Overview of United Kingdom employment law

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Employment is arguably less regulated in the United Kingdom (UK) than in most other European countries. In most of continental Europe, labour law generally favours the protection of employees' rights. Historically in the UK the attitude has been that, beyond the minimum statutory protection, parties should be free to agree whatever terms they choose. However, the development and application of European Union (EU) law in the UK prior to Brexit increased statutory protection for employees, which can be challenging for an employer.

This guide briefly summarises the important areas of law and practice applying to the employment of staff in the UK. We at CMS are ready to advise and assist on all queries about the law and practice of employment, pensions, health and safety, and employee benefits.

This guide focusses on the rights of employees and, to a lesser extent, workers (who have fewer rights under UK employment law). These are two categories of individuals with employment law protection under UK employment law, in contrast to those who are self-employed and, generally speaking, do not benefit from rights under UK employment law. Determining a person's status is based on the actual relationship in place and not simply what their agreement with an employer or engaging entity says. Specific rules also apply in relation to agency workers. We are happy to discuss how proposed arrangements are likely to be categorised.

Where we refer to "workers" having particular rights, this includes employees unless the context indicates otherwise.

1. Sources of UK employment law

1.1 UK employment law has three main sources:

- *Common law*: this is the body of law that is based on custom and practice and court/ tribunal decisions. The relationship between the employer and the employee is governed at common law by the contract of employment.
- *Domestic legislation*: this provides a number of minimum statutory rights to employees.
- *European law*: employees have acquired additional rights (and employers have acquired additional obligations) as a result of EU law, particularly in the areas of discrimination, equal pay, 'family-friendly' rights and working time. These have been incorporated into domestic legislation following the UK's exit from the EU although they may be subject to change given the UK is no longer bound to implement EU law. In some cases, EU case law remains relevant to interpretation of domestic UK legislation that is derived from EU law.

2. Contract of employment

2.1 Most employers have standard contracts of employment which they adapt for each employee. These may cover employees who work full-time or those who have different working arrangements, such as part time working hours or employment for a fixed term.

2.2 Section 1 of the Employment Rights Act 1996 ("**ERA**") requires an employer to provide a written statement setting out certain minimum prescribed particulars of employment. This statement must be given to employees and most workers on or before their first day of employment.

2.3 These particulars include basic details such as the names of employer and worker, job title/description, rates of pay, date of commencement of employment, hours of work and holiday entitlement. Further terms must be included such as details on all remuneration, paid holiday and training entitlement. This written statement is not on its own a formal 'contract', but it is often the basis of a contract containing these particulars and other terms and conditions of employment.

2.4 In every contract of employment, there are additional rights and duties which exist even if they have not been expressly agreed by the parties and which cannot be excluded. Some of these arise under common law, others under statute. The most important of the common law duties are the duty of confidentiality and the duty of trust and confidence. Many of the statutory duties and rights are contained in the ERA and in the Health & Safety at Work Act 1974.

2.5 Staff manuals, handbooks or supplementary documents can also contain terms and conditions that form part of the contract if they are expressly or impliedly incorporated.

2.6 Employers cannot make unilateral changes to the employee's contract. If the employer attempts to make changes without the employee's consent, this will be a breach of contract, entitling the employee to claim damages. If the change is fundamental, the employee will be entitled to terminate the contract. This is to be contrasted with the position in some other European countries, where the employer may be able to change the contract to require the employee to perform tasks different from those originally agreed, or the employer is able to change the working conditions on grounds of economic, technical, organisational or production reasons. In the UK, if consent is not given, the employer's only way of introducing a substantial change is to terminate the employee's employment and offer them a new job on the new terms and conditions.

3. Salary

3.1 Section 1 of the ERA requires the worker's contract of employment to state the scale, rate, or calculation method of remuneration and the intervals at which remuneration is paid.

3.2 A national minimum wage ("**NMW**") applies for all workers over compulsory school leaving age. The NMW rates differ depending on the age of the worker and whether or not they are in training. Workers who qualify for but are not paid the NMW can bring a claim in an employment tribunal and enforcement action against the employer may also be taken by the UK tax authority, HM Revenue & Customs. Workers aged 23 and over must be paid the national living wage ("**NLW**") which from 1 April 2024 is £11.44. It is a criminal offence for employers wilfully to refuse to pay the NMW or NLW.

3.3 However, salary is also based on market forces and the employee's ability. An employer may link a worker's pay to their level of productivity or to the company's performance or profits.

3.4 In the UK, it is usual to pay workers weekly or monthly. There is no requirement to make a 'thirteenth month' payment at any time (for example at Christmas time), as there is in some jurisdictions. Payment can be made in cash, or by other means (for example, cheque or direct credit transfer to the worker's bank account). As in continental Europe, employers in the UK are required to give their workers an itemised payslip. Where the worker is paid on an hourly basis, the payslip must detail the hours worked that month and the hourly pay rate(s).

3.5 The salary will be paid after deduction of income tax and National Insurance contributions using the Pay As You Earn system ("**PAYE**"). The income tax and National Insurance contributions are paid directly to HM Revenue & Customs by the employer. Generally, PAYE will apply to those who are categorised as employees and office holders for UK tax purposes, but not to those who are self-employed. Employers must be registered with HM Revenue & Customs so they can operate PAYE. Those categorised as workers under employment law can be employees for tax purposes, but this should be considered in each case.

3.6 In the UK deductions from salary other than PAYE and National Insurance contributions will be unlawful unless they are required by or permitted by a statutory or contractual provision, or the worker has given their prior written consent to the deduction. This contrasts with some other European countries where an employer can make a deduction from the employee's salary to recover any debt which the employee owes to the employer, without these restrictions.

3.7 Employees may also be eligible to participate in bonus schemes. Where the employer reserves discretion as to whether or not to pay any bonus or as to the amount of the bonus for a particular year, this discretion must not be exercised perversely or irrationally.

4. Social security

4.1 The UK Treasury maintains a National Insurance Fund to provide funds for the Government from which it can pay certain benefits (e.g. statutory maternity pay). These are referred to as 'contributory benefits' as they are funded by, and are to some extent calculated by reference to, National Insurance contributions. There are different 'classes' of contribution. Class 1 contributions are due on earnings paid to those categorised as employees and office holders under UK tax law. There are two categories of Class 1 contributions: (i) primary contributions payable by employees below pensionable age (although the actual calculation and collection of such payments are made under the PAYE system); and (ii) secondary contributions payable by employers.

4.2 Under the Employers' Liability (Compulsory Insurance) Act 1969 (as amended), UK employers have an obligation to maintain insurance cover for bodily injury or disease sustained by employees and arising out of, and in the course of, their employment. This insurance must cover liability of at least £5 million in respect of any one occurrence. The National Health Service in the UK provides free medical care for almost all, so there is no legal obligation for employers to provide private medical insurance.

5. Pensions

5.1 **Pension provision in the UK consists of the state pension and private pensions**

5.1.1 State pension

The state provides a basic state pension for individuals who have paid sufficient National Insurance contributions during their working life.

5.1.2 Private pensions

Private pensions can either be arranged on an individual basis or through a scheme set up by an employer and can either be tax approved or unapproved.

Private pension schemes provide two basic types of benefit:

- Defined Benefit (which includes final salary schemes). In a defined benefit scheme, the benefit the member will eventually receive is set out at the outset. The employer takes the ultimate risk of the investment performance of the scheme. New defined benefit schemes are very unusual now.
- Defined Contribution (or money purchase). In a defined contribution scheme, a specified level of contributions is payable to the scheme, but the eventual benefits are not known until retirement. The employee takes the investment risk.

Under the auto-enrolment regime all employers in the UK are required to automatically enrol "eligible jobholders" in a workplace pension scheme and pay minimum contributions into the scheme.

6. Working conditions

6.1 Working hours

The Working Time Regulations 1998 ("**WTR**") set a general rule that a worker's working time (including overtime) in any (17-week) reference period shall not exceed an average of 48 hours a week. An employer is under a positive duty to take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that this limit is not exceeded. It is necessary for workers to sign an 'opt out' agreement in advance if they are to work in excess of a 48-hour working week. The WTR also offer special protection for shift and night workers.

Broadly, all workers are entitled to 11 hours' uninterrupted rest each day and 24 hours' uninterrupted rest (i.e. one day) per 7-day period. They are also entitled to rest breaks of at least 20 uninterrupted minutes away from the workstation (if the worker works in excess of 6 hours) and 'adequate rest breaks' if health and safety may be put at risk.

There are exemptions for certain industries (for example, where continuity of production is required) and for workers who determine their own working time (for example, senior managers who can decide when to do work and for how long).

6.2 Holidays

UK employers must give their full-time workers at least 5.6 weeks' (or 28 days') paid holiday each year. This entitlement is pro-rated for part-time workers. Employers can include paid UK public and bank holidays within this annual entitlement.

6.3 Maternity leave

In common with most of continental Europe, pregnant employees are entitled to maternity leave. In the UK, all pregnant employees are entitled to 52 weeks' statutory maternity leave regardless of length of service.

Employees normally qualify for statutory maternity pay ("**SMP**") if they have been continuously employed by their employer for 26 consecutive weeks by the end of the 15th week before the week in which they expect their baby. If the employee meets the requirements, they will be entitled to receive SMP whether or not they intend to return to work. SMP entitlement is based on 90% of an employee's normal weekly earnings per week for 6 weeks followed by 33 weeks at the lower of 90% of normal weekly earnings or the prescribed statutory rate (from 7 April 2024 this is £184.03 per week). SMP is paid by the employer to the employee but can generally be recovered from HMRC. Very similar provisions are in place for statutory adoption leave. Some workers will be eligible for SMP.

For further details, please see our Guide to maternity rights.

6.4 Sick leave

In the UK, there is a statutory sick pay ("**SSP**") regime. Employees do not receive SSP for the first three days they are absent from work (or for periods up to three days' absence) by reason of sickness. From the fourth day of absence, an employee is entitled to SSP as long as they fulfil certain conditions. At £116.75 (from 7 April 2024) per week the amount of SSP is modest. Employees are entitled to SSP in respect of a period of incapacity for work ("**PIW**") or a series of linked PIWs of up to 28 weeks in three years. PIWs are considered to be linked when a PIW occurs within 56 days of a prior PIW. Beyond complying with these basic conditions, employers have flexibility in dealing with sickness absence. Many employers will not deduct pay for short periods of absence. Some employers will enhance SSP in cases of sickness absence. Some workers will be eligible for SSP.

6.5 Parental, paternity and shared parental leave

An employer is obliged to give employees with at least one year's continuous service up to 18 weeks' statutory parental leave per child up until the child's 18th birthday. Statutory parental leave is unpaid. Unpaid dependant leave must also be granted for family emergencies.

There is also special provision for either one or two weeks' statutory paternity leave which can be taken within the first year after birth or adoption and is paid at the prescribed statutory rate of £184.03 per week (from 7 April 2024) or 90% of weekly earnings if that is lower.

Shared parental leave allows new parents (including adoptive parents) to use up to 50 weeks of their statutory maternity or adoption leave entitlement more flexibly within the first year after the birth or placement for adoption. Statutory shared parental leave can be taken in one block or discontinuous blocks with periods of work in between. Eligible employees may also be entitled to statutory shared parental pay.

6.6 Part-time workers

Part-time workers must not be treated less favourably than comparable full-time workers in their contractual terms and conditions, unless the difference of treatment can be objectively justified. Part-time workers are therefore entitled to the same hourly rate of pay, the same access to benefits such as pension, annual leave and maternity or parental leave on a pro-rata basis and should receive the same training as full-time workers.

6.7 Fixed-term employees

Fixed-term employees should not be treated less favourably than comparable permanent employees on the grounds that they are fixed-term employees, unless the difference of treatment can be objectively justified.

6.8 Discrimination

In the UK, the main unlawful types of discrimination are:

- **Direct discrimination:** For example, where an employer decides not to offer a qualified applicant a position because they are gay.
- **Indirect discrimination:** For example, an employer's dress code which does not allow workers to wear hats or scarves in the office would indirectly discriminate against Sikh men who wear turbans or Muslim women who wear hijabs.
- **Harassment:** For example, teasing a worker about their partner's religious convictions.
- **Victimisation:** For example, failing to promote a worker because they have made allegations of disability discrimination.

An employer may not act in any way that discriminates against any worker because of their sex, race, age, sexual orientation, marital or civil partnership status, pregnancy or maternity, disability, religion or belief, nationality or national origin, or gender reassignment. It should be noted that workers do not need any specific length of service to make a claim for discrimination and that compensation for such claims is not limited. This means that discrimination claims can be brought by any worker (or indeed any job applicant) and can be very expensive for the employer, if successful.

7. Termination of the employment relationship

7.1 Notice of termination

Employees are entitled to a period of notice before their employment terminates. If the employee has been employed for one month or more, this period must be no shorter than the statutory minimum. This statutory minimum is at least one week where an employee gives notice to their employer. Where an employer gives notice to its employee, the period must be at least one week until the employee has completed 2 years' continuous employment, when it becomes 2 weeks. For each additional completed year of employment after this, an employee is entitled to receive a further one week's notice up to a total maximum of 12 weeks' notice (after 12 or more years' continuous employment).

Contractual notice periods may and often do exceed the statutory minimum amounts.

Where there is no specified notice period in the contract of employment or the period specified does not adhere to the statutory minimum requirements, it is open to an employment tribunal or court to imply the appropriate notice period to be given by the relevant party. This might be the statutory minimum but could be longer, for example taking into account the seniority of the employee or particular industry practice.

7.2 Pay in lieu of notice

An employer, under an express provision in a contract of employment, has the right to pay an employee a lump sum equal to the value of their salary that would have been payable during the length of their notice period instead of requiring the employee to work during the notice period. On some occasions and depending on the wording of the contract, payment in respect of the employee's benefits may also be made. Unless there is an express contractual right to do so, a payment in lieu of notice will constitute a breach of contract. The breach may not cause the employee to suffer any financial loss, but the employer will be unable to rely on any contractual terms which place obligations on an employee after their employment has ended (e.g. restrictive covenants).

7.3 Grounds for dismissal

Under UK employment law, it is relatively easy to dismiss employees. Unlike in some European countries, where a dismissal can be declared void if the employer has infringed the employee's constitutional rights or has acted in a discriminatory manner, under UK law the actual dismissal itself will almost always be effective. Usually the only issues arise in relation to compensation and remedy if the dismissal is found to have been unlawful in some way (although see below regarding reinstatement and re-engagement). Where an employee has the requisite continuity of employment they are entitled to bring a claim in an employment tribunal of 'unfair dismissal' if they are dismissed other than for one of the five potentially fair reasons or if the employer does not behave in a fair and reasonable manner in dismissing them. The period of continuous service required to bring a claim for unfair dismissal is two years in most cases, but in some instances no period of continuous employment is required to bring a claim. Dismissed employees with the right to claim unfair dismissal are also entitled to receive, upon request, a written statement of the reason(s) for the dismissal.

In order for a dismissal to be fair:

- the reason (or, if more than one, the principal reason) for dismissal must be one of the potentially fair reasons for dismissal (specifically (i) conduct, (ii) capability, (iii) redundancy, (iv) illegality or (v) some other substantial reason);
- the employer must have acted reasonably in all the circumstances in treating that reason as a sufficient reason for dismissing the employee; and
- the employer must have followed a fair procedure in effecting the dismissal. In particular, employers should follow the ACAS Code of Practice on disciplinary and grievance procedures when dealing with any disciplinary or grievance issues. Where there has been an

unreasonable failure to follow the ACAS Code of Practice, employees may receive increased levels of compensation from employment tribunals (up to 25%) if they win their claim.

If a dismissal is found to be unfair, the employment tribunal may order the employer to pay compensation to the employee. Compensation for unfair dismissal is calculated partly according to a formula based on age, weekly pay and length of service (the “basic award’) and partly according to the employee's losses flowing from the dismissal which will mostly relate to lost earnings (the “compensatory award”). The maximum basic award is £21,000 (from 6 April 2024) and the maximum compensatory award is the lower of the statutory limit of £115,115 (from 6 April 2024) or 52 weeks' actual gross pay. Reinstatement or re-engagement is an optional remedy open to the tribunal to order and although it is very unusual, importantly the limits on compensation referred to above may be exceeded where this is the case and the employer refuses to reinstate or re-engage the employee.

7.4 Redundancy

An employer can potentially dismiss employees fairly by reason of redundancy if it ceases to carry on business (or to carry on a business at a particular site) or if the business needs fewer employees to do work of a particular kind.

An employee so dismissed who has completed two or more years' continuous employment will be entitled to receive a statutory redundancy payment calculated according to a formula (also based on age, pay and length of service). The length of continuous service used in the calculation is capped at 20 years, resulting in a maximum possible statutory redundancy payment of £21,000 (from 6 April 2024).

An employer must follow a fair procedure in carrying out a redundancy dismissal. Broadly, a fair redundancy procedure involves:

- fair selection of the employees to be made redundant;
- consultation with selected employees before making a final decision;
- considering alternatives to dismissal;
- considering whether there are any suitable jobs elsewhere in the organisation (including the wider group) for the redundant employees and offering any such positions to them.

Collective redundancies: If an employer is proposing 20 or more redundancies in a 90-day period, it must also consult with representatives of a recognised trade union or elected employee representatives and notify a government department before any dismissals take effect. Depending on the numbers involved there are rules regarding minimum consultation periods of either 30 or 45 days and specific information which must be given to the representatives. The financial penalties for failing to properly consult about collective redundancies can be severe, leading to awards of up to 90 days’ pay per affected employee.

7.5 Employee’s obligations on termination

Under the common law, an employee will owe their employer a duty not to disclose highly confidential information (such as trade secrets) even after their employment has ended. However, it may be possible to extend the scope of an employee's confidentiality obligation by including an express clause in their contract of employment.

Employers will often impose restrictions on an employee’s activities after their employment has ended where they have been senior and/or had access to sensitive business information. These restrictions (often referred to as “restrictive covenants”) for example may limit the employee’s ability to join a competitor, set up in competition, contact customers or suppliers or poach key employees of their former employer. The UK courts will only enforce a restrictive covenant that goes no further

than reasonably necessary to protect an employer's legitimate business interests. A covenant extending further than this will be unenforceable and the employer may be left without any protection. Covenants must be limited e.g. in terms of the geographical area which they cover, the period during which they are effective and the particular aspects of the business to which the employee may pose a threat. There is currently no requirement in the UK for payment of financial compensation while a restrictive covenant is in effect.

7.6 **Employment tribunals**

Most employment-related claims are brought in special ‘courts’ known as employment tribunals. Employment tribunals are independent judicial bodies comprising an Employment Judge and sometimes also two lay members, one from the employer side of industry and the other from the employee representative side. There are special rules of procedure that must be followed when bringing or defending claims in the employment tribunals. Unlike the UK civil courts, the general rule in employment tribunal proceedings is that each side bears its own costs, whether they win or lose. The tribunals can award costs in certain circumstances such as where a party has acted vexatiously or abusively, but this is not very common.

7.7 **Retirement**

Compulsory retirement of employees will be age discrimination unless it can be justified as a proportionate means of achieving a legitimate aim. Employers must therefore decide whether to have a fixed retirement age, either for the whole business or for certain roles. This is increasingly rare and in practice is likely to be difficult to enforce except in very specific circumstances.

For further details, see our Guide to age discrimination.

8. Whistleblowing

Employees who blow the whistle on malpractice are protected under the law. The dismissal of an employee will be automatically unfair if the reason, or principal reason, for their dismissal is that they have made a "protected disclosure". In addition, workers are protected from being subjected to any detriment on the ground that they have made a protected disclosure.

For further details, see our Guide to whistleblowing.

9. Collective rights and bargaining

9.1 There is no specific labour code, or other fundamental source of law, regulating collective rights in the UK. Trade unions are well-established organisations which regulate relations between workers and employers or employers' associations. Trade union law derives from a wide variety of sources including statute, common law and codes of practice. In recent years, trade unions have declined somewhat in power and prominence in many sectors of the UK economy although the Covid-19 pandemic and cost of living crisis have seen a reverse of that trend. There are statutory provisions that encourage employers to voluntarily recognise trade unions for collective bargaining purposes. There is also a compulsory procedure for the recognition of trade unions, provided certain conditions are satisfied, which broadly speaking relate to whether enough of the affected workers want the union to be recognised.

9.2 Staff councils and other staff associations (which do not have the same legal rights or duties as trade unions) are also commonplace, more so in larger businesses. For example, employers must consult with their staff when making collective redundancies, when transferring businesses or outsourcing parts of businesses under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the UK legislation implementing the EU Acquired Rights Directive), and when making certain changes to pension provision.

9.3 Collective bargaining and industrial action issues are highly regulated and specialist employment advice should be taken where an employer is involved in either.

10. Employment aspects of transactions

10.1 **Share sales**

When control of a company is acquired by way of a share sale, there is no direct effect on the employees of the target company. There is no change of employer in these circumstances and the employees' contractual and statutory rights are preserved.

10.2 **Business transfers**

On the transfer of a business as a going concern, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") applies broadly as follows.

- All employees of the seller (the 'transferor') who are employed in that business immediately before the transfer automatically become the employees of the buyer (the 'transferee') on their existing terms of employment without breaking their continuity of service.
- An information, and often a consultation, process must be followed.
- All rights, powers, duties and liabilities under the contracts of employment pass to the transferee.
- Changes can only be made to the transferring employees' terms and conditions of employment in limited circumstances.
- Any dismissals will be automatically unfair if the sole or principal reason for the dismissal is the transfer itself. If, however, the reason is an economic, technical or organisational reason entailing changes in the workforce (an "**ETO reason**"), then they will instead be potentially unfair.
- Employees may refuse to transfer to the buyer (the 'right to object'), but the effect is to terminate their employment without any right to compensation.

Some workers will also come within the scope of TUPE, and in the UK TUPE can also apply where there is a service provision change such as an outsourcing situation.

11. Data protection

11.1 Data protection law in the UK is governed by the Data Protection Act 2018 and the UK GDPR which, broadly, is the EU General Data Protection Regulation incorporated into UK domestic law.

11.2 Any activity relating to personal data carried out by a data controller will amount to "processing" for data protection law purposes and must be carried out in accordance with the prescribed data protection principles. The data controller must have a lawful basis for processing the data and a further separate condition for processing in relation to "special category" data or criminal convictions data.

11.3 Failure to comply with requirements under data protection law can have serious legal, financial, reputational and employee relations repercussions. Specific advice is recommended on this issue.

12. Immigration

A points-based immigration system was introduced in the UK on 1 January 2021. Employers are under a legal obligation to check that their employees have the right to work in the UK and to keep records of these checks.

13. Training obligations

The training obligations imposed on an employer will depend upon the particular industry in which it operates. Employers must provide health and safety training to employees to the extent relevant to their work. Other training may be common as a matter of practice but is not required under law.

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Further resources

ACAS's Code of Practice on disciplinary and grievance procedures

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