

SECTION 1

SUMMARY OF STATUTORY EMPLOYEE RIGHTS

Employees have a range of legal rights derived from national or European legislation and these are summarised below. The rights of Northern Ireland employees can differ from those in Great Britain. As a result employers should pay particular attention to the source of information and ensure that it is Northern Ireland based e.g. The Labour Relations Agency (www.lra.org.uk) or www.nibusinessinfo.co.uk

Employers must give their employees a **written statement of their main terms and conditions of employment** within 8 weeks of commencing employment. Employers may wish to include these terms within a contract of employment. For further details see section 3 of this guide.

Employees are entitled to rates of pay which comply with the current rate of the **National Minimum Wage** and the **National Living Wage**. Separate rates exist for those aged 21 and over, for those aged 18 to 20 and for 16 and 17 year olds. There is also a rate for apprentices aged under 19 or aged 19 or over and in their first year of apprenticeship. Current rates are available on the NI Business Info Website (www.nibusinessinfo.co.uk/minimum-wage-rates). See section 5 for further information.

Employees are entitled to an **itemised pay statement** each time they are paid. The statement must specify; the gross amount of wages or salary; the amount of any fixed or variable deductions; the reasons for any such deductions; and the net amount of wages or salary payable. Employees are entitled to receive the itemised pay statement at, or before, the time at which salary or wages are paid.

Workers have the right not to have unlawful **deductions** made from their wages. This right applies to employees and also those engaged under a contract of service or apprenticeship or any other contract under which the person is engaged to do or perform personally work or services for another party. For deductions to be lawful, they must either be required or authorised by law and allowed by the worker's contract of employment or the worker must have previously signified in writing their agreement or consent to the making of the deduction.

In this case, a copy of the relevant term or a written explanation of the term must be issued to the worker before the deduction is made and agreed to by the worker in writing before the deduction is made. Further information can be obtained from the Labour Relations Agency (www.lra.org.uk) which has published an information note on the relevant legislation (No. 7 Deductions from wages by employers).

Employees qualify for **Statutory Sick Pay (SSP)** if they are sick for 4 calendar days in a row, have earnings of at least the national insurance lower earnings limit and have given the required notice. Employers do not pay SSP until the 4th qualifying day (contractual or normal working day). Employees may self-certify themselves for up to 7 days of illness but thereafter a **Fit Note** must be provided as evidence of illness. SSP is paid for up to 28 weeks in any period of incapacity for work. Further details and an eligibility calculator can be accessed from the HMRC website (www.hmrc.gov.uk). See section 19.

Workers are entitled to **paid annual leave** and entitlement starts to accrue from the 1st day of employment. During the 1st year of employment, the amount of leave a worker may take at any time is limited to the amount they have "accrued" at that time. Accrual is at the rate of one-twelfth of the annual entitlement at the beginning of each month. The amount of **statutory paid annual leave** that a worker is entitled to can be worked out by multiplying their normal working week by 5.6 (e.g. if you work 5 days per week = 5 x 5.6 = 28 days paid annual leave per year). There is no statutory right to have bank or public holidays, with or without pay. Bank or public holidays which the worker has off will count towards the worker's statutory holiday, unless their contract provides for bank or public holidays in addition to statutory holidays. See section 4.

A worker's **average working time**, including overtime, averaged over a 17 week reference period must not exceed 48 hours, unless the worker agrees to work more than this and signs an opt out agreement confirming this.

A worker who works more than 6 hours at a stretch is entitled to a **rest break** of 20 minutes. A worker under 18 years of age who works for more than 4.5 hours at a stretch is entitled to a rest break of 30 minutes. Whether employees are paid for rest breaks depends on the terms of the employment contract. See section 4 for further information.

Employees have the right to time off work for a number of reasons, including:

- for public duties (including jury duty);
- to look for work if declared redundant; and
- for trade union duties, activities and training.

SECTION 1

A female employee is entitled to 52 weeks' **Statutory Maternity Leave** (made up of 26 weeks' ordinary maternity leave followed by 26 weeks' additional maternity leave) regardless of her length of service. A female employee is entitled to 39 weeks **Statutory Maternity Pay** if she has been continuously employed for 26 weeks by the 15th week before the expected week of child birth and has average weekly earnings of at least the national insurance lower earnings limit. Other maternity rights include; time off for antenatal care; and protection against unfair dismissal on maternity-related grounds. See section 8.

Employees may be entitled to 52 weeks' **Statutory Adoption Leave** (made up of 26 weeks' ordinary adoption leave followed by 26 weeks' additional adoption leave) if they have a child matched or placed with them for adoption. **Statutory Adoption Pay** is paid for 39 weeks. See section 10.

Employees who have worked for their employer continuously for 26 weeks by the end of the 15th week before the expected week of childbirth may be entitled to paid **Paternity Leave** of up to two continuous weeks for the birth or adoption of a child. See section 9. Employees may be entitled to more leave or pay if their partner returns from maternity or adoption leave before the end of the 52 week period and they qualify for **Shared Parental Leave and Pay**. See section 11.

Employees who have completed 1 year's service are entitled to 18 weeks unpaid **Parental Leave** for each child under the age of 18. This right applies to both parents. See section 12.

Employees have the right to take **Parental Bereavement Leave** i.e. 2 weeks time off work, in the event of the death of a child (if the child has died under the age of 18 or is stillborn after 24 weeks of pregnancy). See section 12.

Employees who have worked for their employer continuously for 26 weeks, have the right to request **flexible working**. See section 7.

All employees are entitled to reasonable **time off work** without pay to deal with an emergency involving a dependant. See section 12.

All **part-time** workers are entitled to the same contractual rights (pro-rata) as comparable full-time workers. See section 7.

Employees with at least 2 years' service are entitled to **statutory redundancy pay**. See section 22.

All employees have the right to a **guarantee payment when laid off work** (so long as the contract allows the employee to be laid off, otherwise full pay is due). See section 23.

An employee who has been in continuous employment for 1 month or more is entitled to receive at least 1 week's **notice of termination of employment** if the employment has been for less than 2 years. Thereafter the employee is entitled to receive 1 week's notice for each year of completed service subject to a maximum of 12 weeks. However, an employee dismissed because of gross misconduct forfeits all notice rights.

Employees have the right to a **safe system of work**.

Employees and job seekers have the right **not to be discriminated against or subject to harassment** on the grounds of;

- sex;
- pregnancy or maternity leave;
- married or civil partnership status;
- gender reassignment;
- religious or similar philosophical belief;
- political opinion;
- race, colour, nationality, ethnic or national origins;
- sexual orientation;
- disability; or
- age.

Employers owe a special duty towards disabled job seekers and employees, **the duty to make reasonable adjustments**. Discrimination can arise where an employer fails to comply with this duty.

Anti-discrimination laws ban discrimination and harassment in relation to the recruitment of new staff; in relation to employees' terms and conditions of employment, including pay, and in the opportunities that are provided for their career development; in relation to the termination of their employment; and, in how employees behave towards one another. In addition to being held responsible for any discriminatory action on their part, an employer is likely to be held responsible for any discriminatory actions that their employee may commit in the course of carrying out their work. An employee can also be held personally liable for their actions.

SECTION 1

Employees have the right to belong or not to belong to an independent **trade union** and to not be discriminated against for their choice. Those who do so benefit from certain bargaining rights if their union is recognised by their employer. Where an employer with at least 21 employees does not recognise a union voluntarily, the union can follow a statutory procedure to obtain recognition. The issue will be referred to the Industrial Court who will determine whether or not the trade union should be recognised. Once a union has been recognised, it will have a right to be informed and consulted on a number of issues, including redundancies, health and safety and business transfers. An employer can withdraw voluntary recognition from a trade union at any time, but will need to follow a specific de-recognition procedure if recognition was originally granted under the statutory procedure. While there is no legal right to strike in the UK and employees who participate in industrial action are usually in breach of their contracts of employment, where an employee takes part in official industrial action it will be automatically unfair to dismiss an employee for taking industrial action within certain protected periods.

Employees have the right to be **transferred automatically on the same terms and conditions without loss of service related employment rights** from one employer to another when a business is transferred.

Employees have the right **not to be unfairly dismissed**. Subject to certain exceptions, employees must have 12 months' continuous service before the right not to be unfairly dismissed arises. For further information please see the Labour Relations Agency website (www.lra.org.uk). See also section 18.

Employees with 12 months' continuous service have the right to **written reasons for dismissal**. For further information see section 18. The request can be made either in writing or verbally but the employer must respond within 14 days of the date of the request. Failure to respond properly may result in an industrial tribunal ordering the employer to pay an award of 2 weeks pay (uncapped) and/or make a declaration as to what it finds the employer's reasons for dismissing the employee were.

An employee **dismissed** at any stage during **pregnancy, statutory maternity or adoption leave** is entitled to receive a written statement of the reasons for her dismissal even where she has not requested one and regardless of her length of service.

Employees have the right not to be dismissed, selected for redundancy or subjected to any other detriment for **health and safety reasons**.

Employees have the right not to be dismissed for asserting a **statutory employment right**.

There is no fixed **retirement age** for workers in Northern Ireland. Retirement age is generally when an employee chooses to retire. Compulsory retirement at any age must be objectively justified or will otherwise be an act of unlawful age discrimination.

Employees have the right to protection from dismissal or other negative consequences for **'whistleblowing'** (reporting wrongdoing in the workplace) when certain criteria are met.

See www.nibusinessinfo.co.uk/content/dismissals-resignations-and-retirements for further details and guidance.

Agency workers are classed as "workers" rather than as employees. All workers, including agency workers, are entitled to certain rights which include:

- The statutory minimum paid holiday leave
- Rest breaks and limits on working time
- The National Minimum Wage or National Living Wage
- No unlawful deductions from wages
- The right not to be discriminated against on grounds of race, religious belief or political opinion, sex, sexual orientation, age or because of a disability
- Health and safety at work
- Protection for 'whistleblowing'
- Not to be treated less favourably if they work part-time.

The Agency Worker Regulations (Northern Ireland) 2011 give agency workers the entitlement to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, if and when they complete a qualifying period of 12 weeks in a particular job.

The regulations cover agency workers supplied by a temporary work agency to a hirer. This includes most agency workers that people refer to as 'temps'. The regulations also cover agency workers supplied via intermediaries.

To establish the rights in these regulations, the agency worker needs to be able to identify a comparator. The regulations do not cover the genuinely self-employed, individuals working through their own limited liability company, or individuals working on managed service contracts.

SECTION 1

Rights of agency workers

From Day 1 of their employment, an agency worker is entitled to:

- the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the hirer; and
- be informed about job vacancies and have the same opportunity as any comparable worker to find permanent employment with the hirer.

After a 12-week qualifying period, an agency worker will be entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day 1 of the assignment, specifically:

- pay - including any fee, bonus, commission, holiday pay or other emolument (salary, fee or profit), whether payable under contract or otherwise, relating to the assignment. It does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay, or any payment by way of pension, allowance or gratuity in connection with the worker's retirement as compensation for loss of office, any payment or reward made in accordance with a financial participation scheme, any bonus, incentive payment or reward which is not directly attributable to the amount or quality of work done and which is given to a worker for a reason other than to encourage the worker's loyalty or to reward the worker's long term service, payment for time off for carrying out trade union activities, a guarantee payment, any payment by way of an advance or a loan, any payment in respect of expenses and any payment to the worker otherwise than in that person's capacity as a worker;
- working time rights - for example, including any annual leave above that required by law;
- rest breaks;
- night work; and
- automatic pension enrollment.

Agency workers who have completed the 12 week qualifying period will also be entitled to paid time off to attend antenatal appointments during their working hours.

The 12-week qualifying period does not have to be continuous

Most breaks between or during an assignment to the same job and the same hirer, that are less than 6 weeks in length will simply pause the accrual of the 12 week qualifying period. Most breaks between or during an assignment to the same job that are 6 weeks or more will reset to zero the 12 week qualifying period.

The accrual of 12 weeks qualifying period can be paused by:

- absences for sickness and jury service (for up to 28 weeks);
- annual leave, shut downs (e.g. factory closures and school holidays); and
- industrial action (for the duration of the absence).

Pregnancy and maternity related absences, maternity leave, paternity leave and adoption leave, or any other form or statutory leave such as parental leave or time off for dependents, will not pause the 12 week accrual at all. In these cases the 12 week accrual period will continue throughout the duration of the absence and include these weeks as counting towards the 12 week total.

Employer responsibilities and actions

Employers should make available all relevant information regarding the services that are available to the agency worker on day one of the assignment. For example, how to access internal vacancy information. They should also:

- provide time off for pregnant workers for antenatal appointments;
- carry out induction with agency workers;
- depending on the circumstances of the assignment, consider providing appraisals.

Further information is available at www.nibusinessinfo.co.uk/agency-workers