



# UNIT-1

## Introduction to UK Employment Laws

### Learning Outcomes

By the end of this unit the learner will be able to:

- ✓ Understand the basics of UK employment laws from an employer's perspective
- ✓ Discuss how the UK's withdrawal from the EU affect employment law
- ✓ Differentiate between the three main sources of employment law in the United Kingdom

# Unit 1

## The Legal Framework

Employment law in the United Kingdom is derived from three main sources:

- Common Law
- Statute and
- European Law (European Directive and decisions of the European Court of Justice).

Obviously, law will no longer be sourced from Europe once Brexit is implemented, but it is expected that the UK will choose to keep European-sourced legislation in domestic law.

### Common Law

All employees are bound by an employment contract with their employer. The legal basis for the employment relationship is this. The employment contract does not have to be written, but it is commonly done. If the employee is based in England or Wales, certain mandatory statutory employment protection rights will apply regardless of the contract. Furthermore, tort law will govern issues such as an employer's liability for its employees' actions and liability for workplace accidents.

### Statute

The following are some of the most important labour laws:

- Employment Rights Act of 1996: This Act addresses issues such as wrongful dismissal, redundancy payments, wage protection, zero-hour contracts, Sunday work, and suspension from work, flexible working, and termination of employment.
- National Minimum Wage Act 1998: The National Minimum Wage Act 1998 establishes the legal framework for the United Kingdom's national minimum wage. This is reviewed on a regular basis by the government in order to keep it in line with inflation and other factors.
- Employment Relations Act of 1999: Establishes a number of workplace rights, including trade union recognition, de-recognition, and strike action.

The Maternity and Parental Leave etc. Regulations 1999 establishes parental leave rights for employees in the United Kingdom.

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

- The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 are a UK labour law measure that requires employers to treat part-time workers in the same way as full-time workers doing the same jobs.

- Transfer of Undertakings (Protection of Employment) Employees have rights under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE ), which were enacted in 2006, when a business was transferred to a new owner.
- The Equality Act 2010: The Equality Act 2010 protects people in the workplace and in society from discrimination. It consolidated previous anti-discrimination laws into a single Act, simplifying the law and strengthening protection in certain situations.
- The Agency Workers Regulations of 2010: This Directive establishes a general framework for temporary agency workers' protection.
- The Data Protection Act of 2018 regulates how organisations, businesses, and the government use your personal information.

### **The Effects of the EU Withdrawal on Employment Law**

Acts of Parliament and case law are the main sources of employment law in the United Kingdom. After the UK joined the European Economic Community (later the European Union) in 1973, European law became a new source, and the EU's impact on employment regulation grew significantly when the UK joined the Maastricht Treaty's Social Chapter in 1997.

On January 31, 2020, the United Kingdom formally exited the European Union. Following that, 11 months of negotiations resulted in an agreement on how the UK's future relationship with the EU would be managed. In terms of employment law and workers' rights, the agreement contains a "non-regression" clause. In practise, this means that, starting in 2021, the UK will no longer be bound by EU employment law, but it has agreed not to reduce the level of existing social protection in a way that would distort competition.

The withdrawal will not, in and of itself, repeal all of the UK's employment or immigration laws. The European Communities Act of 1972 will need to be repealed, but many of the UK's employment laws come from Europe or are based on European Directives that have been implemented through other UK legislation. Each law would have to be amended or repealed individually. Following the UK's exit from the EU, opinions differ on which, if any, employment laws will be repealed.

### **Worker Types in the United Kingdom**

In the United Kingdom, there have traditionally been three types of workers: self-employed independent contractors, agency workers or temps, and employees, each with different employment protection rights. However, in recent years, a fourth category, referred to as "workers," has emerged. This category, perplexingly, overlaps with the others.

**Self-employed/independent contractors** In essence, an independent contractor is someone who runs a business on their own dime and is responsible for making all of the job-related decisions.

A relationship of this nature has benefits for both the employer and the individual; the employer is exempt from most statutory employment protection legislation, and the individual benefits from a favourable tax situation. However, the courts and HM Revenue & Customs (HMRC) are increasingly scrutinising these types of relationships (formerly the Inland Revenue). The fact that

both parties to the relationship label an individual as an independent contractor is not the deciding factor.

The most important considerations, according to recent decisions, are whether there is mutuality of obligations and whether the contractor is obligated to do the work personally. If there is, the court and/or HMRC will almost certainly determine that the relationship is one of employer and employee.

### **Temps or Agency workers**

An employment agency employs or engages some workers, who then provide their services to the hirer. Although the hirer will be responsible for certain statutory obligations (e.g., discrimination and health and safety laws), the agency worker will not be entitled to many of the employment protection rights that employees enjoy.

The majority of agency workers are hired for short-term assignments, but it is not uncommon for them to last several months or even years. However, if an agency worker is used by a hirer for an extended period of time and other facts point to an employer/employee relationship, the agency worker may be able to sue the hirer directly for employment rights (even if there is no contract directly between the agency worker and the hirer).

### **Employees**

In the United Kingdom, the vast majority of workers are employed by the company to which they provide their services. Other than what may be written into their employment contracts, there is no legal distinction between blue collar workers, white collar workers, and senior directors, as there is in some EU countries? All employees, regardless of their status, are covered by the common law and statutory employment protection legislation.

Employees have more statutory employment protection rights than independent contractors and agency workers as long as they meet the relevant qualifying conditions. An employee will have the right not to be unfairly dismissed after one year of service, in particular.

### **Workers**

In UK law, the concept of a separate legal category of "workers" is relatively new. The idea is based on European law. In general, a worker is someone who works under an employment contract or another contract that requires them to provide personal services. Furthermore, the organisation to which the individual is providing their services must not be a client or customer of their profession or business to qualify as a worker. As a result, some independent contractors may be considered workers.

Workers have fewer rights than 'full-time' employees, but they still have rights regarding the number of hours they work, the amount of annual leave they can take, and the pay they receive.

### Employment Courts in the United Kingdom

There are three forums in which a worker's legal disputes with their employer are resolved:

- Employment Tribunals,
- The common law courts (the High Court or County Court) and
- The Advisory Conciliation & Arbitration Service ("ACAS"), which is a government-run arbitration scheme.

### Employment Tribunals

These are specialised employment courts that hear the majority of disputes between employers and the employees they hire. They primarily deal with claims brought under employment protection legislation, such as discrimination and unfair dismissal.

Compensation awards for unfair dismissal are capped at £89,493. This means that if your annual gross pay exceeds £89,493, a tribunal cannot award you more than £89,493.

There's also a limit on how much you can get if you earn less than £89,493. One year's gross pay is the limit. Regardless of how much you've calculated your claim is worth, a tribunal can't award you more than this. If you were fired on or after April 6, 2021, you are subject to these restrictions.

The compensation cap is £88,519 if you were fired on or after April 6, 2020.

### Common Law Courts

Instead of going to the Employment Tribunal, an employee who wants to bring a contractual claim (such as for notice pay) can go to the High Court or the County Court. In general, if a claim is worth more than £15,000, it must be filed in the High Court. The process in the High Court and County Court is generally more formal and lengthy than in the Employment Tribunal, though the successful party can usually recover the majority of their costs from the unsuccessful party, which they cannot in the Employment Tribunal.

### ACAS Arbitration Scheme

This is a voluntary scheme that went into effect on May 21, 2001, with the goal of providing a faster, less legalistic, and less expensive alternative to Employment Tribunals. It is currently only available for the resolution of simple unfair dismissal complaints and disputes over flexible working arrangements. To participate in the scheme, both parties must agree. The hearing is held in private before a single ACAS arbitrator, who has the authority to award the same remedies as an Employment Tribunal.

### Further Reading:

- ✓ *ACAS (2009) Code of Practice on Disciplinary and Grievance Procedures. Better Regulation Executive (2010) Lightening the Load: the Regulatory Impact on UK's Smallest Businesses*
- ✓ *Carley, M. (2010) International: PPR Signs Charter on Stress Prevention with EWC, European Employment Review, IRS.*