

Employment Data

6th April 2018

M O O R E B L A T C H

Employment rights

Entitlement qualifying period

Day 1

- Breach of contract claim by employee.
- Protection from unfair dismissal in certain specific circumstances, for example, if the main reason involves:
 - Pregnancy, maternity, adoption, dependant care and parental leave;
 - Health and safety;
 - Making a protected disclosure;
 - Asserting statutory rights, including asserting the right to be accompanied at a disciplinary or grievance meeting;
 - Making a flexible working application;
 - Status as a part time worker or fixed term employee; or
 - The employee's political opinions or affiliations.
- Protection from discrimination on the grounds of sex, sexual orientation, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion or belief, age and disability.
- 26 weeks' ordinary maternity leave + 26 weeks' additional maternity leave.
- Equal pay.
- Unpaid time off to care for dependants and paid time off for ante-natal care.
- Failure to conduct collective consultation.
- Right to paid annual leave.
- Right to statutory sick pay after 3rd consecutive day of absence subject to certain qualifications.
- Zero hour employees have the right not to be unfairly dismissed and the right not to be subjected to a detriment for failing to comply with an exclusivity clause.

1 month

- At least 1 week's notice of termination of contract.
- Guarantee payments in case of lack of work.

- Payment of salary during suspension on medical grounds for up to 26 weeks.

2 months

- A written statement of the particulars of employment as contained in Section 1 Employment Rights Act 1996.

26 weeks

- 2 weeks' paternity leave plus paternity pay.
- Right to request time off for study or training where employers have 250 or more employees.
- 39 weeks' maternity pay + 52 weeks' leave.
- 39 weeks' adoption pay + 52 weeks' leave.
- Make a flexible working request.
- Make a shared parental leave request.

1 year

- 18 weeks' unpaid parental leave in respect of each child aged under 18.

2 years

- Written reasons for dismissal.
- Statutory redundancy payment.
- Right to paid time off to look for work when under notice of redundancy.
- Protection from unfair dismissal.

Statutory notice and termination payments

Statutory notice

From employer

- No notice requirement if less than 1 month's employment.
- 1 week if continuous employment is between 1 month and 2 years.
- 1 week's notice for each additional year of continuous employment between 2 and 12 years.

- 12 weeks' notice if the period of continuous employment is 12 years or more.

From employee

- 1 week if continuous employment is 1 month or more.

A contract of employment can provide for greater periods of notice but cannot reduce them.

Termination payments

- From 6 April 2018, all payments made in lieu of notice will be treated as earnings and therefore will be subject to tax and class 1 National Insurance contributions.

Employee shareholders

Tax benefits for employee shareholder schemes ended on 1 December 2016. It is no longer possible to become an employee shareholder. Therefore, the provisions below only apply to existing employee shareholders.

An employee shareholder does not have the following statutory rights:

- To request time off for study or training.
- To request flexible working (unless it is made within 14 days of returning from a period of parental leave).
- To a statutory redundancy payment.
- Not to be unfairly dismissed (this does not include automatic unfair dismissals, dismissals in breach of the Equality Act 2010 or dismissals on health and safety grounds).

Working parents

Ante-natal care

- All female employees are entitled to time off for ante-natal care and at normal rates of pay regardless of length of service.
- Those in qualifying relationships with a pregnant woman or her expected child are entitled to unpaid time off to attend 2 ante-natal appointments.

Paternity leave

Up to 2 weeks' ordinary paternity leave at £145.18 per week or 90% of normal weekly earnings if lower.

Parental leave

18 weeks' unpaid leave to care for each child up to 18 years of age from date of birth.

Adoption leave

26 weeks' ordinary adoption leave followed by 26 weeks' additional leave. Up to 39 weeks' paid leave at:

- 90% of average weekly earnings for the first 6 weeks.
- Lesser of £145.18 per week or 90% of average weekly earnings for remaining 33 weeks.

Time off for dependants

A 'reasonable amount' of unpaid time off to deal with an unexpected emergency and make necessary long term arrangements involving a dependant.

Flexible working

- All employees with at least 26 weeks' continuous employment are entitled to make a request for flexible working.
- The request to vary working hours, days or location can be for any reason but can only be made once every 12 months.

- The application must:
 - Be in writing;
 - Be dated;
 - State that it is a flexible working request;
 - Specify the change the employee is seeking and when they wish it to take effect;
 - Explain the effect the employee expects the change would have on the employer and how that might be dealt with; and
 - State if any previous requests have been made.
- Employers have 3 months (or longer with the employee's agreement) to consider the request and make a decision.
- Whilst the application must be dealt with in a reasonable manner the employer can refuse the request for one or more of the following reasons:
 - The burden of additional costs;
 - Detrimental effect on the ability to meet customer demand;
 - Inability to reorganise work among existing staff;
 - Inability to recruit additional staff;
 - Detrimental impact on quality;
 - Detrimental impact on performance;
 - Insufficiency of work during the periods the employee proposes to work; and/or
 - Planned structural changes.
- If the employer agrees to the change it will mean a permanent change to the employee's contract of employment.
- There is no legislative requirement to allow for an appeal but it is recommended by the Acas Code.

Maternity leave and pay

Statutory maternity pay

Qualifying employees are entitled to 39 weeks' Statutory Maternity Pay (SMP). Rate of SMP is:

- 90% of average weekly earnings for first 6 weeks.
- Lesser of £145.18 per week or 90% of normal weekly earnings for remaining 33 weeks.
- Employers are reimbursed 92% of SMP (103% for small employers).

Qualifying for SMP

- The employee must have 26 weeks' continuous employment ending on the 15th week before expected week of childbirth (EWC).
- Her normal weekly earnings in the 8 weeks up to the 15th week before EWC must not be less than the lower earnings limit for NIC, currently £116.
- The employee must notify the employer no later than the 15th week before EWC:
 - That she is pregnant.
 - When the EWC will be.
 - When she intends Ordinary Maternity Leave (OML) to start.
 - When she expects SMP to start (28 days' notice required). Employer has 28 days to confirm expected return date.

Maternity leave

- Starts no earlier than the 11th week before EWC.
- All female employees are entitled to at least 26 weeks' OML and 26 weeks' additional maternity leave (AML) regardless of length of service.

Up to 10 keeping in touch days may be worked during OML or AML without bringing leave to an end or losing SMP.

Compulsory maternity leave

- 2 weeks from date of childbirth.
- 4 weeks if employee works in a factory.
- A later date in certain cases by statutory requirement.

Return after maternity leave

- The employee does not have to give notice of her intention to return at the end of her maternity leave if this is the same date as previously notified to her employer.
- Return date is the 1st working day after the end of maternity leave.

- The employee must give 8 weeks' notice to return before the end of full maternity leave entitlement.
- An employee shareholder must give 16 weeks' notice.
- The employee must give contractual notice if she does not intend to return after maternity leave.

Shared parental leave

- An eligible mother can choose to end her maternity leave early and with her partner or the child's father (if they also meet the qualifying requirements) opt for shared parental leave (SPL) instead.
- The mother is still obliged to take compulsory maternity leave but can choose to share the remaining 50 weeks of maternity leave and 39 weeks of pay.
- Fathers will continue to be entitled to take up to 2 weeks' paternity leave in addition to SPL.
- The parents can decide how to share the leave and whether to take periods of leave as one continuous period or in separate blocks (up to a maximum of 3).
- If an employee requests a continuous period of leave then the employer cannot refuse this.
- If the employee requests a discontinuous period then within 2 weeks of the request the employer can propose alternative dates or refuse it. If a request for discontinuous leave is refused then the total amount of leave requested in the notice will automatically become a continuous block of SPL unless the request is withdrawn by the employee, before the 15th day after the request was made.
- The employee must give at least 8 weeks' written notice of their intention to take SPL which must include:
 - Their partner's name;
 - Start and end dates for maternity or adoption leave and pay;
 - The total amount of SPL and Shared Parental Pay (SPP) available and how much they and their partner intend to take;
 - Confirmation that they are sharing childcare responsibility with their partner; and
 - An indication of the pattern of leave they are thinking of taking.

- The employee must also include with their notice a signed declaration from their partner stating:
 - Their name, address and National Insurance number;
 - That they satisfy the qualifying requirements for SPL and SPP; and
 - That they agree to their partner taking SPL and SPP.

In addition to the 10 existing keeping in touch days that can be worked during OML or AML parents will be entitled to 20 shared parental leave keeping in touch days.

Statutory redundancy payments

- The right to a redundancy payment starts when the employee has completed 2 years' employment.
- Service is calculated by counting backwards from the end of the notice period for each complete year of continuous service.
- For each complete year of service (for a maximum of 20 years), use the following multiplier:
 - Aged 22 years old or under = Half a week's pay*
 - Between 23–41 years old = One week's pay
 - Aged 42 years or over = One and a half week's pay

Example:

3 years of service x 1 (aged 27 at date of dismissal)
x £508 = £1,524

* *Limit on week's pay = £508*

Collective redundancy – consultation obligations

- Applies when 20 or more employees are to be made redundant at one establishment within a period of 90 days or less.
- Consultation must start “in good time” but:
 - At least 30 days before the first dismissal takes effect for between 20–99 redundancies.
 - 45 days before the first dismissal takes effect for 100 or more redundancies.

- Employees on a fixed term contract that has expired are excluded from consultation.
- Failure to consult properly may result in a protective award of up to a maximum of 90 days **actual** pay per employee calculated on gross pay.

Auto-enrolment and employer pension duties

- By now all employers will have reached their staging date and all eligible workers that currently work for the employer will have been enrolled into a pension scheme.
- Employers are required to review the status of current workers who are not eligible and consider when new workers become eligible. Employers have a period of 6 weeks from the date the worker becomes eligible to make the necessary arrangements in relation to the pension scheme.
- Employers must make minimum contributions to employees' pensions which will increase over time.
 - Between 6 April 2018 to 5 April 2019 the minimum contribution will be 2% (with an additional 3% employee/government contribution).
 - From 6 April 2019 the minimum contribution will be 3% (with an additional 5% employee/government contribution).
- The government has stated the above rates could increase for defined contribution pensions. Rates can also vary if the employer has chosen to use an existing scheme instead of setting up a new automatic enrollment scheme.
- If an employer does not comply with its duties the Regulator may issue a warning letter followed by a formal compliance notice. In addition, financial penalties can be imposed starting from £50 and reaching up to £10,000 a day. There are also possible criminal proceedings for wilful failures.

Agency Workers Regulations

- Agency workers have the entitlement to the same treatment as other employees in respect of basic employment and working conditions after 12 weeks' employment (ie. basic hourly pay rate, overtime, bonuses, rest breaks and holiday).
- From day one, agency workers must have access to the same facilities as comparable employees and they must be advised of relevant employment vacancies.

Working Time Regulations

Working Time Regulations apply to all workers (with specific exceptions for certain sectors i.e. sea, air and road transport)

Hours

- 48 hour maximum working week averaged over a 17 week period (26 weeks in certain cases). This can be extended by agreement to 52 weeks.
- It is possible to opt out by written agreement signed by the worker which can be cancelled on 7 days' notice or longer (up to 3 months) if agreed.
- Does not apply to workers who can decide how long they work eg. directors.

Rest breaks

- 11 hours uninterrupted rest in a 24 hour period.
- 1 whole day off a week, averaged over 2 weeks (24 hours rest per week or at the employer's choice 48 hours per fortnight).
- 20 minute rest break after the first 6 hours of work.
- Special rules apply to young workers and night workers.

Holidays

- 28 days' paid annual leave (for those working a 5 day week), made up of:
 - 20 days' annual leave;
 - 8 days' annual leave which represent the usual number of Bank Holidays in the UK each year.

- Employers can require employees to work on a public holiday. However, the employer must ensure that employees are given the opportunity to use these days at another time within the relevant leave year.
- Leave accrues at the rate of 1/12 each month (rounded up to the next half day).
- Workers must give notice of intention to take leave.

General Data Protection Regulation (GDPR) 2018

- The GDPR will apply directly to the UK and come into force on 25 May 2018.
- The GDPR will continue to apply post-Brexit as by that time it will have been implemented through UK domestic legislation (currently the Data Protection Bill).
- The GDPR has 6 principles which must be followed carefully to ensure compliance:
 - Lawfulness, fairness and transparency;
 - Purpose limitation;
 - Data minimisation;
 - Accuracy;
 - Storage limitation; and
 - Integrity and confidentiality.
- Firms with more than 250 employees are required to carry out audits and retain records of those audits in order to demonstrate compliance with the GDPR. However, it is recommended that, regardless of the number of employees, all employees should keep full and accurate records to demonstrate compliance.
- Firms can face a maximum fine of up to 20 million euros or 4% of worldwide turnover, whichever is the greater, for non-compliance.

Gender pay gap reporting

- Employers with 250 employees or more are now required to report their gender pay gap information each year. The data must be published on a specific government website and the employer's own website.
- Private sector employers will be required to collect most of the relevant data on a 'snapshot' date of 5 April each year, while public sector employers will be required to collect the data on 31 March.
- Data on mean and median bonus pay will need to be collected over the course of a year – from the 5 April to the 5 April for the private sector and from the 31 March to the 31 March in the public sector.
- The data will need to be published within 12 months of the data being collected - for the private sector this will be by 4 April and the public sector by the 30 March of the following year.
- For example, when a private sector employer presents its data in April 2019, the majority of the data will be based on a 'snapshot' date of 5 April 2018.
- Employers with over 250 'relevant' employees will be required to report the following information each year:
 - The difference between the mean pay of male and female relevant employees;
 - The difference between the median pay of male and female relevant employees;
 - The difference between the mean bonus pay paid to male and female relevant employees;
 - The difference between the median bonus pay paid to male and female relevant employees;
 - The proportions of male and female relevant employees who were paid bonus pay; and
 - The proportions of male and female relevant employees in each 'quartile band' receiving full pay.

National minimum wage and national living wage

Rates from 1st April 2018.

**Adult rate
(national
living wage)** (worker aged 25+)
£7.83 per hour

Adult rate (worker aged 21 – 24 inclusive)
£7.38 per hour

**Development
rate** (worker aged 18–20 inclusive)
£5.90 per hour

**Young workers’
rate** (16 & 17 year olds)
£4.20 per hour

**Apprentices
under 19 or in
1st year of
apprenticeship** £3.70 per hour

Maximum accommodation set off
£7.00 per day

Sickness payments

Qualifying employees who have been absent from work for 4 or more consecutive days are entitled to receive statutory sick pay of £92.05 per week for up to 28 weeks in any 3 year period assuming there has not been a gap of more than 56 days between periods of incapacity.

The ‘Fit for Work’ service is available to provide (in addition to free health and work advice) free occupational health assessments and return to work plans for employees who have been, or whose GP expects them to be, on sickness absence for 4 weeks or more. An employee may be referred to the service by their employer or GP. It is not mandatory but highly recommended.

Compensation limits

Employment right	Maximum award
Unfair dismissal	
Basic award	£15,240
Compensatory award*	£83,682 (i.e. 26 – 52 weeks' pay)
Additional award	£13,208 – £26,416
Statutory redundancy pay	£15,240
Discrimination	No limit
Dismissal for union employee representatives or pension trustee reasons	
Basic award*	£15,240 (minimum £6,203)
Compensatory award	No limit
Dismissal for health and safety reasons	
Basic award	£15,240 (minimum £6,203)
Compensatory award	No limit
Dismissal for making a protected disclosure	
Basic award	£15,240
Compensatory award	No limit
Guarantee pay	£28.00 per day. Subject to a maximum of 5 days (£140) in any period of 3 months.
Breach of flexible working regulations	8 weeks' pay (up to £4,064)
Failure to inform or consult over a TUPE transfer	13 weeks' actual pay (gross)
Failure to inform or consult over collective redundancy	90 days' actual pay (gross)
Breach of right to be accompanied	2 weeks' pay (up to £1,016)
Contract claims in a Tribunal	£25,000
Limit on a week's pay	£508 (where applicable)
Failure to give statement of employment particulars	Minimum 2 weeks' pay (up to £1,016) Maximum 4 weeks' pay (up to £2,032)

* or 52 weeks' gross pay.

Future legislation and changes 2018-2019

- All termination payments above the £30,000 threshold will be subject to class 1A National Insurance contributions (employer liability only). This will take effect from 6 April 2019.
- All payslips must state the number of hours being paid where a worker's wages vary according to time worked - this can be either as an aggregate number of hours or as separate figures for different types of work. This will come into force under the Employment Rights Act 1996 (Itemised Pay Statement) Amended Order 2018 on 6 April 2019.
- The General Data Protection Regulation will be implemented in the UK on 25 May 2018.
- The Data Protection Act 1998 will be replaced in due course by legislation that is currently the Data Protection Bill.
- Childcare voucher schemes will close on 6 April 2018.
- The Parental Leave Bereavement Bill is expected to have its first reading in Parliament. If passed, this will entitle bereaved parents to unpaid leave. It is expected to come into force in 2020.

The information contained in this leaflet is correct as at April 6th 2018. It is intended as a useful check list only and is not intended to provide specific legal advice to you or your business. The firm is not authorised under the Financial Services and Markets Act 2000 but is able in certain circumstances to offer a limited range of investment services to clients because we are members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.

For more information please contact

Katherine Maxwell

023 8071 8094

katherine.maxwell@mooreblatch.com

Naomi Greenwood

020 3274 1006

naomi.greenwood@mooreblatch.com

Emma Edis

023 8071 8872

emma.edis@mooreblatch.com

Stephanie Bowen

023 8071 8185

stephanie.bowen@mooreblatch.com



023 8071 8000

www.mooreblatch.com

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