple adopting jointly who is not taking adoption leave may be entitled to paternity leave. The qualifying conditions are similar to those given above, except that he or she must have worked for their employer for 26 weeks leading into the week in which the adopter is notified of being matched with a child, and must continue to be

employed up to the date of placement of the child for adoption. Leave must be completed within 56 days of the child's placement.

During paternity leave employees are entitled to benefit from all their normal terms and conditions of employment except for remuneration (monetary wages or salary) and are entitled to return to the same job at the end of their leave.

After having followed internal grievance procedures employees can complain to an employment tribunal if their employer prevents or attempts to prevent them from taking paternity leave. They are also protected from dismissal or detrimental treatment for taking or seeking to take it.

Statutory Paternity Pay (birth and adoption)

During their paternity leave employees may be entitled to one or two weeks' Statutory Paternity Pay (SPP). The qualifying conditions for SPP are the same as those for paternity leave but, in addition, employees must have average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SPP is paid by the employer at a flat rate but partly (or, for small firms wholly) reimbursed by the State. There are special rules to allow fathers who do not qualify for SPP to claim Income Support.

HM Revenue and Customs (HMRC) provide a calculator to help employers to calculate SPP due, see www.hmrc.gov.uk/calcs/ssp.htm

Further information for **employers** is set out in the HMRC helpbook E15, *Pay and time off work for parents* www.hmrc.gov.uk/employers/employee_pregnant.htm or, for adoptive parents, E16, *Pay and time off work for adoptive parents*, available from its Employers Orderline on 0845 7646 646 and on their website www.hmrc.gov.uk/employers/employee_adopting.htm Employers may also call the HMRC Employer's helpline on 0845 7143 143.

FFor further information on paternity leave and pay see Working fathers: rights to paternity leave and pay: a guide for employers and employees www.dti.gov.uk/employment/employment-legislation/employment-guidance/page18481.html or, for adoptive parents, Adoptive parents: rights to leave and pay - a basic summary www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16191.html

Adoption leave

Employees who have worked continuously for their employer for 26 weeks ending with the week in which they are notified of being matched with a child for adoption will be eligible for 26 weeks' ordinary adoption leave followed immediately by 26 weeks' additional adoption leave. The right is available to individuals who adopt or one member of a couple adopting jointly.

The employee is required to inform their employer of their intention to take adoption leave within seven days of being notified by their adoption agency that they have been

matched with a child for adoption, unless this is not reasonably practicable. They must tell their employer:

- When the child is expected to be placed with them; and
- When they want their adoption leave to start.

Employers must respond to the notice within 28 days notifying the employee of the date on which the employer expects them to return to work if the full entitlement to adoption leave is taken. The employee can choose to start leave from the date of the child's placement or from a fixed date which can be up to 14 days before the expected date of placement.

During ordinary adoption leave employees are entitled to benefit from all their normal terms and conditions of employment except for remuneration (monetary wages or salary) and are entitled to return to the same job at the end of their leave.

During additional adoption leave the employment contract continues and some contractual benefits and obligations remain (for example, compensation in the event of redundancy and notice periods). At the end of additional adoption leave employees are entitled to return to their original job or, if this is not reasonably practicable, to a suitable alternative job. If the employer cannot offer suitable alternative work, the employee may be entitled to redundancy pay; but if he or she unreasonably refuses a suitable offer, he or she could forfeit his or her right to redundancy pay.

Employees who intend to return to work at the end of their full adoption leave entitlement do not have to give any further notification to their employers. Employees who want to return to work before the end of their adoption leave period must give their employer notice of the date they intend to return (see below).

After having followed internal grievance procedures employees can complain to an employment tribunal if their employer prevents or attempts to prevent them from taking adoption leave. They are also protected from dismissal or detrimental treatment for taking or seeking to take adoption leave or if their employer believed they were likely to take adoption leave.

Return to work after adoption leave

An employee wishing to return before the end of his or her full adoption leave entitlement, or wishing to change a previously notified return date, must give notice to his or her employer. If insufficient notice is given an employer is entitled to postpone the employee's return until the end of the correct notice period. Employees whose child was expected to be placed for adoption on or after 1 April 2007 must give their employer eight weeks' notice of any change in their date of return to work. Employees whose child was expected to be placed on or before 31 March 2007 must give their employer 28 days' notice of a change.

An employee returning during or immediately after ordinary adoption leave is entitled to return to his or her original job on terms and conditions as if he or she had not been away. An employee returning during or after additional adoption leave is also entitled to return to the original job on terms and conditions as if he or she had not been away unless it is not reasonably practicable for him or her to return to the same job, in which case he or she is entitled to be offered a suitable alternative job on terms and conditions which are no less favourable. If the employer cannot offer suitable alternative work, the employee may be entitled to redundancy pay; but if he or she unreasonably refuses a suitable offer, he or she could forfeit his or her right to redundancy pay.

If a redundancy situation arises during adoption leave, he or she must be offered a suitable alternative vacancy if one is available. If the employer cannot offer suitable alternative work, the employee may be entitled to redundancy pay; but if he or she unreasonably refuses a suitable offer, he or she could forfeit his or her right to redundancy pay.

Statutory Adoption Pay

A person who is adopting a child is entitled to Statutory Adoption Pay (SAP) if he or she has been employed by their employer for a continuous period of at least 26 weeks ending with the week in which they are notified by the adoption agency that they have been matched with a child for adoption, and they have an average weekly earnings at least equal to the lower earnings limit for National Insurance contributions.

Employees whose child was expected to be placed for adoption on or after 1 April 2007 are entitled to 39 weeks' SAP. Employees whose child was expected to be placed on or before 31 March 2007 are entitled to 26 weeks' SAP.

HM Revenue and Customs provide a calculator to help employers to calculate SAP due See www.hmrc.gov.uk/calcs/sap.htm
Further information for **employers** is set out in the HMRC helpbook E16, *Pay and time off work for adoptive parents* available from its Employers Orderline on 0845 7646 646 and on their website www.hmrc.gov.uk/employers/employee_adopting.htm
Employers may also call the HMRC Employer's helpline on 0845 7143 143. For further information on adoption leave see the DTI guidance pages www.dti.gov.uk/employment/workandfamilies/adoption-leave/guidance/page21074.html

The right to apply to work flexibly and the duty on employers to consider requests seriously

From April 2003, parents of children under six or disabled children under 18 have had the legal right to request flexible working patterns, and their employers have had a duty to consider their requests seriously. From April 2007, the scope of this right to request flexible working will be extended to carers of adults (see section on *Other Statutory Employment Rights*).

In order to qualify for this right an individual must:

- Be an employee;
- Have a child under six, or 18 where the child is disabled;
- Make the request no later than two weeks before the child's appropriate birthday;
- Be responsible for the child as its parent;
- Be making the application to enable them to care for the child;
- Have worked for their employer continuously for 26 weeks at the date the application is made;
- Not be an agency worker or a member of the armed forces;
- Have not made another application to work flexibly under the right during the past 12 months.

Applications must be in writing. Information that must be provided includes an explanation of what effect, if any, the employee thinks the proposed change would have on the employer and how, in their opinion, any such effect might be dealt with. The employer must follow a defined procedure to consider the request. In the first instance, they must ensure that they arrange to meet with the employee to discuss the request within 28 days of receiving the application.

If the request is agreed, the new working pattern forms a permanent change to the employee's terms and conditions.

Employers can reject an application where they have a clear business reason to do so. Acceptable business grounds are specified in law and an employer must provide a written explanation setting out why the ground applies in the circumstances. Employees whose applications are turned down will be able to appeal against their employer's decision, and in specific circumstances can take their case to Acas Arbitration or an employment tribunal.

Further details can be found in *Flexible working: the right to request - a basic summary*
www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16358.html

Interactive guidance for employees is available at
www.direct.gov.uk/Diol1/EmploymentDecisionTrees/fs/en
Interactive guidance for employers is available at
www.businesslink.gov.uk

Free confidential advice for employers and employees is available from the Acas helpline 08457 47 47 47.

Other time off

Time off for dependants

All employees are entitled to reasonable time off work **without pay** to deal with an emergency involving a dependant; for example, if a dependant falls ill or is injured, if care arrangements break down, or to arrange or attend a dependant's funeral.

Further details on circumstances when leave can be taken and the definition of a dependant can be found in the documents *Time off for dependants. A guide for employers and employees* www.dti.gov.uk/files/file11419.pdf *and Family emergency? Your right to time off* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page19475.html

Time off work for public duties

Under certain circumstances employers must give employees who hold certain public positions reasonable time off to perform the duties associated with them.

This provision covers such offices, among others, as justice of the peace, prison visitor, and member of a local authority, a police authority, a statutory tribunal, and certain

health and education authorities. Employers do not have to pay employees for the time off taken for public duties. Further details can be found in the document *Time off for public duties* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16377.html

Time off work for trade union duties and activities

An employee who is an **official** of an independent trade union which is recognised by the employer must be allowed reasonable time off with pay during working hours to:

- Carry out those duties as an official which relate to matters for which the employer has recognised the union, or any other functions which the employer has agreed the union may perform;
- Consult with the employer, or receive information from the employer, about mass redundancies or business transfers; or
- Undergo training relevant to those duties and which is approved by the union or by the Trades Union Congress.

An employee who is a **member** of an independent trade union which is recognised by the employer is entitled to reasonable time off for certain trade union activities. The employer is not obliged to pay the employee for time off for these activities.

The Acas Code of Practice *Time off for trade union duties and activities* www.acas.org.uk/media/pdf/l/q/CP03_1.pdf provides guidance on the time off to be permitted by an employer.

Time off for Union Learning Representatives

An employee who is a member of an independent trade union which is recognised by the employer and who is a Union Learning Representative must be allowed reasonable time off with pay during working hours to:

- Carry out those duties that relate to Union Learning Representatives;
- Undergo training relevant to the duties of a Union Learning Representative.

The Acas Code of Practice *Time off for Trade Union Duties and Activities* provides guidance on the time off to be permitted by an employer for Union Learning Representatives.

Time off for safety representatives

Employees who are:

- Safety representatives appointed under the Safety Representatives and Safety Committee Regulations 1977 by a trade union recognised by their employer; or
- Representatives of employee safety elected under the Health and Safety (Consultation with Employees) Regulations 1996, to represent employees not covered by the 1977 Regulations; or
- Safety representatives elected under the Offshore Installations (Safety Representatives and Safety Committee) Regulations 1989.

are entitled to time off with pay to carry out their functions and to undergo training.

Further details can be found in the following booklets available from HSE Books (01787 881165) and other booksellers: *Safety representatives and safety committees* (contains the 1977 Regulations and a supporting Code of Practice and guidance), *A guide to the Health and Safety (Consultation with Employees) Regulations 1996* and *A guide to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989*.

Time off for occupational pension scheme trustees and directors of trustee companies

Employees who are trustees of an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993) or directors of trustee companies are entitled to reasonable time off with pay to carry out any of their trustee's duties or to receive training relevant to those duties.

Time off for employee representatives under the Occupational Pensions (Consultation by Employers and Miscellaneous Provisions) Regulations 2006

Employees who act as employee representatives for consultation about significant changes to their work-based pension schemes under the above Regulations are entitled to reasonable time off with pay during working hours to perform these functions. Initially, the Regulations apply to undertakings with 150 or more employees and then to

undertakings with 100 or more employees (April 2007) and eventually to undertakings with 50 or more employees (April 2008).

Time off for employee representatives

Employees who act as representatives for consultation about redundancies or business transfers, or are candidates to be representatives of this kind, are entitled to reasonable time off with pay during working hours to perform these functions and to receive appropriate training. Further details can be found in the documents *Redundancy consultation and notification* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page13852.html and *A guide to the 2006 TUPE Regulations for employees, employers and representatives* www.dti.gov.uk/files/file20761.pdf

Time off for activities relating to the Transnational Information and Consultation of Employees Regulations 1999

The Transnational Information and Consultation of Employees Regulations 1999 implement the European Works Council Directive in the UK. They set out requirements for informing and consulting employees in undertakings or groups with at least 1000 employees in European Union countries and at least 150 employees in each of two or more of the EU's member states. These Regulations allow employees reasonable time off with pay to perform their functions as a member of a special negotiating body or a European Works Council, as an

information and consultation representative or as a candidate in an election to be such a member or representative.

Time off for activities relating to the Information and Consultation of Employees Regulations

The above Regulations implement the EU Directive establishing a general framework for informing and consulting employees. The Regulations came into force on 6 April 2005. They set out requirements for informing and consulting employees in undertakings with at least 50 employees. The Regulations currently apply to undertakings with 150 employees and then to undertakings with 100 employees (April 2007) and eventually to undertakings with 50 employees (April 2008). Employees are entitled to reasonable time off with pay to perform their functions as negotiating representatives or information and consultation representatives.

Time off for study or training

Employees aged 16 or 17 who have not achieved a certain standard in their education or training have the right to reasonable time off **with pay** to study or train for a relevant qualification which will help them towards that standard. Certain employees aged 18 have the right to complete study or training already begun. The study or training can be in the workplace, at college, with another employer or a training provider, or elsewhere.

There is no qualifying period of employment for the employee.

Details can be found in the Department for Education and Skills booklet *Time off for study or training* (TfST EL1), available from Jobcentre Plus offices or see the DfES website www.dfes.gov.uk/tfst/

Time off for job hunting or to arrange training when facing redundancy

An employee who is being made redundant, and who has been continuously employed by the same employer for at least two years, is entitled, whilst under notice, to take reasonable time off **with pay** within working hours to look for another job, or to make arrangements for training for future employment.

Further details can be found in the document *Redundancy entitlement - statutory rights. A guide for employees* www.dti.gov.uk//employment/employment-legislation/employment-guidance/page15686.html

Anti-discrimination

Sex and race

Under the Sex Discrimination Act (SDA) 1975 (as amended), it is unlawful for employers to discriminate on the grounds of sex, marriage, civil partnership, pregnancy or maternity leave or because someone intends to undergo, is undergoing or has undergone gender reassignment. The Race Relations Act (RRA) 1976 (as amended) generally makes discrimination or harassment by employers on racial grounds unlawful.

There are two kinds of unlawful discrimination: direct and indirect. Direct sex discrimination is where a person is, or would be treated less favourably than another on the grounds of his or her sex. Indirect sex discrimination arises where an apparently neutral provision, criterion or practice puts, or would put people of one sex at a particular disadvantage compared with people of the other sex. Direct and indirect racial discrimination arise in the same way but on racial grounds that is, on grounds of race, colour, nationality (including citizenship) or ethnic or national origins, though the definition of indirect discrimination is slightly different in respect of discrimination on grounds of colour or nationality.

It is unlawful to victimise someone who has made a complaint under these Acts or under the Equal Pay Act 1970 (see Equal Pay) or the Pensions Act 1995.

'Harassment' means unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person: for example, display of nude calendars or racist literature.

There are limited exceptions; for instance, where there is genuine and determining occupational requirement that a job be done by a person of a particular sex or from a particular racial group as defined in the relevant Act. Both the SDA and RRA permit employers, under certain conditions, to train employees of one sex or of a particular racial group in order to fit them for particular work in which their sex or racial group has recently been under-represented; they may also encourage people of a particular under represented sex or racial group to take up opportunities to do that work.

Individuals who wish to bring a claim under the employment provisions of these Acts will need to do so with an employment tribunal.

The Equal Opportunities Commission (EOC) and the Commission for Racial Equality (CRE) both have statutory responsibilities in the employment field: they can conduct formal investigations and have issued Codes of Practice to help eliminate discrimination and promote equality of opportunity.

The CRE *Employment Code of Practice* gives practical guidance for employers and others on implementing policies to secure good race relations in employment. It does not extend the law but it may be used in evidence in Race Relations Act cases heard by an employment tribunal, and if the tribunal considers the Code could be relevant to a question arising in the proceedings, it must take it into account. Copies are available from the CRE, St Dunstan's House, 201-211 Borough High Street, London SE1 1GZ (020 7939 0000) or from the CRE's website at www.cre.gov.uk

The EOC has also produced a Code of Practice, which can be obtained from their website (www.eoc.org.uk) or by contacting the EOC, Arndale House, Arndale Centre, Manchester M4 3EQ (0845 601 5901).

Further information about these Acts can be found in the guides *Sex discrimination* and *Racial discrimination*, available from Jobcentre Plus offices or from the EOC and CRE respectively. See also *Gender Reassignment - A guide for employers* available from www.womenandequalityunit.gov.uk

Equal pay

The Equal Pay Act 1970 (EPA) makes it unlawful for employers to discriminate between men and women where they are doing like work; work rated as equivalent; or work which is of equal value. It covers both pay and other terms and conditions such as piecework, output and bonus payments, holiday and sick pay provided by the contract of employment.

The Act does not give anyone the right to claim equal pay with a person of the same sex. In other words, any comparison **must be** with a person of the opposite sex.

Individuals who consider that they have been discriminated against under the EPA can make a claim to an employment tribunal within six months of leaving that job.

A woman is employed on 'like work' with a man if her work is of the same or a broadly similar nature, and any difference between the things they do is not of practical importance in relation to their terms and conditions of employment. It is for the employer to show that any difference is of practical importance.

A woman is employed on work of equal value to that of a man if the work they are doing is not the same or similar, but nevertheless of equal value in terms of the demands made on them, under such headings as effort, skill and decision making. In equal value claims, the tribunal or an independent expert appointed by the tribunal will determine whether the jobs in question are of equal value.

A woman is regarded as performing work rated as equivalent to a man where a job evaluation study, carried out by the employer, has already rated their jobs as having equal value, providing the evaluation itself contains a proper analysis and is not discriminatory on grounds of sex.

If it is established that the work is like work, work rated as equivalent or work of equal value, an employer can defend a difference between the man and woman's contracts *by demonstrating* that any such differences are due to a

genuine material factor which is not attributable to direct or indirect sex discrimination such as a difference in the level of their qualifications. If the factor causing the difference in the contractual terms is tainted by sex discrimination an employer may be able to defend the claim by showing that the difference is objectively justified.

Further details can be found in the leaflet *Are you getting equal pay?* Available from the EOC website at www.eoc.org.uk/PDF/eoc_ep_english.pdf and in the EOC *Code of Practice on Equal Pay* www.eoc.org.uk/PDF/law_code_of_practice.pdf also available by calling the EOC helpline 0845 601 5901.

Employers can obtain further information on equal pay through Equality Direct on 0845 600 3444 or www.equalitydirect.org.uk

Disability

In order to qualify for protection against discrimination, an individual would need to meet the definition of a disabled person under the Disability Discrimination Act 1995 (DDA), as amended. Under the Act, someone is considered disabled if they have a 'physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day to day activities.' Since 5 December 2005, the Disability Discrimination Act 2005 has widened this definition, providing protection for people with cancer, HIV and multiple sclerosis, effectively from the point of diagnosis. The restriction that mental illness must be 'clinically well-recognised' before it is judged to be a mental impairment has also been removed.

Under the employment provisions (Part 2) of the Act, an employer is required not to discriminate against a disabled person for a reason related to their disability. Discrimination occurs when, for a reason related to the person's disability, an employer treats someone less favourably than he or she would treat other people, and cannot justify this treatment. Since 1 October 2004, harassment on the grounds of disability has also been explicitly outlawed.

An employer also needs to consider reasonable adjustments to premises, practices or procedures, if these would otherwise put a disabled person at a substantial disadvantage. Examples of reasonable adjustments could include allocating some of the disabled person's duties to another employee, providing a piece of specialist equipment or allowing the disabled person to be absent during working hours for rehabilitation, assessment or treatment. The duty to make reasonable adjustments applies to any aspect of employment, including the recruitment process, access to training and promotion, access to work benefits or facilities, and selection for redundancy. It is worth noting that the employment provisions are not anticipatory and therefore the employer is only required to consider the needs of an actual disabled employee or, in the case of making adjustments to a recruitment process, a disabled job applicant.

Since 1 October 2004, Part 2 has covered all employers, regardless of their size, with the exception of service in the armed forces. From this date, the employment duties have also included provisions outlawing job advertisements which imply that any candidate's success

depends on him not having a disability, or any specific disability, or which indicates a reluctance on the part of the employer to make reasonable adjustments. Additionally, since 5 December 2005, third-party publishers, eg newspapers, have been liable for publishing discriminatory advertisements.

However, the DDA is based on the concept of 'reasonableness' and recognises the need to maintain a balance between the rights of disabled people and the interests of employers. In deciding what is reasonable, factors such as the cost of the adjustment, the employer's resources and the effect of the adjustment would all be taken into account.

People who have, or have had, disabilities, and believe that is why they have been discriminated against in employment matters, may make a complaint to an employment tribunal, usually within three months of the alleged act having taken place.

Further information on the Act's provisions can be obtained from the Disability Rights Commission (DRC) helpline on 08457 622 633, call 08457 622 644 for the textphone service for people with hearing impairments or email enquiry@drc-gb.org. Information can also be obtained through the DRC website www.drc-gb.org or Directgov www.direct.gov.uk/DisabledPeople/fs/en

More detailed information and examples are available in the DRC *Code of Practice on Employment and Occupation* www.drc-gb.org/pdf/4008_323_employment_occupation_pdf.pdf

Detailed information on the definition of disability is available in *Guidance on matters to be taken into account in determining questions relating to the definition of disability*. This is a priced publication available from TSO (The Stationery Office) bookshops, online at www.tsoshop.co.uk or telephone 0870 600 5522.

Sexual orientation and religion or belief

The Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003 make it unlawful to discriminate against someone or harass someone on grounds of sexual orientation or religion or belief in employment and vocational training. The Regulations apply in all workplaces large or small throughout Great Britain, both in the private and public sectors. They cover all aspects of the employment relationship, including recruitment, pay, working conditions, training, promotion, dismissals and references.

'Discrimination' means treating someone less favourably than others because of their sexual orientation or their religion or belief. It includes applying provisions, criteria or practices, which disadvantage people because of a particular sexual orientation or religion or belief unless they can be objectively justified. Discrimination also includes victimising someone who has made a complaint under these Regulations – for example, if someone made a formal complaint of discrimination or given evidence in a tribunal case. 'Harassment' means unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

The legislation covers perception of sexual orientation or perception of religion or belief. So it protects people who are assumed – correctly or incorrectly – to be of a particular sexual orientation or to have a particular religion or belief. The legislation also protects people who are discriminated against because of the sexual orientation or the religion or belief of the people with whom they associate, for example, their family and friends.

Similarly to sex and race legislation, there are certain exceptions where a job has to be done by a person of a particular sexual orientation or religion or belief, but these apply in a very limited set of circumstances. In most cases, a complaint must be made to the employment tribunal, though in cases involving institutes of further and higher education proceedings must be brought in the county or sheriff court.

Further information about these Regulations can be found on the DTI website
www.dti.gov.uk/employment/discrimination/index.html
Acas has Equality and Diversity Advisers who specialise in providing practical help to businesses of all sizes and sectors on equality and diversity issues in the workplace. Acas also runs Equality Direct, a helpline for questions on managing equality in the workplace (0845 600 34 44).

Age discrimination

The Employment Equality (Age) Regulations 2006 that came into force on 1 October 2006 outlaw unjustified age discrimination in employment and vocational training. They give individuals important new rights, extend existing rights and speed up removal of traditional barriers.

They apply to all employers in the private and public sector, vocational training providers, trade organisations, qualifications bodies and employment agencies and will be extended to cover trustees and managers of occupational pension schemes in December 2006. They cover employees of any age – whether young or older – and other workers, office holders, and partners of firms.

The Regulations outlaw:

- Direct discrimination on grounds of age, unless this is objectively justified;
- Indirect discrimination (ie applying generally a criterion, provision or practice which disadvantages people of a particular age or age group) unless it can be objectively justified;
- Victimisation, for example for making a complaint about age discrimination;
- Instructions to discriminate;
- Harassment on grounds of age.

Employers cannot discriminate on grounds of age in recruitment, promotion, transfer or training, or in the terms and conditions of employment.

Discrimination may be lawful if there is a Genuine Occupational Requirement for the job to be filled by a person having a characteristic related to age. An organisation advising and promoting rights for older people, for example, may be able to show that it is essential that its chief executive – who will be the public face of the organisation – is of a certain age.

Providers of vocational training cannot discriminate on age grounds in relation to that training or access to it, nor can the provider harass a person seeking or undergoing training.

In relation to retirement, employees will have the right to request working beyond retirement age and the employer has a duty to consider such requests.

The upper age limits on unfair dismissal and redundancy have been removed, as well as the lower age limit for redundancy pay. This means older employees get the same rights to claim unfair dismissal – or to receive a redundancy payment – as younger employees.

Employees can generally bring a claim before the employment tribunals, in line with other workplace anti-discrimination legislation.

Further information about these Regulations can be found on the DTI website www.dti.gov.uk/employment/discrimination/age-discrimination/index.html The guidance for employers and individuals that Acas have produced is available via their website www.acas.org.uk/index.aspx?articleid=337 Employers wanting confidential advice on equality issues can contact the Acas Equality Direct helpline on 0845 600 3444. Acas also provides information and good practice advice to employers and employees on a wide range of employment matters through its website (www.acas.org.uk), helpline (08457 47 47 47), publications and training.

Other statutory employment rights

Asserting a statutory employment right

Employees may complain to an employment tribunal if they are dismissed (including selection for redundancy when others in similar circumstances are not selected) for bringing proceedings against their employer to enforce certain rights, or for alleging the employer has infringed those rights. This protection applies to all employees, regardless of their length of service. To benefit, the employee need not necessarily have specified the right, so long as it was reasonably clear to the employer what the right was.

Provided they act in good faith, employees are protected regardless of whether they qualified for the right they sought to assert and regardless of whether that right had in fact been infringed. Employees can claim protection if they are dismissed after asserting rights relating to:

- Written statement of employment particulars;
- Itemised pay statement;
- Trade union duties and activities or training;
- Unlawful deductions from pay;
- Not having to make unauthorised payments to employer;

- Guarantee payments;
- Opting out of shop or betting work on Sunday;
- Detriment in cases about: health and safety, Sunday working, working time, trusteeship of employee pension schemes, employee representatives, time off for study and training, protected disclosures, maternity, parental, paternity, adoption or domestic leave, or grounds related to trade union membership or activities;
- Matters connected to/making a request under the flexible working provisions of the Employment Act 2002;
- Remuneration during suspension on medical grounds;
- Time off: for public duties, to look for work or make arrangements for training prior to redundancy, for antenatal care, for dependants, for employee pension scheme trustee or director's duties or training, for study or training for young people, for employee representatives;
- Minimum notice terminating employment;
- Deduction of unauthorised or excessive union subscriptions;
- Employer paying contribution to a union's political fund;
- Consultation about redundancy or business transfer;
- Working time, rest periods, breaks and annual leave.

Similar protection is provided for employees who are dismissed for certain actions under the Transnational Information and Consultation of Employees Regulations 1999 or the Part Time Work Regulations 2000, the European Limited-Liability Company Regulations 2004, the European Cooperative Society (Involvement of Employees) Regulations 2006 or the Information and Consultation of Employees Regulations 2004 or because they qualify for:

- The National Minimum Wage;
- Working Families Tax Credit.

or because any action is taken (or even proposed to be taken) to enforce any of these rights.

Trade union membership and activities, and non-membership of a union

Employees have the right to join or not join a trade union of their choice. Their employer may not dismiss them, select them for redundancy or make them suffer detriment for being or proposing to become a union member, nor for taking part in the union's activities at an appropriate time. They are similarly protected if they choose not to belong to a union or refuse to join one.

Dismissals which infringe these rights may be taken to an employment tribunal regardless of the employee's length of service. Employees who claim to have been unfairly dismissed in this way (except those complaining of unfair selection for redundancy) can also apply to the tribunal for an order of interim relief (which requires the employer to continue their contract of employment or to re-employ them pending the final outcome of the case).

For further information on these rights, see the documents *Union membership: rights of members and non-members* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page20829.html and *Unfairly dismissed?* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page30728.html

Taking action on health and safety grounds

An employee may not be dismissed, selected for redundancy (when others in similar circumstances are not selected) or subjected to any detrimental action for taking certain types of action on health and safety grounds. These rights apply to all employees, regardless of their length of service, if they:

- Carry out or propose to carry out activities which their employer has designated them to carry out in connection with preventing or reducing risks to health and safety at work; or
- Perform or propose to perform functions they have as official or employer-acknowledged health and safety representatives or committee members; or
- Bring to their employer's attention by reasonable means - and in the absence of a representative or committee with whom it would be reasonably practicable for them to raise the matter - a concern about circumstances at work which they reasonably believe are harmful to health and safety;
- In the event of danger which they reasonably believe to be serious and imminent and which they could not reasonably be expected to avert, leave or propose to leave the workplace or any dangerous part of it, or (while the danger continues) refuse to return; or
- In circumstances of danger which they reasonably believe to be serious and imminent, take or propose to take appropriate steps to protect themselves or others.

All employees have the right to complain to an employment tribunal if any of these rights are infringed. Where health and safety representatives or committee members or those designated to carry out workplace health and safety activities (which could include, for example, first aiders) are dismissed or selected for redundancy, they are entitled to compensation without a statutory limit. In other cases of dismissal or selection for redundancy on health and safety grounds, the remedies will be subject to the same limits as under the ordinary unfair dismissal provisions. For details see either the document *Dismissal – fair and unfair: a guide for employers* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page30726.html or *Unfairly dismissed?* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page30728.html Where the employee has been subjected to some other detriment relating to taking action on health and safety grounds, the employment tribunal will award the compensation it considers just and equitable in all the circumstances, taking into account the particular infringement and any loss incurred.

Suspension from work on medical grounds

Certain health and safety regulations require employees to be suspended from their normal work on medical grounds, when their health would be endangered if they continued to be exposed to a substance specified in the regulations. These provisions cover exposure to ionising radiation, lead and some other hazards.

Further details can be found in the document *Suspension from work on medical or maternity grounds under health and safety regulations*
www.dti.gov.uk/employment/employment-legislation/employment-guidance/page17196.html

Transfer of a business or undertaking

The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to the transfer of an undertaking, or part of an undertaking, to a new employer (for example, as the result of a sale) and service provision changes. The employees automatically become employees of the new employer as if their contracts of employment were originally made with the new employer; and the new employer takes over all employment liabilities of the old employer (except criminal liabilities and certain occupational pension rights).

Employees are entitled to object to their contract being transferred to the new employer but, in doing so, normally lose the right to claim there was a dismissal unless they can show that the transfer would have involved a substantial and detrimental change in working conditions. If either the new or the old employer dismisses an employee solely or mainly because of the transfer, the dismissal is considered unfair.

However, if the main reason for dismissal, by either employer, is an economic, technical or organisational one that is connected to the transfer and entails changes in the workforce, an employment tribunal may consider it to be fair provided that the tribunal also finds that the employer

acted reasonably in treating this reason as sufficient to justify dismissal. Further information is available in the document *A guide to the 2006 TUPE Regulations for employees, employers and representatives* www.dti.gov.uk/files/file20761.pdf

Sunday shop and betting work

Shop workers have the right not to be dismissed, selected for redundancy (when others in similar circumstances are not selected) or subjected to other detrimental action for refusing or proposing to refuse to work on Sundays.

There are similar rights for betting workers – that is broadly all employees at licensed betting offices, and those employees at horse race courses or licensed tracks whose work involves dealing with betting transactions.

For further information, see the document *Sunday shop and betting work: employees' rights* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page17143.html

Working time

The Working Time Regulations 1998 give workers the right to:

- Work no more than an average 48 hours a week although individuals may choose to work longer;
- Four weeks' paid leave a year;
- 11 consecutive hours' rest in any 24-hour period;

- An in-work rest break of 20 minutes if the working day is longer than six hours;
- One day off each week;
- A limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

The night work limits and the rights to rest periods and breaks may be modified in certain special circumstances.

The Regulations apply not only to employees but also to workers, which includes the majority of agency workers and freelancers. The Regulations were amended, with effect from 1 August 2003, to extend working time measures in full to all non-mobile workers in road, sea, inland waterways and lake transport, to all workers in the railway and offshore sectors, and to all workers in aviation who are not covered by the sectoral Aviation Directive. The Regulations were extended to junior doctors from 1 August 2004.

Mobile workers in road transport have more limited protections. Those subject to European drivers' hours rules 3820/85 are entitled to four weeks' paid annual leave and health assessments if a night worker from 1 August 2003. Mobile workers not covered by European drivers' hours rules are entitled to an average 48 hours per week, four weeks' paid holiday, health assessments if a night worker and adequate rest.

Young workers (those over the minimum school leaving age but under 18) are entitled to:

- 12 consecutive hours rest between each working day;
- Two days' weekly rest and a 30-minute in-work rest break when working longer than four and a half hours;
- Four weeks' paid annual leave.

The following changes for young workers took effect in 2003:

- Working time to be limited to eight hours a day and 40 hours a week;
- Prohibition of night-work between 10pm and 6am or between 11pm and 7am;
- Derogations from the working time limit and night-work prohibition permitted in specific circumstances, and in the case of the night-work prohibition, specific sectors.

Workers may complain to an employment tribunal if they are being denied rest periods, breaks or the paid annual leave entitlements. The limits and health assessments (if a night worker), are enforced by the Health and Safety Executive, local authority environmental health departments, the Civil Aviation Authority (CAA) and the Vehicle and Operator Services Agency (VOSA).

Employees may complain to an employment tribunal of unfair dismissal, regardless of their length of service, if they are dismissed for exercising rights under these Regulations; and workers who are not employees may complain that they have suffered a detriment if their contracts are terminated for this reason. Both employees

and workers who are not employees are also protected from other detrimental action or deliberate inaction by their employer in respect of their working time rights.

Further details can be found in the document *Your guide to the Working Time Regulations* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page30342.html

Protected disclosures

Workers who 'blow the whistle' on wrongdoing in the workplace can complain to an employment tribunal if they are dismissed or victimised for doing so. An employee's dismissal (or selection for redundancy) will be unfair if it is wholly or mainly for making a protected disclosure within the meaning of Part IVA of the Employment Rights Act 1996 (inserted by the Public Interest Disclosure Act 1998). Workers who are not employees can complain that they have suffered a detriment if their contracts are terminated for making such a disclosure, with compensation awarded on the same basis as for unfair dismissal. Both employees and other workers are also protected from other detriment by their employer.

For further information, see the document *Disclosures in the public interest: protections for workers who 'blow the whistle'* www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16186.html

Disciplinary and grievance hearings

Workers are entitled to be accompanied at certain disciplinary and grievance hearings by a fellow worker or a trade union official of their choice, provided they make a reasonable request to be accompanied. They also have the right to a reasonable postponement of the hearing, within specified limits, if their chosen companion is unavailable at the time the employer proposes.

Workers have the right to take paid time off during working hours to accompany fellow workers employed by the same employer.

These rights apply to workers including agency workers and homeworkers, though not to those who are in business solely on their own account.

For further information, see Acas's *Code of Practice Disciplinary and grievance procedures* www.acas.org.uk/media/pdf/l/p/CP01_1.pdf

An employment tribunal will consider a worker has been unfairly dismissed, regardless of his or her age or length of service, if the dismissal was for exercising or seeking to exercise the right to be accompanied, or for accompanying or seeking to accompany another worker; nor may an employer subject workers to any other detrimental treatment on these grounds.

The right to apply to work flexibly for carers of adults and the duty on employers to consider requests seriously

With effect from 6 April 2007, as a result of the Work and Families Act 2006, the scope of the right to request flexible working will be extended to include carers of adults. Carers who will be eligible to make requests will be defined in secondary regulations which are to be laid before Parliament before the end of 2006. (These will be the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006). The procedure will be very similar to that which applies to the current right to request flexible working for parents of young children (see Parental Legislation). The DTI will also be publishing guidance by the end of 2006. The Acas helpline, 08457 47 47 47, will also be able to offer advice on specific cases.

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

The Regulations aim to ensure that part-time workers are not treated less favourably than comparable full-timers, unless the less favourable treatment can be justified on objective grounds. Principally, this means they should:

- Receive the same rates of pay (including overtime pay, once they have worked normal full-time hours);
- Not be treated less favourably for contractual sick pay or maternity pay purposes, or discriminated against over access to pension schemes or pension scheme benefits;
- Not be excluded from training simply because they work part-time;

- Receive holiday entitlement pro rata to comparable full-timers;
- Have any career break schemes, contractual maternity leave and parental leave made available to them in the same way as for full-time workers; and
- Not be treated less favourably in the criteria for selecting workers for redundancy.

Part-time workers who believe their treatment infringes these Regulations have the right to make a request in writing for a written statement, within 21 days, giving the employer's reasons for the treatment. Employees will be held to be unfairly dismissed (or selected for redundancy), regardless of age or length of service, if the main reason for the dismissal is that:

- They exercised or sought to enforce rights under the Regulations, refused to forgo them or alleged that the employer had infringed them; or
- They gave evidence or information in connection with proceedings brought by an employee under the Regulations; or
- The employer believed the employee intended to do any of these things.

Though only employees may complain of unfair dismissal, workers who are not employees may complain to an employment tribunal that they have suffered a detriment if their contracts are terminated for any of these reasons, compensation being awarded on the same basis as for unfair dismissal. Both employees and other workers are also protected from other detrimental treatment for these reasons.

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 say that fixed-term employees should not be treated less favourably than comparable permanent employees on the grounds they are fixed-term employees, unless this is objectively justified. Any such less favourable treatment must be actually necessary to achieve a legitimate objective and must also be an appropriate way to achieve it. Employees who believe their rights are infringed under these Regulations may present their case to an employment tribunal.

They apply to employees on contracts that last for a specified period of time or will end when a specified task has been completed or a specified event does or does not happen. Examples include employees covering for maternity leave and peaks in demand and employees on task contracts such as setting up a database. An example where less favourable treatment may be justified could be the disproportionate cost of giving a company car to an employee on a short fixed-term contract just because the comparator has one.

Less favourable treatment may be assessed in one or two ways: either each of the fixed-term employee's terms and conditions of employment should not be less favourable than the equivalent treatment given to their comparator or the fixed-term employee's overall package of conditions should not be less favourable.

Fixed-term employees have a right to ask for a written statement setting out the reasons for less favourable treatment if they believe that this may have occurred. The employer must provide this statement within 21 days.

Use of successive fixed-term contracts is limited to four years, unless further fixed-term contracts are justified on objective grounds. However, it will be possible for employers and employees to increase or decrease this period or agree a different way to limit the use of successive fixed-term contracts via collective or workforce agreements. Service accumulated from 10 July 2002 counts towards this four-year limit. If a fixed-term contract is renewed after the four-year period, it is treated as a contract for an indefinite period (unless the use of a fixed-term contract is objectively justified). Fixed-term employees have a right to ask their employer for a written statement confirming that their contract is permanent or setting out objective reasons for the use of a fixed-term contract beyond the four-year period. The employer must provide this statement within 21 days.

Any ***redundancy waiver*** that is included in a fixed-term contract which is agreed, extended or renewed after 1 October 2002 will be invalid.

Fixed-term employees should receive information on permanent vacancies in their organisation.

The end of a task contract that expires when a specific task has been completed or a specific event does or does not happen counts as a dismissal in law; so does non-renewal of a fixed-term contract concluded for a specified period of time.

Rehabilitation of offenders

Broadly speaking, anyone who has been convicted of a criminal offence and who is not convicted of a further offence during a specified period (the 'rehabilitation period') becomes a 'rehabilitated person' and the conviction becomes spent. This means it does not have to be declared for most purposes, such as applying for a job. The rehabilitation period depends on the sentence and runs from the date of conviction. A conviction resulting in a prison sentence of more than 30 months can never become spent.

Under the Rehabilitation of Offenders Act 1974, a spent conviction – or failure to disclose a spent conviction or any circumstances connected with it – is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for prejudicing a person in any way in any occupation or employment. However, there are some exceptions to the Act (which relate broadly to work with children, the sick, disabled people and the administration of justice). Where an exception applies, an individual must, if asked, disclose all convictions including spent ones.

Complaints and remedies

Statutory procedures for resolving disputes in the workplace

Employers and employees are generally required to follow a minimum three-stage process to ensure that disputes at work are discussed. The new minimum procedures create a framework for dealing with dismissal, disciplinary action and grievance issues, but are not intended to replace established effective procedures. The three steps consist of (1) a letter outlining the problem; (2) a meeting to discuss the matter and (3) an opportunity to appeal at a further meeting. Employees who have not been able to resolve a grievance through discussion should attempt to complete the three-step procedure. In a case where the statutory grievance procedure applies, if the employee does not complete step 1 and wait 28 days, his/her claim will not be accepted by an employment tribunal. Where an employer or employee is found not to have fully complied with these procedures, employment tribunals will impose financial penalties.

Detailed guidance is available on the DTI website www.dti.gov.uk/employment/Resolving_disputes/index.html

Further help and advice can be found on the Acas website www.acas.org.uk and by contacting their helpline on 08457 47 47 47. See also www.businesslink.gov.uk

The Acas Arbitration Scheme

The Acas Arbitration Scheme provides an entirely voluntary alternative to an employment tribunal hearing in cases of unfair dismissal or flexible working. Arbitration is an effective method of resolving a dispute in which an independent arbitrator's decision is binding as a matter of law and has the same effect as a court judgement. The scheme is confidential, relatively fast, cost efficient, non-legalistic and informal.

The Scheme covers England, Wales and Scotland for claims of unfair dismissal and flexible working.

Detailed guidance on using Acas Arbitration for Unfair Dismissal or Flexible Working applications can be obtained on the Acas website (www.acas.org.uk) or by ringing the Acas Arbitration Scheme section on 0207 210 3742.

Making a claim to an employment tribunal

Before a claim to an employment tribunal is accepted it must meet certain conditions. It must be on an approved form provided by the Employment Tribunals Service and certain information must be provided.

Once a claim is accepted the tribunal office will send a copy to the employer together with a response form which the employer must return within 28 days. If the employer needs more time to complete the form they must write to the tribunal within this 28 day time limit and ask for an extension of time giving full reasons of why the extension is needed. A chairman will then decide whether to grant an extension. The office will generally send a copy of the form to a conciliator at Acas who will try to help the two sides settle the case, if they wish to avoid the need for a tribunal hearing. The booklet *Making a claim to an Employment Tribunal* explains the procedure and contains a claim form with guidance on how to complete it. It is available from Jobcentre Plus offices, Citizens Advice Bureaux, employment tribunal offices, online at www.employmenttribunals.gov.uk/pdfs/english/Making_a_claim.pdf or from the employment tribunals public enquiry line on 0845 795 9775.

Pre-hearing review

A chairman may conduct a pre-hearing review of a case as a result of a request by either party or on the chairman' own initiative. Pre-hearing reviews are held to:

- Decide whether the claim or response should be struck out;
- Decide questions of entitlement to bring or defend a claim;
- Decide, if either side's case appears weak, whether a deposit needs to be paid, and if so, how much, before that side go can ahead.

Tribunal hearing

A tribunal normally consists of a legally qualified chairman and two lay members; but in certain circumstances the chairman may sit alone.

Most hearings are heard at permanent tribunal offices although additional centres are hired where necessary. Both parties should attend. They may claim traveling and other expenses within certain limits, but not the cost of any legal representation.

Tribunals try to keep their proceedings as simple and informal as possible. Many claimants and respondents put their own cases to the tribunal although some may choose to have a representative, who may be a lawyer, trade union official, representative of an employers' organisation, or simply a friend or colleague.

Time limits

Claims to an employment tribunal must normally be made **within three months** of the date of the infringement of the right. Exceptions to this general rule are detailed in the documents about the particular individual rights. In certain cases, particularly where the statutory disciplinary and dismissal or grievance procedure applies, the three months may be extended to six months to allow the dispute to be resolved without involving the tribunal.

Remedies

In cases where particulars of the written statement of employment are disputed, the tribunal will decide what the correct particulars should be. In other cases, where an employer is found not to have complied with one or more statutory provisions, the tribunal may award compensation to be paid by the employer to the employee. If the tribunal decides that the employee has been unfairly dismissed, the remedy will be either re-instatement, re-engagement or monetary compensation, depending on the circumstances. A compensatory award will be reduced, however, if the tribunal finds the employee partly to blame for the dismissal or because the employee did not mitigate his or her loss – for example, by making reasonable efforts to obtain another job.

The use or non-use of an internal appeals procedure, where available, may also be taken into account in calculating the award, up to a maximum of two weeks' pay.

If either an employer or the employee has failed to follow a statutory disciplinary or grievance procedure where appropriate, the award may be reduced or increased by up to 50 per cent.

If the tribunal finds someone has been discriminated against on grounds of race, sex or disability, it may make one or more of the following:

- A declaration of the rights of those involved;
- A recommendation that the employer take action to remedy the discrimination; or

- An award of compensation. There is no statutory maximum on awards for sex, race, or disability discrimination; and such awards may also include an amount for injury to feelings.

Costs, preparation time and wasted costs orders

A tribunal or chairman has the power to award up to £10,000 costs against a legally represented party where it finds that the case was misconceived and had no reasonable prospect of success; or where a party, or party's representative, has behaved vexatiously, abusively, disruptively or otherwise unreasonably in conducting the proceedings. If a party is not legally represented a tribunal or chairman may order one party to make a payment for the preparation time of another party. If a representative acts improperly, unreasonably or is negligent a wasted costs order can be made against them.

Breach of contract claim

Employees who suffer a measurable financial loss because their employer has departed from the agreed terms of their contract of employment (or of any other contract connected with employment) can seek damages by making a breach of contract claim. Normally this must be made to a county court or other civil court but if the employment has ended and if the amount of compensation they are claiming is less than £25,000, it may be made to an employment tribunal. Further details are given in the document *Contracts of employment: changes, breach of contract and deductions from wages*

www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16161.html

Employer's counter-claim

Employers who suffer a measurable financial loss because an employee has departed from the agreed terms of the contract of employment (or of any other contract connected with employment) can seek damages by making a breach of contract claim – or, if the employee has already claimed breach of contract to the tribunal, a counter-claim. Again, such a claim must normally be made to a county court or other civil court but where the employment has ended, and if it is in response to a existing breach of contract claim that an employee has already made to an employment tribunal, it may be made to an employment tribunal. Further details are given in the document *Contracts of employment: changes, breach of contract and deductions from wages*.

Further information

Further information on employment tribunals can be found on their website www.employmenttribunals.gov.uk or you can ring the employment tribunals public enquiry line on 0845 795 9775. The helpline can give information on tribunal procedures and publications, but cannot provide legal advice.

Advisory, Conciliation and Arbitration Service (Acas)

Acas has a general duty of promoting the improvement of employment relations. It can supply information on legislation and advise on a wide range of employment matters. Employers and employees can request assistance from Acas conciliators to help settle disputes. In most cases where employees or trade unions have a complaint against an employer that they could take or have taken to an employment tribunal, an Acas conciliator can help the parties try to settle the case without the need for a tribunal hearing.

Acas conciliation, in cases which are or could be the subject of complaints to employment tribunals, is explained in the leaflet *Conciliation explained*, available from the Acas publications orderline 08702 42 90 90. The Acas Code of Practice *Disciplinary and grievance procedures* www.acas.org.uk/media/pdf/l/p/CP01_1.pdf aims to help employers, workers and their representatives by giving practical guidance on how to deal with disciplinary and grievance issues. It also has guidance on a worker's right to be accompanied at a disciplinary or grievance hearing.

Failure to observe any part of the Code does not in itself make employers liable to proceedings but it may be used in evidence at an employment tribunal. If the tribunal considers it relevant to any question arising in the proceedings, it must take the Code into account in determining that question. Similarly the Code must be

taken into account by arbitrators appointed to determine unfair dismissal cases under the Acas Arbitration Scheme (see the section *The Acas Arbitration Scheme*).

Acas also publishes two other Codes of Practice: *Disclosure of information to trade unions for collective bargaining purposes* www.acas.org.uk/media/pdf/2/q/CP02_1.pdf and *Time off for trade union duties and activities* www.acas.org.uk/media/pdf/l/q/CP03_1.pdf The same rules apply as regards their use in evidence at employment tribunals.

Further information

Acas www.acas.org.uk Acas helpline 08457 47 47 47

Business link – Practical advice for business
www.businesslink.gov.uk

Citizens Advice www.citizensadvice.org.uk

Commission for Racial Equality (CRE) www.cre.gov.uk

Department for Work and Pensions (DWP)
www.dwp.gov.uk

Directgov/employees www.direct.gov.uk/employees

Disability Rights Commission (DRC) www.drc-gb.org
DRC helpline 08457 622 633 (textphone 08457 622 644)

Employment Tribunals Service
www.employmenttribunals.gov.uk
Employment tribunals public enquiry line 0845 795 9775

Equal Opportunities Commission (EOC) www.eoc.org.uk
EOC helpline 0845 601 5901

HM Revenue and Customs (HMRC) www.hmrc.gov.uk
HMRC's Employers' helpline on 0845 7143 143

Health and Safety Executive (HSE) www.hse.gov.uk
HSE Infoline 0845 345 0055

Jobcentre Plus www.jobcentreplus.gov.uk

Labour Relations Agency (Northern Ireland) www.lra.org.uk
Enquiry point 02890 321442

National Minimum Wage helpline 0845 6000 678

Redundancy Payments Offices
www.insolvency.gov.uk/contactus/rp/officemap.htm
Helpline 0845 145 0004

Women & Equality Unit
www.womenandequalityunit.gov.uk

Further copies of this booklet can be ordered from the DTI Publications Orderline on 0845 015 0010 (quoting URN 06/1833), online at www.dti.gov.uk/publications/index.html or by email from publications@dti.gov.uk

Printed in the UK on recycled paper with a minimum HMSO score of 75.
First published October 2006. Department of Trade and Industry.

DTI/Pub 8378/40k/10/06/NP.
URN 06/1833