

Helpline 08457 47 47 47

08456 06 16 00
helpline for textphone users

08702 42 90 90
for ordering Acas publications

08456 00 34 44
for questions on managing
equality in the workplace

Rights at work

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www.acas.org.uk

discipline, grievances and dismissals
equality and discrimination
information and consultation
parents at work
> pay
time off
trade unions and representation



INVESTOR IN PEOPLE

12/04

Ref: RW05

inform

advise

train

work
with you

Acas can help *with your employment relations needs*

Every year Acas helps employers and employees from thousands of workplaces. That means we keep right up to date with today's employment relations issues – such as discipline and grievance handling, preventing discrimination and communicating effectively in workplaces. Make the most of our practical experience for your organisation – find out what we can do for you.

We inform

We answer your questions, give you the facts you need and talk through your options. You can then make informed decisions. Contact us to keep on top of what employment rights legislation means in practice – before it gets on top of you. Call our helpline 08457 47 47 47 or visit our website www.acas.org.uk.

We advise and guide

We give you practical know-how on setting up and keeping good relations in your organisation. Look at our publications on the website or ask our helpline to put you in touch with your local Acas adviser. Our Equality Direct helpline 08456 00 34 44 advises on equality issues, such as discrimination.

We train

From a two-hour session on the key points of new legislation or employing people to courses specially designed for people in your organisation, we offer training to suit you. Look on the website for what is coming up in your area and to book a place or talk to your local Acas office about our tailored services.

We work with you

We offer hands-on practical help and support to tackle issues in your business with you. This might be through one of our well-known problem-solving services. Or a programme we have worked out together to put your business firmly on track for effective employment relations. You will meet your Acas adviser and discuss exactly what is needed before giving any go-ahead.

Pay

What is this leaflet for?

This leaflet gives a brief outline of rights to pay at work. It includes basic information on:

- Who is entitled to the rights
- How people complain if they are denied a right they believe they are entitled to.

For detailed information about a particular right, visit www.acas.org.uk.

Rights covered

- Statutory Adoption Pay
- Equal pay
- Guarantee payments
- Holiday pay
- Payment owed by an insolvent employer
- Itemised pay statement
- Statutory maternity pay
- Medical suspension pay
- National minimum wage
- Statutory paternity pay
- Protection from unauthorised deductions
- Protective awards
- Redundancy pay.

Visit the Acas website at www.acas.org.uk to access further information on all the rights with links to detailed guidance on the Department of Trade and Industry (DTI) website. Printed versions of Acas publications are available from **Acas Publications** 08702 42 90 90.

If you do not have easy access to the Internet (world wide web) at home or at work try:

- your local library. Most medium-sized or large public libraries provide Internet access including a limited period free of charge. In some areas other sources of free access are available.
- Internet cafes, which provide access to the internet for a fee.
- UK online centres. These were set up by the Department for Education and Skills to help people with no computer skills to access the internet. There are around 6,000 UK online centres. Call the free UK online helpline **0800 77 1234** to find your nearest centre.

This leaflet is one of a series which outlines individual employment rights – other titles include *Discipline, grievances and dismissals, Equality and discrimination, Information and consultation, Parents at work, Time off, and Trade unions and representation*. Information on the law is for guidance only – you may need to seek legal advice on your particular circumstances.

Advisers on **Acas' helpline 08457 47 47 47 can answer questions on most employment relations matters** including rights and duties, but cannot provide legal advice. Acas also offers a wide range of products and services for organisations of all sizes and the people who work in them. Our aim is to improve organisations and working life through better employment relations.

Rights

on pay

Statutory adoption pay

Most employees who are entitled to adoption leave (see the leaflet '*Parents at work*' in this series) are also entitled to Statutory Adoption Pay (SAP) from their employers. SAP is paid for up to 26 weeks and is the same as the standard rate of Statutory Maternity Pay – £102.80 a week or 90 per cent of average weekly earnings if this is less than £102.80.

Equal pay

Employers must give men and women equal treatment in the terms and conditions of their employment contract if they are employed on:

- 'like work' – work that is the same or broadly similar
- work rated as equivalent under a job evaluation study, or
- work found to be of equal value.

A woman is employed on 'like work' with a man if her work is of the same or a broadly similar nature, and any difference between the things they do is not of practical importance in relation to their terms and conditions of employment. It is for the employer to show that any difference is of practical importance.

Individuals may complain to an employment tribunal under the Equal Pay Act 1970 up to six months after leaving the employment to which their claim relates. They may claim arrears of remuneration (which includes sick pay, holiday pay, bonuses, overtime etc as well as 'pay') for a period of up to six years (five years in Scotland) before the date of their tribunal application.

Guarantee payments

Certain employees are entitled to a guarantee payment for up to five days in any three-month period. This is payable for days on which they would normally be expected to work under their

contract of employment, but throughout which their employer has not provided them with any work (because of, say, reduced demand or lack of raw materials).

Payment does not have to be made if:

- the employee has not completed one month's continuous employment with the employer
- the employee unreasonably refuses suitable alternative work
- the employee does not comply with the employer's reasonable requirement to be available to work
- the short-time or lay-off results from a strike, lock-out or other industrial action involving any employee of the employer or of an associated employer.

If the employer makes a payment in respect of the workless day under the employee's contract of employment, it is offset against the liability to make a guarantee payment for that day.

Holiday pay

Most workers – whether part-time or full-time – are entitled to four weeks' paid annual leave.

A week's leave should allow workers to be away from work for a week – ie it should be the same amount of time as the working week. If a worker does a five-day week, he or she is entitled to 20 days' leave. If he or she does a three-day week, the entitlement is 12 days' leave.

There is no statutory right to have bank holidays off as paid leave. They may be part of the four weeks' leave – some employment contracts deal with bank holidays separately.

Workers must give the employer notice that they want to take leave. Employers can set the times that workers take their leave, for example for a Christmas shutdown. If a worker's employment ends, he or she has a right to be paid for the leave time due and not taken.

Payment owed by an insolvent employer

Employees who have been dismissed can receive payments of certain debts (within limits) owed to them by an employer who is formally insolvent, as defined in the legislation, from the National Insurance Fund.

These debts include:

- arrears of pay for a period of at least one week but not exceeding eight weeks in all
- holiday pay for up to six weeks
- compensation for the employer's failure to give them proper statutory entitlement to notice, and
- any basic award of compensation for unfair dismissal.

'Pay' includes commission, overtime and bonus payments if these are contractual payments; guarantee payments; statutory payments for time off work or suspension on medical or maternity grounds; and any protective award made by an employment tribunal because the employer failed to inform or consult the employee's representative about a collective redundancy.

Itemised pay statement

All employees are entitled to an individual written pay statement, at or before the time they are paid. The statement must show gross pay and take-home pay, with amounts and reasons for all variable deductions. Fixed deductions must also be shown, with detailed amounts and reasons. Alternatively, fixed deductions can be shown as a total sum, provided a written statement of these items is given to each employee in advance – or at the time – of issue of the first pay statement showing the total sum, and after that at least once a year.

A dispute relating to the itemised pay statement provisions may be referred to an employment tribunal by either an employer or an employee. If the employment has come to an end, the reference must be made within three months of the end of the employment.

Statutory maternity pay

A woman is entitled to Statutory Maternity Pay (SMP) if she has been employed by her employer for a continuous period of at least 26 weeks ending with the 15th week before the expected week of childbirth, and has average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SMP can be paid for up to 26 weeks; it is payable by the employer but partly (or, for small firms wholly) reimbursed by the state.

From April 2004 the standard rate of SMP is £102.80 a week (or 90 per cent of the woman's average weekly earnings if this is less than £102.80 a week). For the first six weeks of maternity leave the rate is 90 per cent of average weekly earnings. The rate of SMP is reviewed every April.

Medical suspension pay

Certain health and safety regulations require employees to be suspended from their normal work on medical grounds, when their health would be endangered if they continued to be exposed to a substance specified in the regulations. These provisions cover exposure to ionising radiation, lead and some other hazards.

Employees suspended for this reason are entitled to medical suspension pay if, before the suspension begins, they have one month's continuous employment with the employer and if they are fit for work (provided they have not unreasonably refused suitable alternative work offered by the employer). Employers who make medical suspension payments provided for in an employee's contract of employment can offset them against this statutory liability. See the leaflet *Parents at work* for information on maternity suspension pay.

National minimum wage

Workers are entitled to be paid at least the level of the statutory National Minimum Wage (NMW) for every hour they work for an employer. From 1 October 2004:

- the main NMW rate is £4.85 an hour (up from £4.50)

- the development rate for those aged 18-21 years old inclusive, and also for older people receiving accredited training for up to six months after starting a new job with a new employer, is £4.10 an hour (up from £3.80).

Check the current rate at www.dti.gov.uk/er. The following do not qualify for the NMW: the genuinely self-employed, anyone under 18, genuine volunteers, apprentices under 19, apprentices under 26 who are still within the first 12 months of their apprenticeship, students doing work as part of their undergraduate or post-graduate course, workers on certain training schemes, residents of certain religious communities, prisoners, the armed forces and share fishermen.

However, there are no exemptions according to size of business or by sector, job or region. All workers including pieceworkers, homeworkers, agency workers, commission workers, part-time workers and casual workers must receive at least the NMW.

Statutory paternity pay

Most employees who are entitled to paternity leave (see the leaflet *Parents at work* in this series) are also entitled to Statutory Paternity Pay (SPP) from their employers. SPP is paid by employers for either one or two consecutive weeks, whichever the employee chooses. The rate of SPP is the same as the standard rate of Statutory Maternity Pay – £102.80 a week or 90 per cent of average earnings if this is less than £102.80.

Protection from unauthorised deductions

The law protects individuals from having unauthorised deductions made from their wages, including complete non-payment. This protection applies both to employees and to some self-employed workers.

One of three conditions has to be met for an employer lawfully to make deductions from wages or receive payments from a worker. The deduction or payment must be:

- required or authorised by legislation (for example, income tax or national insurance deductions); or

- authorised by the worker's contract – provided the worker has been given a written copy of the relevant terms or a written explanation of them before it is made; or
- consented to by the worker in **writing** before it is made.

There are exemptions from these conditions which allow an employer to recover, for example, an earlier overpayment of wages or expenses to a worker.

There are extra protections for individuals in retail work.

Workers who believe they have suffered an unlawful deduction from wages can make a complaint to an employment tribunal.

Protective awards

In cases where employers have failed to consult with employee representatives over proposed redundancies an employment tribunal can make a 'protective award'. The employer is required to pay employees covered by a protective award their normal week's pay for each week of a specified period, known as the protected period, regardless of whether or not they are still working.

To be covered by an award, employees must belong to a group specified in the award, they must be employees whom the employer plans to dismiss or has already dismissed as redundant and they must be employees in whose case the employer has failed to comply with the information and consultation requirements (see also leaflet *Information and consultation* in this series).

Redundancy pay

Employees have the right to a lump-sum 'redundancy payment' if they are dismissed because of redundancy. The amount is related to the employee's age, length of continuous service with the employer, and weekly pay up to a maximum – see *links from Acas website* www.acas.org.uk for current maximum. The employer must also provide a written statement showing how the payment has been calculated, at or before the time it is paid.

Any dispute about whether a redundancy payment is due, or about its size, can be determined by an employment tribunal.

Who has these rights?

Most people are entitled to the statutory rights listed in this leaflet, although, in many cases, qualifying conditions must be fulfilled before a right may be claimed. Some rights apply to all employees as soon as they start work; others depend on factors such as length of service, continuity of employment and activities in addition to the job (eg union work). For certain rights, various groups of people are excluded. Most rights apply only to employees but some apply to wider groups of workers. Always check detailed information on qualifying conditions using the links provided on the Acas website at www.acas.org.uk.

Employers and employees are free to agree better terms than those required by legislation in their contract of employment. A contract of employment is an agreement entered into by an employer and employee under which they have certain mutual obligations – for more information visit the Department of Trade and Industry website at www.dti.gov.uk/er.

Employers must give employees **a written statement of the main particulars of employment within two months** of the beginning of the **employment**. It should include, among other things, details of pay, hours, holidays, notice period and an additional note on disciplinary and grievance procedures.

What happens if there *is a dispute about rights at work?*

If employers and employees have a dispute about any of the rights listed in this leaflet they have the following options:

1. **Settle the dispute.** Employees should always try to resolve a problem or dispute with their manager or employer first. This might be through the organisation's own grievance procedure. Both sides can also come to Acas for advice, either from the helpline or an Acas adviser.
2. An employee can make a **complaint to an employment tribunal** if he or she believes an employment right has been denied or infringed. In most cases, people who are treated detrimentally for exercising their rights may also complain to a tribunal. Complaints normally must be made within three months of the date of the alleged infringement – although there are exceptions (follow the links on the Acas website for details). For nearly all types of complaint, once an application is received an Acas conciliator will contact both parties to see if a settlement can be reached before the case reaches a hearing.
3. **Acas Arbitration Scheme.** For cases of alleged unfair dismissal and complaints under the right to request flexible working only, both parties can choose to have their case heard by an independent arbitrator appointed by Acas. The hearing is private, informal, non-legalistic, quick and confidential and the arbitrator's decision final. The remedies are the same as through an employment tribunal.
4. A **tribunal hearing** has various remedies and awards it can make, depending on the type of case. For example, if the tribunal decides an employee has been unfairly dismissed, the remedy could be re-instatement, re-engagement or monetary compensation, depending on the circumstances. Costs can also be awarded. A tribunal hearing is public.

Acas Publications

*Book time with your
Employment specialist*

Whether you need to know how to write a contract of employment, how much holiday you are entitled to or about the latest employment legislation, our range of booklets and leaflets give practical information and advice for both employers and employees on employment matters.

You can choose from our handbooks offering comprehensive guidance to the modern workplace or our Getting it Right pocket guides, providing vital checklists to help small firms run their business.

View and order online at www.acas.org.uk or call Acas Publications on 08702 42 90 90.

Other Acas material on this subject includes:

- Acas Advisory Booklet– *Pay*
- Acas Getting it Right guide – *Paying employees*

Acas Training

Our training is carried out by experienced Acas staff who work with businesses every day. They will show you the value to your business of following good practice in employment matters and how to avoid the common pitfalls. We also run special training sessions on new legislation.

Look at the Acas website for up-to-date information about all our training or if you want to book a place online.

Training sessions are specially designed for smaller companies and our current programme includes:

- Managing discipline and grievances at work
- Managing absence at work
- Dealing with bullying and harassment at work
- Employing people: an overview
- The written statement and contracts of employment
- New employment legislation

We also have free online learning to help you – just go to www.acas.org.uk and click on **e-learning** to look at the topics covered.

Information in this booklet has been revised up to the date of the last reprint – see date below.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

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