

YOUR LEGAL RIGHTS AT WORK

MEMBERS' FACTCARD



BECTU

a sector of Prospect

YOUR RIGHTS AT WORK

This factcard outlines your rights at work as of 1 January 2017. It only covers the legal minimum requirements - in most cases your contract of employment will offer better terms, so the rights in your contract will apply.

Your rights cannot be weaker than the legal minima. Always check the contractual terms that apply to you as these may be recorded in:

- your written contract
- a statement of terms and conditions
- a staff handbook/intranet
- your letter of appointment, or
- company rules.

The information set out here cannot cover all circumstances, so always seek advice from your BECTU representative or negotiations officer.

EMPLOYMENT STATUS

All the rights referred to here apply to employees ie people who work under a contract of service. Some also apply to a broader group of workers, such as zero hours contract workers, consultants or freelancers.

All workers have legal rights in respect of:

- discrimination on grounds of a protected characteristic
- working time
- right to be accompanied by a trade union representative at disciplinary or grievance hearings
- part-time working
- national minimum/living wage.

Many who are self-employed (sole traders) qualify as workers under European law and have access to a limited range of rights such as holiday pay and the national minimum/living wage. See recent legal cases involving Uber, Deliveroo, Addison Lee and City Sprint. Only the self-employed set up as a limited company are excluded from workers' rights. Seek advice if you are unsure whether you are an employee or self-employed with worker rights in law. Members will find more information on employment status in our Tax Guide for Freelancers (www.bectu.org.uk/tax-guide)

WHO IS COVERED

The rights outlined apply to members in England, Wales and Scotland (Great Britain). Members in Northern Ireland have, broadly speaking, the same rights as those in Great Britain, but there are some important differences addressed below. BECTU members should consult their BECTU rep or official for advice/support. There are differences for the Isle of Man and the Channel Islands. Most statutory rights apply to Crown Servants, though there are some exceptions, e.g. they are excluded from the statutory scheme as they have their own redundancy pay scheme. If you have any queries seek advice from your rep or full time official.

Some rights apply to all employees while others depend on length of service. Subject to some service requirements, all employees have the same statutory rights regardless of whether they work full or part time, or are employed on a casual, fixed-term or indefinite contract.



WRITTEN STATEMENT OF TERMS AND CONDITIONS

All employees are entitled to receive a written statement of their terms and conditions of employment within two months of starting work. This must include the following details or state where they can be found:

- names of employer and employee
- date employment began
- date of continuous employment
- scale or rate of pay or how it is calculated
- intervals of pay (monthly, weekly etc)
- hours of work
- holiday entitlement, holiday pay
- sickness arrangements, sick pay
- pension entitlement
- length of notice of termination required by employer and employee
- job title or brief description of the work
- place of work and any mobility obligations
- collective agreements which affect terms and conditions of employment
- disciplinary and grievance procedures
- termination date if the contract is for a fixed term
- details if the employee is to work outside the UK.

PAY

Minimum entitlements are:

- itemised pay statements
- statutory sick pay (with some exceptions)
- the national minimum wage £7.50 per hour for those aged 25 and over, £7.05 for 21-24 year olds, £5.60 for 18-20 year olds, £4.05 for under 18 year olds; apprentice rate of £3.50 (rates change each year; the rates here apply from 1 April 2017)
- not to have unauthorised deductions from pay.

PENSIONS

All employers must provide minimum pension provisions under the auto-enrolment provisions. In Northern Ireland this began in October 2012 and all employers have to provide workers with a qualifying workplace pension by 2018.

WORKING TIME

With some exceptions, most workers have the right to:

- a daily rest period of 11 hours
- a weekly rest period of 24 hours
- a 20-minute break if working more than 6 hours a day
- work no more than an average 48 hours a week
- work no more than an average 8 hours a night
- 5.6 weeks paid annual leave a year (including public holidays).

EQUAL PAY

Women and men employed on work rated as equivalent, like work, or work of equal value, are entitled to equal pay unless the employer has a material reason, untainted by gender, for the difference in pay.

In Great Britain, but not as of yet in Northern Ireland, pay secrecy clauses are unlawful, so any term in a contract which forbids employees from discussing their pay for the purpose of finding out if there is discrimination will be unenforceable.



DISCRIMINATION

All workers have the right not to be discriminated against on the grounds of the following protected characteristics:

- gender
- race
- disability
- sexual orientation
- age
- religion or belief – “Religion” means any religion, and a reference to religion includes a reference to a lack of religion. “Belief” means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief (in Northern Ireland discrimination against someone’s political opinion is also specifically outlawed).
- marriage & civil partnership
- gender reassignment
- pregnancy and maternity

with regards to recruitment, terms and conditions, benefits, promotion, training, transfer, dismissal or harassment.

Legislation also protects workers from being victimised for alleging a breach of discrimination laws, taking proceedings or supporting someone else who has done so.

People with a disability are entitled to have reasonable adjustments made to the job or working environment to enable them to remain in, or to take up, employment.

In Great Britain, but not in Northern Ireland, it is unlawful for an employer to ask questions about a job applicant’s health or disability before offering them a job (although there are some exceptions).



FAMILY RIGHTS

All women are entitled to:

- 52 weeks maternity leave
- statutory maternity pay
- paid time off work to attend ante-natal sessions.

Adoptive parents have similar entitlements.

Men and women are entitled to:

- shared parental leave and pay (the mother's partner can share the statutory leave and pay)
- time off to care for dependants in exceptional circumstances
- return to the same or (in some cases) similar job after maternity or parental leave
- 18 weeks unpaid parental leave for children aged up to 18 but only after one year's continuous employment
- two weeks paternity/partner leave and statutory paternity pay.

PART-TIME WORKERS

Part-time workers have the right to equal treatment with comparable full-time workers unless the difference can be objectively justified.

Equal rights apply to terms and conditions on a pro rata basis where appropriate, eg pay, training, sick pay, pensions, leave and promotion. In some cases, workers can use discrimination laws to change to part-time work to care for dependants or because of a disability.



FIXED-TERM CONTRACTS

Employees on a fixed term contract are entitled to equal treatment with a comparable permanent employee, unless the employer can objectively justify the difference in treatment. Where an employee has been continuously employed on a fixed term contract for four years or more, any subsequent renewal of the contract will be deemed to be for an indefinite term, unless the employer can objectively justify a further fixed term.

FLEXIBLE WORKING

All employees have the right to request flexible working to change their hours, working pattern or to work from home.

YOUNG WORKERS

Most employment rights apply to all workers, but there are differences for workers under 18 who are entitled to a daily rest period of 12 hours, a weekly rest of 48 hours and a 30-minute break if working more than 4.5 hours. Employees who have not achieved set standards in education are also entitled to reasonable paid time off for relevant training.

HEALTH AND SAFETY

All employers are covered by the Health and Safety at Work Act which sets minimum standards of health and safety at work (Northern Ireland has its own equivalent legislation which is almost identical). Employees have the right:

- not to be dismissed or suffer any other detriment for being a safety rep or for raising health and safety concerns or taking certain action;
- to be paid if suspended from work on medical grounds under regulations covering: control of lead, ionising radiation, control of substances hazardous to health only after one month's continuous employment.

TRADE UNION RIGHTS

All employees have the right not to suffer a detriment or to be dismissed on the grounds of their trade union membership or activities. Where the union is recognised, members and reps are entitled to reasonable time off for trade union duties and activities. Employees also have the right not to be dismissed for taking official industrial action within 12 weeks of the start of the action.

Trade unions have the right to be:

- recognised by an employer where the majority of workers in a bargaining unit are members, or where there has been a successful ballot;
- consulted over redundancies and transfers of undertakings.

There is a legal duty on employers with more than 50 employees to inform and consult the workforce on a range of issues.

RIGHT TO BE ACCOMPANIED

All employers must allow workers to be accompanied by a trade union rep at a disciplinary hearing or certain grievance hearings. This applies whether or not the employer recognises a union.

TIME OFF FOR PUBLIC DUTIES

Employees who carry out public duties are entitled to reasonable time off work for undertaking those duties, eg JPs, members of certain public bodies including a local authority, statutory tribunal, health authority or an education body, such as a board of school governors.

TIME OFF FOR LEARNING

In Great Britain but not Northern Ireland as of yet (November 2017), employees have the right to request unpaid time off to undertake study or learning. This only applies to employers with 250 or more workers.

DETRIMENT

All employees have the right not to be subjected to any detriment or less favourable treatment for asserting rights in respect of:

- working time
- parental leave
- maternity, paternity or adoption
- part-time working
- national minimum/living wage
- public interest disclosure (whistleblowing)
- preventing or deterring them from trade union membership/activities/using trade union services or compelling them to join any union and activity connected to a claim for union recognition.
- requesting flexible working
- being a pension fund trustee or employee rep.

TRANSFERS OF UNDERTAKINGS

The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) (coupled with Service Provision Change Regulations (SPC) in Northern Ireland) offer protection if there is a transfer of undertakings, eg contracting out, privatisation, company sale or takeover. The main rights are:

- your employment transfers to the new employer
- not to be dismissed for a reason connected to a transfer (subject to two years' service (one year in Northern Ireland))
- not to have your terms and conditions of employment worsened because of the transfer (unless the employer can show an economic, technical or organisational reason entailing change in the workforce).

NOTICE OF TERMINATION

Employers must give notice to employees as follows:

- after one month of employment: one week
- after two years of employment: two weeks
- one week's notice for each additional year of employment, up to a maximum of 12 weeks.

Contracts of employment may provide for longer periods of notice. Employees must give employers at least one week's notice; your contract may require you to give a longer period of notice.

UNFAIR DISMISSAL

After two years' service (one year in Northern Ireland), employees have the right not to be unfairly dismissed. If dismissed, they have the right to a written statement of the reasons for dismissal. Where the dismissal is to be challenged, the employee must follow disciplinary and appeal procedures; failure to do so can result in compensation being reduced by the employment tribunal. A failure, in Northern Ireland only, to follow the three step Statutory Dismissal and Disciplinary Procedure will result in the dismissal being automatically unfair – speak to your BECTU rep or official for advice/support.

SPECIAL CASES OF UNFAIR DISMISSAL

Dismissal on any of the grounds listed below, regardless of length of service, is automatically unfair. Employees can bring a claim to an employment tribunal if they are dismissed because of:

- pregnancy or childbirth
- health and safety reasons (in certain circumstances)
- asserting a statutory right like working time, maternity or parental leave, minimum wage
- trade union membership or activities
- taking lawful industrial action (in certain circumstances)
- making a protected disclosure in the public interest
- being an employee rep or pension fund trustee
- campaigning for union recognition
- in Northern Ireland only, breaches of the three step Statutory Dismissal and Disciplinary Procedure.

COMPENSATION

In Great Britain the maximum compensation for most cases of unfair dismissal is £14,670 (6 April 2017) plus one year's gross pay, which is subject to a cap. Average awards are much less, just £12,000 in 2014/15. In Northern Ireland, the equivalent maximum (as at November 2017) is £15,000 plus the amount a tribunal regards as just and equitable in relation to loss of earnings etc. which is subject to a cap of £79,100. Additional compensation may be awarded where an employer refuses reinstatement ordered by the tribunal or where the dismissal was on the grounds of a protected characteristic, health and safety, or for making a protected disclosure.

For employees, there is a special procedure (interim relief) for immediate reinstatement or continuation of contract where a dismissal is for any of the following:

- trade union membership or activities
- for being a health and safety rep, pension fund trustee, or an employee rep for the purposes of working time, redundancy or transfer consultations, or
- for making a protected disclosure.

REDUNDANCY

Employees are entitled to a statutory redundancy payment if they are made redundant after two years or more continuous employment. They are also entitled to a reasonable period of paid time off to look for work or to arrange training once notice of redundancy is given.

The maximum statutory redundancy payment is £14,670 (6 April 2017) (£15,000 in Northern Ireland as at November 2017) depending on age and length of service.

Redundancy may also be an unfair dismissal if the employee was unfairly selected, not consulted in advance, or the employer failed to consider alternative employment for the employee.

BREACH OF CONTRACT

All employees are entitled to:

- bring an employment tribunal claim for breach of contract, which arises or is outstanding at termination of employment, up to a limit of £25,000
- bring a breach of contract claim to the county court or sheriff's court.

But seek advice on whether it is best to take the case through a tribunal or a court.

INSOLVENCY OF EMPLOYER

Where an employer becomes insolvent, employees can claim from the National Insurance Fund if they are owed:

- statutory redundancy pay
- arrears of pay of up to eight weeks
- pay for the statutory notice period
- up to six weeks' holiday pay
- a basic award for unfair dismissal.

A week's pay is limited to £489 (from 6 April 2017) and £500 in Northern Ireland (as at November 2017).



EMPLOYMENT TRIBUNALS

There are strict time limits for making a claim to an employment tribunal. For most of the statutory rights set out here, the claim must be started within three months of the incident or dismissal occurring (see table).

In Great Britain, the first stage in most cases is to present a claim for Early Conciliation to ACAS before making the claim to the tribunal. This must be done within the three-month time limit and this will stop the clock for presenting the tribunal claim. The rules are complicated so always seek advice as soon as possible. The employee should always follow the grievance or disciplinary appeal procedure. If they do not, compensation may be reduced by up to 25 per cent. Northern Ireland has, as of yet (November 2017), no equivalent process, but a similar one is likely to be introduced in the near future.

In July 2017, tribunal fees payable by the claimant, first introduced in 2013, were ruled unlawful by the Supreme Court.

ADVICE FROM BECTU

The BECTU Sector of Prospect advises members on a range of issues concerning their rights at work. The union may also represent members at internal grievance or disciplinary hearings and employment tribunals. Workplace and other legal assistance is offered at the discretion of the union, and is decided on the facts and merits of each case. This information here can only offer a brief summary of employment rights. Contact your BECTU representative or negotiations officer as early as possible if you need legal advice. If you don't know who your representative or negotiations officer is then do write to info@bectu.org.uk to request advice with a brief summary of the issue. Please quote your membership number.

STATUTORY RIGHTS		TIME LIMIT
CONTRACTS AND PAY	SERVICE	MONTHS*
Unlawful deduction of wages	none	3
Statement of particulars of employment within 2 months of starting	none	3
National minimum/living wage	none	3
Request for flexible working	26 weeks	3
WORKING TIME		
No detriment for refusing to work more than 48 hours a week on average	none	3
Uninterrupted rest period of 11 hours per day, 24 hours per week	none	3
5.6 weeks paid annual leave	none	3
EQUAL RIGHTS		
Discrimination on grounds of a protected characteristic	none	3
Equal pay between women and men	none	6
Equal treatment for part-time work	none	3
No detriment for trade union membership or activities	none	3
Equal rights for fixed term contract workers	none	3
FAMILY RIGHTS		
Parental leave	1 year	3
Time off for dependents	none	3
52 weeks maternity/shared parental leave	none	3
Paternity leave	26 weeks	3
Adoption leave	none	3
TERMINATION OF EMPLOYMENT		
Notice of termination	1 month	3
Unfair dismissal (GB)	2 years	3
Unfair Dismissal (NI)	1 year	3
Unfair dismissal on grounds of: <ul style="list-style-type: none"> trade union activities or membership asserting a statutory right making a protected disclosure being an employee representative 	none <ul style="list-style-type: none"> pregnancy/childbirth health and safety activities being a pension trustee 	3
Interim relief applications	none	7 days
Statutory redundancy payment	2 years	6
Written reasons for dismissal (GB)	2 years	3
Written reasons for dismissal (NI)	1 year	3
Breach of contract arising or outstanding on termination of employment	none	3

* For taking a claim to an employment tribunal

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