

Working in the UK: a guide to your rights

2015



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www.tuc.org.uk/workingintheUK

www.migrantinfo.eu



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> Introduction

Welcome to the TUC guide on your rights at work in the UK. The TUC is the national centre of trade unions in the UK – we represent almost 6 million workers and 54 unions from a variety of sectors.

Trade unions bring workers together to defend rights at work, make sure workplaces are safe and bargain for better pay and conditions for their members. To find out how to join a union, see www.tuc.org.uk.

Many people experience problems at work but are not able to solve them on their own. Many of the problems that people face in the workplace may not only be experienced by an individual but might affect many people. Together workers are stronger. Being in a trade union means these problems can be taken up as a common issue. This is why it is important to be in a trade union, to

encourage others to join a union and to work for union/s to be recognised in your workplace.

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We hope you find this guide useful. Please share it with your colleagues and friends.

Disclaimer: The legal system of any country is always complex. You should treat this as a guide to the basics. If you think you are losing out, or your employer is breaking the law, you should take further advice here: www.acas.org.uk/helpline

> 1. Employment status and rights

1. WHAT TYPE OF WORKER ARE YOU?

All workers with a right to work in the UK have employment rights. If you are from a non-EU country there may be conditions attached to your visa which restrict the hours or type of work you may be employed to do, however. See the Home Office website (www.gov.uk/browse/visas-immigration) for more information about the conditions attached to your visa.

The rights you are entitled to at work will depend on the *type* of worker you are.

There are generally three legal categories of workers in the UK: 'employees'; 'workers' such as casual or agency workers; and the 'self-employed'.

2. EMPLOYEE

You are likely be an employee if:

- You are expected to attend work regularly
- You expect your employer to provide you with regular hours or work
- You expect to be paid for the work that you do
- You are expected to carry out your work yourself (i.e. you would not be allowed to ask a friend or family member to do it for you)
- You are not allowed to refuse to work or refuse to come to work
- Your employer is in charge of how, when and where you work
- Your employer pays taxes and National Insurance out of your wages
- Your employer provides your tools, equipment, facilities, uniform etc.
- You have a written contract of employment

Note: If these facts do not apply to you, you might be 'self-employed' or a 'worker'. You should ask for help from a trade union official if you are not sure about your employment status.

3. RIGHTS FOR EMPLOYEES

All employees have the right to:

- Be paid at least the National Minimum Wage www.gov.uk/national-minimum-wage
- Protection against unlawful deductions from wages
- Paid annual leave
- The statutory minimum length of rest break
- Protection from accidents at work
- not work more than 48 hours on average per week
- Protection against unlawful discrimination

- Protection for 'whistleblowing' – reporting wrongdoing in the workplace
- Not be treated less favourably if they work part-time
- Join a trade union
- Be accompanied in grievances and disciplinary actions www.tuc.org.uk/workplace/tuc-19823-f0.cfm
- Statutory Sick Pay
- Protections if they are pregnant
- Maternity and paternity leave and pay
- Minimum notice periods if their employment will be ending – e.g. if an employer is dismissing them www.acas.org.uk/index.aspx?articleid=1650
- Protection against unfair dismissal
- Request flexible working www.gov.uk/flexible-working
- Time off for emergencies
- Statutory Redundancy Pay www.tuc.org.uk/sites/default/files/extras/facingredundancy.pdf

4. WORKER

You are likely to be a worker if:

- Your employer does not have to offer you regular or guaranteed hours
- You do not have to accept any work or shifts that your employer offers
- You have a contract it describes you as 'casual' or 'as required'
- You are expected to carry out your work yourself (i.e. you would not be allowed to ask a friend or family member to do it for you)
- Your employer pays taxes and National Insurance out of your wages
- Your employer provides your tools, equipment, facilities, uniform etc.

Note: If these facts do not apply to you, you might be 'self-employed' or an 'employee'. You should ask for help from a trade union official if you are not sure about your employment status.

5. RIGHTS FOR 'WORKERS'

All workers have the right to:

- Be paid at least the National Minimum Wage (www.gov.uk/national-minimum-wage)
- Protection against unlawful deductions from wages
- Paid annual leave
- The statutory minimum length of rest break
- Protection from accidents at work
- Not work more than 48 hours on average per week
- Protection against unlawful discrimination
- Some protections for pregnant workers
- Protection for 'whistleblowing' – reporting wrongdoing in the workplace (www.pcaw.org.uk)
- Not be discriminated against if you work part-time
- Join a trade union
- Right to be accompanied in grievances and disciplinary actions
www.tuc.org.uk/workplace/tuc-19823-f0.cfm

6. SELF-EMPLOYED WORKER

You are likely to be self-employed if:

- You pay your own tax and National Insurance

- You can hire someone else to do your work for you
- You provide your own tools and equipment
- You provide invoices for your work rather than receiving a wage
- You risk losing profits if there is a problem

Bogus self-employed?

If you suspect you may be a 'worker' or 'employee' but are being treated as self-employed, you should seek immediate advice from a trade union official.

7. RIGHTS FOR SELF-EMPLOYED WORKERS

- Health and safety at work
- Protection against unlawful discrimination
- If you are pregnant, you may be eligible to claim Maternity Allowance – see www.gov.uk/maternity-allowance for more information.

There are some additional rights that apply to some self-employed workers which a union can help you to claim. To find the relevant union for your job see www.tuc.org.uk/about-tuc/union-finder.

➤ 2. Agency Workers

1. RIGHTS FOR AGENCY WORKERS

Agency workers are entitled to the same rights as other 'workers'.

Agency workers on 'pay between assignment' contracts, have the same rights as 'employees'.

In addition, agency workers have the right to a written statement of terms and conditions before they start any work (www.nidirect.gov.uk/agency-workers-what-information-should-you-get-and-when)

An agency **may not**

- charge the worker a fee simply for finding them work or putting them on their books.
- insist a worker buy other products or services such as CV writing, training, or personal protective equipment as a condition of using their work-finding services.
- withhold a workers' pay simply because they have not received payment from the organisation you worked at, or because you cannot produce a signed time sheet. It is the agency's responsibility to establish the hours that the worker actually worked.

See the TUC's Agency Workers guide online for more information: www.tuc.org.uk/sites/default/files/agencyworkers_0.pdf

2. AGENCY WORKERS: EQUAL TREATMENT

From the first day of work for a hirer agency workers have rights to:

- access the same facilities as permanent staff
- the same opportunities to apply for internal vacancies as permanent staff

Once agency workers have worked in the same role at an organisation for **12 weeks** they have the right to:

- be paid at the same rate as permanent staff (unless you are on a 'pay between assignments' contract, see below)
- the same holiday rights as permanent staff
- the same working time entitlements as permanent staff

3. 'PAY BETWEEN ASSIGNMENT' CONTRACTS

Agency workers who are employed on a 'pay between assignment contract' are not

entitled to equal pay even after 12 weeks' work for a hirer.

Individuals will only lose out on equal pay if their contract:

- is "permanent" and not a fixed-term contract
- sets out the minimum pay they will receive
- says where they will be expected to work
- gives the hours of work they will work states the type of work they are expected to do

In addition the agency worker must have a right to be paid between assignments when they are not working.

For more information see the TUC online guide.

A union will be able to help you to claim your rights at work if you are on this kind of contract.

4. AGENCY WORKERS: ACCIDENTS AT WORK

Agencies have a duty to find out about any health and safety risks in the workplace known to the organisation that is hiring an agency worker and the steps taken to prevent or control those risks. They should check that the organisation has carried out a thorough health and safety risk assessment and ensure that workers are made aware of the situation before placing them in an organisation.



➤ 3. Join a union

Trade unions are organisations that defend people's rights at work, make sure their working conditions are safe and bargain for better pay and conditions for their members.

Trade unions can provide you with guidance to claim many of the rights in this guide. To find out how to join a union see:

www.tuc.org.uk/join-union

Trade unions are independent of your employer and the Government and you are allowed to join a union by law. You do not have to tell your employer if you are a union member. In the UK workers who are in union-organised workplaces are on average better paid and safer so it is important to join a union.

If an employer 'recognises' a trade union, the union is able to bargain on behalf of workers with management on pay and conditions. This is called 'collective bargaining' and produces 'collective agreements'. Many workplaces have collective agreements on pay and conditions that are above the legal

minimum, health and safety, maternity and paternity rights, among other issues.

If you are a member of a trade union and have a problem at work, unions can offer you a representative to help you settle the issue with your employer. Trade unions also provide legal representation, e.g. Employment Tribunals or if you have an accident at work, if taking legal action against your employer is the only way to secure and protect your rights at work.

If you are a union member working in a workplace where the union is not recognised, workers and employees still have a right to be represented by a union at grievance and disciplinary meetings and your union will give you advice on the rights you are entitled to at work.

If you are not a union member and work in a workplace where the union is not recognised, it is still worth contacting a union in case they are prepared to give you advice if you join.

➤ 4. Hours of work and holidays

1. WORKING WEEK

Employees and workers have the right not to work more than 48 hours a week on average. This is calculated over a 17-week period. They may sign a clause in their contract giving up their right to work a maximum of 48 hours

a week, but they may not be pressured into giving up this right. If they change their mind and want to enforce their right to no more than 48 hours a week they can do so by informing their employer that they no longer wish to opt out of their working time rights,

although they may have to wait a few weeks for it to take effect. A trade union official will be able to provide guidance.

Employees and workers are entitled to 11 un-interrupted hours away from work during every 24-hour period of work.

2. NIGHT WORK

Employees or workers employed on night shifts should not work more than eight hours at night every 24-hours. This is calculated by working out an average over a 17-week period, or the contract period if it is shorter than this.

Example: an agency worker employed for one month should not work more than an average of 48 hours night work a week over a 4 week period.

Workers must be offered a free health assessment before becoming night workers by their employer and on a regular basis after this.

3. REST BREAKS

Employees and workers have the right to have the right to a rest break of 20 minutes where the working day is longer than six hours. If workers are under 18 they are entitled to a 30-minute break after working four and a half hours. For more information see:

www.acas.org.uk

4. HOLIDAY (ANNUAL LEAVE)

Employees and workers should receive a legal minimum of four weeks' paid leave per annum plus 8 days of 'bank holidays' (national holidays). In some workplaces employers allow all staff to take bank holidays off, but in other workplaces staff can take time off instead of bank holidays. You should check your contract of employment, your staff handbook or talk to your trade union representative to find out if what you are entitled to.

➤ 5. Pay

1. PAYSLEIPS

Employees are entitled to a payslip each time they are paid. The payslip should say what they have been paid, what deductions have been made (e.g. tax, national insurance and trade union subscriptions) and take-home pay.

Each year employers must give employees a P60 certificate which shows their gross pay for the year, take-home pay and the total deductions made from their pay during the year.

2. NATIONAL MINIMUM WAGE

Workers and employees have the right to be paid a minimum of the National Minimum Wage, which is set by the Government and reviewed every year by the Low Pay Commission (which includes trade unions and employers).

There are different rates for 16–17 year olds, 18–20 year olds, people who are 21 and older and apprentices. To find out the latest rate of the National Minimum Wage see www.gov.uk/national-minimum-wage-rates

If you think you are being paid under the National Minimum Wage contact the Pay and Rights at Work Helpline (www.gov.uk/pay-and-work-rights-helpline) online or call 0800 917 2368.

3. DEDUCTIONS FROM PAY

Your employer should not make any deductions from your pay unless:

- The deduction is required by law (i.e. income tax and National Insurance)
- The deduction is allowed under your contract (e.g. trade union subscriptions)
- You have signed a written agreement authorising the deduction
- Your employer has overpaid you – you should seek advice from a trade union representative if this has happened
- You did not work because of a strike (your employer can only deduct wages for the day(s) that you didn't work)
- There are also special rules on pay deductions for shop workers where the employer believes that a worker may have stolen – talk to a trade union official for guidance
- If your employer provides accommodation for you then they can pay you a slightly lower rate of the national minimum wage. This is called the accommodation offset:
www.gov.uk/national-minimum-wage-accommodation

Unlawful deductions from pay

- No deductions can be made for any meals or other refreshments that are provided.
- No deductions can be made for protective equipment that you need to do your job safely. If you have any concerns about this you should contact the Health and Safety Executive (www.hse.gov.uk)

4. NATIONAL INSURANCE AND TAX

Every worker in the UK has a National Insurance number. This is a personal number issued by the Government that you need to work legally. It is used to keep track of social security contributions. If you earn more than about £100 a week, then both you and your employer have to pay what are called National Insurance contributions. These are a kind of tax.

You will also have to pay income tax on earnings above a certain threshold. Every worker in the UK has a tax code, which an employer uses to work out how much tax they should pay on your behalf. If you are starting your first job in the UK you will probably start to pay “emergency tax” until you have been given a tax code.

If you do not have a National Insurance Number (NINO), or have been issued with a temporary one by your employer, then you should call 0845 6000643; see www.gov.uk/apply-national-insurance-number

If your employer offers to pay you only in cash without paying National Insurance or tax (known as “cash in hand”), you should talk to a trade union official as soon as possible. It is illegal to employ someone cash in hand.

5. SICK PAY

Your sick pay will depend on what is written in your contract of employment.

If your employer does not pay sick pay, you may be entitled to Statutory Sick Pay (SSP), which is a flat-rate state benefit. It is payable by your employer from the fifth day of sickness up to 28 weeks. You are entitled to SSP as long as you have paid enough National Insurance contributions.

You may be able to claim Income Support or Employment and Support Allowance.

For further information see www.gov.uk/contact-jobcentre-plus.

➤ 6. Health and safety rights at work

The organisation you are working for has a duty to provide you with a safe and healthy working environment. This should include training you about the health and safety issues in your workplace. There are many special rules that will apply in any workplace where there are particular risks to workers. You should check

whether your workplace has a trade union health and safety representative.

For more information on your health and safety rights see the Health and Safety Executive website (www.hse.gov.uk)

➤ 7. Rights for expecting or new parents

1. RIGHTS FOR PREGNANT OR BREASTFEEDING WOMEN

All workers who are pregnant or on maternity leave have the right to not be discriminated against because of pregnancy, for example, individuals must not be disciplined for pregnancy-related sickness absence. The hirer of an agency worker must also not end an assignment because they find out a worker is pregnant.

An organisation that has pregnant workers or new mothers working in it must take steps to minimise the risk of harm to the worker or their babies.

2. MATERNITY PAY

Some workers may qualify for 39 weeks' Statutory Maternity Pay (SMP). The first six weeks of SMP are paid at 90% of your normal earnings and the rest is paid at a flat rate (www.gov.uk/maternity-pay-leave/pay).

If a worker does not qualify for SMP then they may be able to claim Maternity Allowance for up to 39 weeks. Maternity Allowance is paid at the flat rate for 39 weeks (www.gov.uk/maternity-allowance).

3. ADDITIONAL RIGHTS FOR EMPLOYEES WHO ARE NEW OR EXPECTANT MOTHERS

- Paid time off to attend ante-natal appointments
- The employer must take steps to protect the employee and their baby from harm in the workplace. If it is not possible to adjust their job or working conditions to minimise the risk of harm, then their employer must offer them suitable alternative work on terms and conditions that are not less favourable. If it is not possible to find them suitable alternative work, the employer must suspend the employee from work and

they are entitled to be paid during the suspension.

- Up to 52 weeks' maternity leave (the first two weeks of maternity leave are compulsory). Employees must not suffer any detriment or be discriminated against for seeking to take or for taking maternity leave.
- If employees take 26 weeks or less maternity leave they have the right to return to the same job. If they take more than 26 weeks' leave they have the right to return to the same job but if that is not possible then they have the right to return to a suitable alternative job on similar terms and conditions.
- Mothers who have babies due on or after 5 April 2015 can convert up to 50 weeks of their maternity leave into Shared Parental Leave if they and the father/her partner are eligible. For more information see www.gov.uk/shared-parental-leave-and-pay
- If employees are adopting a child and they are expected to be the primary carer they will have similar rights to leave and pay in the first year, for more information see www.gov.uk/adoption-pay-leave/overview

4. PATERNITY LEAVE RIGHTS FOR EMPLOYEES

As a new or expectant father, or as the mother's partner who is expected to be responsible for the upbringing of the child, employees have the following rights:

- The right to unpaid time off to attend up to two ante-natal appointments.
- Up to two weeks' paternity leave to be taken around the time of the birth if they have been employed by their employer for at least 26 weeks by the fifteenth week before the expected week of childbirth.
- Up to two weeks' statutory paternity pay

if they qualify for paternity leave and they have earned more than the lower earnings limit (www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions).

- They may be able to take more leave to care for the child in the first year if they and the mother are eligible for Shared Parental Leave (SPL). This allows a mother to convert up to 50 weeks of her maternity leave into SPL which either partner can use in the first year. www.gov.uk/shared-parental-leave-and-pay/eligibility
- If employees are adopting a child with their partner, they will have similar rights to leave and pay, see www.gov.uk/adoption-pay-leave/overview

5. PARENTAL LEAVE, FLEXIBLE WORKING AND TIME OFF FOR DOMESTIC EMERGENCIES – RIGHTS FOR EMPLOYEES

As a working parent or carer, employees have the following rights to balance paid work with family or caring responsibilities:

- Parents who are employees and have more than a year's service with their employer have the right to take parental leave to care for a child. This leave is unpaid and can be taken in blocks of one week. Parents can take a maximum of 18 weeks' leave for each child. The leave has to be used before the child's 5th birthday. But from April 2015, parents will be able to use the leave up to the child's 18th birthday.
- Employees with more than 26 weeks' service have the right to ask their employer for flexible working.

A trade union official will be able to offer guidance on claiming these rights at work.

➤ 8. Dealing with problems at work

1. GRIEVANCES

If you believe that you are being treated unfairly at work, for example you think you are being discriminated against by your employer or you don't have appropriate working conditions, speak to a trade union representative. Together, you should try to raise the matter informally either with your line manager, or a more senior manager if that is not possible.

But if that does not work, or is not appropriate, you should follow your employer's formal grievance procedure. This may involve writing to your employer explaining what makes you think you are being treated unfairly and your employer should organise a meeting to discuss your grievance. You have the right to be accompanied by a trade union official at the meeting.

If you are not satisfied with the outcome you may wish to ask for an appeal meeting. Again, you have the right to be accompanied by a trade union official.

Note: Many employers do not allow workers or self-employed workers to use grievance procedures. Talk to a trade union official for advice.

2. DISCIPLINARY ACTION

If you are an employee and your employer decides to take disciplinary action against you, you should seek advice from a trade union official on your case and consult the disciplinary procedure in your contract.

As a minimum, a disciplinary procedure should work as follows:

- Your employer should carry out an investigation if they suspect that you

are underperforming or you have acted improperly to see if there is a case against you. Your employer may ask you to attend an investigatory meeting. While you don't have the right to be accompanied to an investigatory meeting, you should ask anyway as a good employer should allow it.

- Your employer should then formally notify you in writing if they think there is a case against you. Your employer should invite you to a meeting, tell you that you have the right to be accompanied by a trade union official, and send you the evidence that they intend to use against you.
- Your employer should then hold a face-to-face meeting with you to discuss the matter. You have the right to be accompanied at this meeting, and you should inform your employer that you wish to be accompanied. After the meeting your employer should inform you of their decision and of your right to appeal against the decision.

If you have been an employee for at least two years, your employer can only lawfully dismiss you if they can show that it was because of your ability to do your job. It is unlawful to be dismissed on the grounds of:

- Trade union membership or activities
- Health and safety
- Exercising your employment rights
- Pregnancy and maternity
- Discrimination

Your employer must follow a fair procedure for dismissal. If they fail to do so, you may bring a claim against your employer for unfair dismissal. Talk to a trade union official for further advice.

3. DISCRIMINATION AND HARASSMENT AT WORK

If you believe you are being bullied, harassed or discriminated against at work you should contact a trade union.

You have the right not to be discriminated against because of your race, gender, nationality, religion or belief, sexual orientation, pregnancy, maternity, age, or disability (known as the 'protected characteristics').

If you are disabled, you are entitled to extra support. An employer has a duty to make 'reasonable adjustments' to things like premises, equipment and working hours so that you are not put at a disadvantage when compared to non-disabled workers. This duty only applies if the employer knows you are disabled.

It is also unlawful to discriminate against you if you are on a fixed-term contract or you are a part-time worker.

Discrimination may include being paid less or being given worse terms and conditions than other workers or not being given a particular job.

If someone at work behaves towards you in a way that you don't want, and their behaviour is hostile, intimidating, humiliating or offensive, including unwanted sexual attention, this is known as 'harassment'. Harassment is unlawful if it relates to any of the protected characteristics.

It is also unlawful to victimise you for raising a complaint about discrimination.

You should write down all incidents of bullying, harassment or discrimination and keep any other related evidence, as you will need this if you have to make a formal complaint. A trade union can advise you how to make a formal complaint.

4. TAKING A CASE TO AN EMPLOYMENT TRIBUNAL

If you have a problem at work, a trade union should be able to help resolve it. They may also help you take your case to an Employment Tribunal.

Employment Tribunals are a special kind of court that deal with employment issues. Most of the time the Tribunal won't get your job back but they might tell your employer to pay you compensation.

It is essential to get advice on taking a case to the Tribunal from your trade union or from the ACAS helpline on 0300 123 1100. You must notify ACAS before you can take a case to the Employment Tribunal. 'They will offer a free 'Early Conciliation' service to advise you.

Most complaints must be made within three calendar months of the issue taking place.

You will have to pay a fee when you apply to the Tribunal, and a further fee if your case cannot be settled before a hearing. If you are on a low wage and have limited savings, you can apply for your fees to be reduced. See www.justice.gov.uk/tribunals/employment/claims for more information.



> 9. Useful contacts

■ **Trades Union Congress**

The TUC is the national centre of trade unions in the UK – we represent almost 6 million workers and 54 unions from a variety of sectors.

T: 020 7636 4030 E: info@tuc.org.uk

www.tuc.org.uk

■ **Advisory, Conciliation and Arbitration Service (ACAS)**

ACAS is a public body that promotes good workplace relations. Their national helpline answers employment questions and provides general advice on rights at work for employees and employers.

T: 0300 123 1100 open from 8am to 8pm Monday–Friday and 9am to 1pm on Saturday

www.acas.org.uk

■ **Equality and Human Rights Commission (EHRC)**

The EHRC is an independent body established to help eliminate discrimination, reduce inequality, protect human rights

www.equalityhumanrights.com

■ **Citizens Advice Bureau (CAB)**

Citizens Advice Bureau offers free, confidential advice on debt and consumer issues, benefits, housing, legal matters, employment, and immigration online and in their local offices. See

www.citizensadvice.org.uk.

■ **Health and Safety Executive**

The Health and Safety Executive is a government body that provides advice and information on health and safety issues.

T: 0300 003 1747 (8.30am–5pm)

■ **Maternity Action**

Maternity Action is a charity working to promote the rights of pregnant women and tackle discrimination. They have information on maternity rights in a number of different languages:

www.maternityaction.org.uk/wp/advice-2/languages/

■ **Pay and Work Rights Helpline**

This helpline is a confidential government service offering advice on the National Minimum Wage, employment agencies, working time, agricultural workers' rights and working for a gangmaster

T: 0800 917 2368 (8am–8pm Mon-Fri; 9am–1pm Sat).

www.migrantinfo.eu

