



UNIT-4

Rights During Employment

Learning Outcomes

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

- ✓ Understand the rights every employee has when working for an employer
- ✓ Discuss the exemptions to certain rules regarding employee rights
- ✓ Understand sick pay, holiday leave and other important employee entitlements

Unit 4

Rights during Employment

Overview

In the United Kingdom, there are approximately 4 million limited companies with up to 21 million full-time employees. Both employers and employees in the United Kingdom are protected by employment laws. These laws protect workers' rights while also safeguarding an employer's interests and keeping the relationship between the two fair. They provide legislation on dismissal, holidays, pay, discrimination, and more.

Working Hours

Maximum Working Hours

According to the Working Time Regulations of 1998, employers must take all reasonable steps to ensure that employees do not work more than 48 hours per week on average. This average is based on a 17-week reference period (which is extended to 26 weeks for certain workers). To demonstrate compliance with these provisions, employers must keep records for two years. Recent cases have suggested that time spent “on-call” by a worker may be considered working time and thus count towards the 48-hour limit, even if the employee is not actually working at the time.

Opt-out Agreements

Workers can sign a written agreement to waive the 48-hour weekly limit. The worker must have the right to terminate the opt-out agreement with no more than three months' notice in the opt-out agreement. Opt-out agreements must be voluntarily entered into, and it is illegal to victimise or dismiss a worker for refusing to sign one. It would be illegal, for example, to require a prospective employee to sign an opt-out agreement as a condition of employment.

Night Workers

Over a 17-week reference period, employers must take all reasonable steps to ensure that night workers' normal working hours do not exceed an average of 8 hours in any 24-hour period. Before starting night work, and at regular intervals thereafter, night workers must be given the opportunity to receive a free health assessment. If a registered medical practitioner informs the employer that a worker is experiencing health problems as a result of night work, the employer must transfer the worker to suitable day work as soon as possible.

Rest periods are important.

Adult workers (those over the age of 18) are entitled to a rest period of at least 11 hours in each 24 hour working period, subject to certain exceptions. Adult workers are also usually entitled to a minimum of 24 hours of uninterrupted weekly rest (which may be made up of two weekly rest periods of at least 24 hours in each 14 day period or a single rest period of at least 48 hours in each 14 day period). For young workers, the minimum weekly rest period is usually 48 hours.

Finally, employees who work for at least six hours have the right to a rest break away from their desk. The rest break should be at least 20 minutes long if there isn't a workforce or collective agreement that specifies it. Aside from these specific obligations, there is a general requirement that workers be given adequate work breaks if their work pattern puts their health and safety at risk, particularly if the work is monotonous or the work rate is predetermined.

Exemptions

None of the preceding provisions apply to workers who are able to set their own working hours or who do not have their working time measured or predetermined (such as managing executives). Furthermore, the 48-hour weekly limit does not apply to workers whose time is partly measured or predetermined but who may also perform additional work, the duration of which is not measured or predetermined (such as voluntary overtime).

Young Employees. Employers must take all reasonable measures to ensure that young workers (those under the age of 18) do not work more than 8 hours per day or 40 hours per week. These limits are not averaged over a reference period, unlike the 48-hour weekly limit for adult workers. Young workers do not have the option of opting out of the limits. Employers must also take all reasonable measures to ensure that young workers do not work between the hours of 10 p.m. and 6 a.m.

Benefits and Salary

National Minimum Wage

Most workers, including home and piece workers, are entitled to a minimum gross hourly wage under the National Minimum Wage Act of 1988. The rate is usually increased once a year, based on the Low Pay Commission's recommendations.

The following increases will take effect on April 1, 2021:

- The National Living Wage (for those aged 23 and up) has increased by 2.2 percent, from £8.72 to £8.91.
- The National Minimum Wage has increased by 2%, from £8.20 to £8.36.
- The National Minimum Wage (18-20) has risen by 1.7 percent to £6.56.

- The National Minimum Wage (for those under the age of 18) has risen by 1.5 percent, from £4.55 to £4.62.
- From £4.15 to £4.30, the apprentice rate has increased by 3.6 percent.

This hourly rate is determined by averaging the relevant pay reference period, which is usually the actual pay period (i.e. usually one week or one month). Bonuses paid during the reference period and tips paid through payroll are included in the calculation of "pay," but advances or loans to the worker are not. In most cases, the value of in-kind benefits is not taken into account when calculating pay.

Itemised Pay Statements

At or before the time of payment, all employees must be given an itemised pay statement detailing the gross amount of wages, any deductions (such as for tax and national insurance contributions), the net wages payable, and, where parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

Tax and Social Security Contributions

Employers are required to deduct income tax directly from employees' salaries and pay it to HMRC on a monthly basis under the Pay as You Earn System (PAYE). Furthermore, on the cash remuneration paid to employees, both employers and employees must pay National Insurance Contributions ("NIC").

For 2020/21, the rates of National Insurance contributions (NICs) for employees and employers remain unchanged. NICs are charged at a rate of 12 percent on all earnings between the primary threshold and the upper earnings limit, and 2% on earnings above the upper earnings limit for employees. NICs are levied at a rate of 13.8 percent on earnings above the secondary threshold for employers. For 2020/21, the primary threshold is £183 per week, and the secondary threshold is £169 per week. For 2020/21, the upper earnings limit has been set at £962 per week to keep it in line with the income tax higher rate threshold.

Deductions from Wages

Except in limited circumstances (for example, when a deduction is made to reimburse the employer for any overpayment of wages or expenses), no deduction from a worker's wages may be made unless the deduction is required or permitted by statute or contract, or the worker has given their prior written consent to the deduction.

Not only could sums wrongfully deducted be ordered repaid to the employee, but the employer could also lose the right to recover the sums it was attempting to deduct. As a result, it's a good idea to include a provision in an employee's contract that gives the employer the right to deduct wages in order to recover any amounts owed to the employee.

This is especially important if the employee has taken more vacation time than they have accrued and the employer wishes to recover the difference by deducting it from the employee's final salary payment.

Non-cash Benefits

Employers are not required by law to provide non-cash benefits to employees, with the exception of pensions (see below). Many contracts, however, expressly provide for a variety of benefits in addition to the basic salary.

Private medical expenses insurance, long-term disability insurance (also known as Permanent Health Insurance), death in service benefit, a company car (or a car allowance), and participation in commission, bonus, or profit sharing schemes are all common benefits given to employees in the United Kingdom.

Pensions

Stakeholder Pension Schemes.

A money-purchase plan primarily for employees or the self-employed that provides retirement benefits. A UK employer with five or more employees was required to designate a stakeholder pension plan for its employees until October 1, 2012, if the employer did not provide an occupational pension scheme or contribute at least 3% of earnings to a group personal pension plan.

Employee contributions had to be deducted from pay and remitted to the stakeholder scheme provider, but the employer was not required to contribute to the scheme itself.

With effect from October 1, 2012, the requirement to designate a stakeholder scheme was repealed, and new duties on UK employers to automatically enrol eligible workers in an automatic enrolment scheme have taken its place.

Exemptions

If an employer meets the following criteria, he or she will be exempt from the requirement to designate a stakeholder pension scheme:

- It has fewer than five employees (after three years, this exemption will be reviewed);
- when an employer provides a personal pension that meets certain requirements;
- where all employees earn less than the Lower Earnings Limit for National Insurance;
- To an employer who offers an occupational scheme to all new employees within the first year of employment (except those aged under 18 or within 5 years of retirement).

Employees who are not covered

Employers are not required to offer stakeholder pensions to:

- Employees who are eligible to join an existing occupational scheme within the first year of employment (see above);
- Someone who has been working for less than three months;
- an employee whose earnings for at least three months have not equaled or exceeded The National Insurance Lower Earnings Limit;
- An employee who is under the age of 18 or is within 5 years of the scheme's normal pensionable age and is unable to join their employer's occupational pension scheme;
- An employee who is unable to make contributions because of an Inland Revenue restriction.

Employers who are not required by law to provide stakeholder pension access may choose to do so on a voluntary basis.

Holidays

Holidays and Public Holidays

Although employees do not have a legal right to paid vacation time on bank and public holidays, most employment contracts do. These are the holidays in England, Wales, and Scotland: The first and second Mondays in January (except in Scotland), Good Friday and Easter Monday (except in Scotland), the first Monday in May, and the Spring Bank Holiday (Usually the last Monday in May), the 25th and 26th of December, and the August Bank Holiday (usually the last Monday in August)

Minimum Annual Leave

Entitlement

Almost all employees are entitled to 5.6 weeks of paid vacation per year (known as statutory leave entitlement or annual leave).

This includes the following:

- Employees who work for an agency
- Employees who work odd hours
- Workers employed on a zero-hours contract

Bank holidays can be included in statutory annual leave by an employer.

Except for carryover leave, workers' entitlement to holiday pay and leave is unaffected by the Coronavirus (COVID-19).

Annual leave is a legal requirement.

Most 5-day workers are entitled to at least 28 days of paid annual leave per year. This equates to 5.6 weeks of vacation time.

Part-time Employment

Part-time workers are entitled to at least 5.6 weeks of paid vacation, but this will be less than 28 days in most cases.

If they work three days a week, for example, they must take at least 16.8 days off per year (3 X 5.6).

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Irregular hours

People who work irregular hours (such as shift workers or term-time employees) have the right to paid time off for each hour they work.

Statutory leave restrictions

The amount of statutory paid vacation time is limited to 28 days. Employees who work six days a week, for example, are only entitled to 28 days of paid vacation.

Public holidays

Bank or public holidays are not required to be paid days off.

Employers have the option of including bank holidays in a worker's statutory annual leave.

Because the Regulations only set the minimum requirements, the contract of employment may include more generous provisions regarding annual leave.

The procedure to be followed when an employee wishes to take annual leave may be specified in the employment contract. In the absence of any contractual provisions, the employee must give at least twice the amount of time they intend to take off. By giving him notice of the requirement, the employer may also require the employee to take all or part of their leave on specific dates.

When a worker's employment is terminated and they have not used all of their accrued minimum leave, the employer is required to compensate them for the time they have not used. Similarly, if an employee's accrued annual leave entitlement has been exceeded, the contract of employment may include an obligation for the employee to reimburse the employer.

Sick Pay

SSP stands for Statutory Sick Pay. For days when they are unable to work due to illness, all employees earning over the weekly lower earnings limit for National Insurance Contributions are entitled to SSP.

For employees who are too ill to work, the SSP rate in 2021-22 is £96.35 per week for up to 28 weeks. In 2020-21, the SSP rate was £95.85 per week.

The rules governing SSP payment are complicated, but the following are the most important:-

- a) In any period of entitlement, a maximum of 28 weeks of SSP is available;
- b) An employee is not entitled to SSP for the first three days of any absence (unless it is a recurring absence within a specified timeframe); and
- c) The employee must provide proof of incapacity for work (such as a self-certificate or a doctor's certificate) to the employer.

Contractual Sick Pay

Because the rate of SSP is typically much lower than most employees' weekly salary, many employers have contractual sick pay arrangements in place where employees are paid their full salary for a set number of sick days per year.

SSP due on the same day is offset by any contractual sick pay paid to an employee. As a result, if an employee is eligible for both SSP and contractual sick pay on the same day of absence, the higher of the two amounts will be paid.

Maternity Leave

Time Off for Ante-natal Care

Pregnant employees are entitled to paid time off to attend ante-natal appointments scheduled on medical advice. The employer can require the employee to produce a medical certificate confirming that she is pregnant, as well as a document proving that the appointment has been made, except in the case of the first appointment.

Maternity Leave

Employees who are pregnant (regardless of length of service) are currently entitled to 26 weeks of Ordinary Maternity Leave ("OML"), which can be taken at any time beginning the 11th week prior to the expected week of childbirth ("EWC"). Employees who have worked for 26 weeks by the start of the 14th week before the EWC are eligible for Additional Maternity Leave ("AML"), which begins at the end of the OML and can last up to 26 weeks.

Throughout OML, all contractual benefits, with the exception of wages or salary, are still payable. Throughout the AML, only a few rights and benefits (such as redundancy rights and the right to notice of termination) are preserved.

Unless it is not reasonably practicable, an employee must notify her employer by the 15th week before her EWC to be eligible for maternity leave. If an employee changes her mind about when she wants to take maternity leave, she must give her employer 28 days' notice. If an employee is absent from work for a pregnancy-related illness in the four weeks leading up to her EWC, maternity leave is automatically triggered.

Maternity Pay

SMP (Statutory Maternity Pay) is paid for up to 39 weeks of maternity leave. You will receive:

- For the first six weeks, 90 percent of your average weekly earnings (before taxes)
- For the next 33 weeks, SMP is paid in the same way as your wages, at £151.97 or 90% of your average weekly earnings (whichever is lower) (for example monthly or weekly). Tax and NI will be taken out of the equation.

Returning to Work Rights

If the employee intends to return to work before the end of her full OML or AML entitlement, she must give her employer 28 days' notice. There is no need to give notice if she intends to return to work when the OML or AML expires. When an employee returns from maternity leave, she is entitled to the same job she had before going on leave.

Unless it is not reasonably practicable to do so, an employee returning from AML is entitled to return to the same job, in which case she must be offered suitable alternative employment. If a redundancy occurs while an employee is on maternity leave, the employer must offer her a suitable alternative position if one is available, or the redundancy will be automatically considered unfair.

Contractual maternity rights

Many employers have contractual maternity plans that provide benefits in addition to the statutory plan. Employers may agree to pay full salary for all or part of the maternity leave period, for example.

Some employers stipulate that any enhanced contractual payments must be repaid if the employee does not return to work for a set period of time after her maternity leave ends.

Paternity Leave

Paternity Leave is a type of parental leave for employees who:

- Anticipate being in charge of the child's upbringing;
- Are the biological father or the husband or partner of the mother, and
- Are eligible for two weeks of paternity leave if they have completed 26 weeks of service by the 15th week before the baby is due. The leave must be completed within 56 days of the child's birth date (or, if the child is born early, within 56 days of the EWC).

If you want to change your start date, you must give your employer 28 days' notice.

Paternity leave is a two-week entitlement that is paid at the statutory rate of £151.20 per week. Returning to work rights following paternity leave, employees are entitled to return to their previous position.

Leave For Adoption

Adoption Leave is a 52-week statutory leave. It is made up of the following components:

- Ordinary Adoption Leave of 26 weeks
- Additional Adoption Leave of 26 weeks

Adoption leave is only available to one person in a couple. Instead, the other partner might be eligible for paternity leave.

After you've been matched with a child, you'll be able to take paid time off work to attend 5 adoption appointments if you've been granted adoption leave.

Date of Commencement

Adoption leave can begin at any time:

- Up to 14 days before the child is supposed to move in with you (UK adoptions)
- Within 28 days of the child's arrival in the United Kingdom (overseas adoptions)
- The day the child is born (if you used a surrogate to have a child) or the day after (if you used a surrogate to have a child)

Statutory Adoption Pay

Adoption by Statute Pay is made for a maximum of 39 weeks. The weekly amount is as follows:

- For the first six weeks, 90 percent of your average weekly earnings
- £151.97 or 90% of your average weekly earnings for the next 33 weeks (whichever is lower).

It is compensated in the same way as your salary (for example monthly or weekly). Tax and NI will be taken out of the equation.

Rights on Returning to Work.

Employees who wish to return to work before their full adoption leave is completed must give their employer 28 days' notice. If an employee wishes to return after taking their full adoption leave, no notice is required.

Employees who return from OAL are entitled to the same job they had before going on leave. Unless it is not reasonably practicable to do so, an employee returning from AAL is entitled to return to the same job, in which case they must be offered suitable alternative employment.

Paternity Leave has a relationship with this. Adoption leave is only available to one member of a couple who adopts together. Paternity leave may be available to the other, and paternity leave may also be available to the partner of someone who adopts a child but does not adopt the child themselves.

It is not necessary for an employee taking paternity leave to be the biological or adoptive father of the child if they are the mother's or adoptive parent's male or female partner and expect to be responsible for the child's upbringing.

Leave for Parents

Parental Leave is a legal right.

Parental leave was created to allow parents to take time off work to care for their children. It can be used by parents to spend more time with their children and strike a better balance between work and family obligations.

Employees who are eligible can take unpaid parental leave to look after their children's needs, such as:

- Invest more time in their children's lives
- Investigate new schools
- Acclimate kids to new childcare arrangements
- Spend more time with family, such as going to the grandparents' house.

During parental leave, their employment rights (such as the right to pay, take vacations, and return to work) are protected.

Entitlement

Parental leave is not compensated. Employees are entitled to 18 weeks of paid leave for each child or adopted child up to the age of 18.

The maximum amount of parental leave a parent can take in a year is four weeks per child (unless the employer agrees otherwise).

Rights on Returning to Work.

Employees who take 4 weeks or less of parental leave are entitled to return to the same job with the same terms and conditions. If the employee takes more than 4 weeks of leave or leaves right after Additional Maternity Leave, they must be allowed to return to their previous job unless it is not reasonably practicable to do so, in which case they must be offered suitable alternative employment.

Time Off For Dependents

Right to take Time Off

All employees (regardless of length of service) have the right to take "reasonable" unpaid time off work to deal with a dependent's emergency. According to the government's guidance, dealing with a specific incident should take no more than one or two days in most cases.

As soon as reasonably practicable, the employee must inform the employer of the reason for their absence and the length of time they expect to be gone. The following situations are exempt from the right to take time off:-

- a) To assist a dependent who becomes ill, gives birth, or is injured or assaulted, or to make arrangements for the care of a dependent who becomes ill or injured;
- b) In the event of the death of a dependent;
- c) Because a dependent's care arrangements were abruptly disrupted or terminated;
or
- d) To handle an unplanned incident involving an employee's child that occurs while the child is at school.

Definition of Dependent

A dependent is defined as the employee's spouse, child, or parent, or someone else living in the same house as part of the family for the purposes of situation (b) above (e.g. unmarried partners or step-children).

The definition is widened to include anyone who reasonably relies on the employee for assistance or to arrange care if they are ill or injured in situation (a).

Anyone who reasonably relies on the employee to make arrangements for their care if it is disrupted or terminated will be considered a dependent in situation (c).

Flexible Working

The ability to request flexible working hours

Flexible working is a way of working that accommodates an employee's needs, such as allowing employees to work from home or having flexible start and finish times.

Not just parents and carers, but all employees have the legal right to request flexible working hours.

To be eligible, employees must have worked for the same company for at least 26 weeks.

What Employers must do

Requests must be handled in a 'reasonable manner' by employers.

The following are some examples of how to handle requests in a reasonable manner:

- Determining the application's benefits and drawbacks
- Holding a meeting with the employee to discuss the request
- Providing an appeals procedure

Types of Flexible Work Arrangements

Working flexibly can be done in a variety of ways.

Job Sharing

Two people split the hours and do one job.

Working from Home

Some or all of the work could be done from home or somewhere else other than the usual workplace.

Part-time Work

Working fewer hours than a full-time employee (usually by working fewer days).

Compressed Hours

Working full-time hours but over a shorter period of time.

Flexitime

The employee can choose when to begin and end work (within agreed-upon parameters), but must work certain 'core hours,' such as 10 a.m. to 4 p.m. every day.

Annualised hours

The employee is required to work a certain number of hours over the course of the year, but they have some scheduling flexibility. There are sometimes 'core hours' that an employee works every week, and the rest of their hours are flexibly worked or when there is an increase in demand at work.

Staggered Hours

The employee's start, finish, and break times differ from those of other employees.

Retirement in Stages

The age of default retirement has been phased out, and older workers now have the option of choosing when they want to retire. As a result, they will be able to reduce their working hours and work part-time.

Union Membership

Every employee has the option to join or not join a trade union. Offering employees financial incentives to relinquish their trade union rights is now against the European Convention on Human Rights, according to a recent decision by the European Court of Human Rights.

If the employer recognises the trade union (and in some cases, the employer is required to do so), the employee will have certain rights to participate in trade union activities. Employees are also protected from dismissal and disciplinary action based on their membership, or lack thereof, in a trade union.

Further Reading:

- ✓ *Employment Law for Business by Dawn Bennett-Alexander , Laura Hartman*
- ✓ *Legal Protection for the Individual Employee by Kenneth Dau-Schmidt, Matthew Finkin, Robert Covington*