



National Indian Students Union (UK)

## **EMPLOYEE RIGHTS**

**This information does not cover all your legal rights but it does make you aware of your basic employment rights.**

### ***What are the legal requirements?***

A contract is a legally binding agreement between your employer and your employee, which is formed when the employee agrees to work for you for pay. The contract is made up of both oral and written agreements which may include:

- express terms which are terms explicitly agreed;
- implied terms, which may include:
  - terms that are too obvious to mention (eg that the employee will not steal from the employer);
  - those necessary to make the contract workable (eg that a person employed as a driver must have a current driving licence) – although it is often better to write down such terms in any case; or
  - those that are the custom and practice of the industry.
- terms incorporated into individual contracts by reference to other documents, such as company handbooks or collective agreements with trade unions
- terms imposed by **law** (for example the right not to be discriminated against on the grounds of sex, race, disability, sexual orientation, religion or belief); maternity pay; pay for lay-offs; pay for medical or maternity suspension.

Your Employer is not required to set out in writing all the terms of the contract but they must provide the employee with written details of his or her main terms and conditions of employment within two months of that person starting work. The terms and conditions the Employer is required to put in writing are set out in the DTI Booklet Written Statement of Employment Particulars available at [www.dti.gov.uk/publications](http://www.dti.gov.uk/publications). As a general rule, alterations to the contract can only be made with the agreement of both parties either verbally or in writing.

- Changes can also be agreed through collective agreements such as those between employers and employees or their representatives or through a term which provides for variation in the contract – for example, a clause which requires an employee to carry out a range of duties.
- Your Employer should agree changes wherever possible. If your Employer impose

change, employees could claim damages in the civil courts or resign and claim constructive dismissal before an employment tribunal.

***A contract can be terminated:***

- By mutual agreement or by the employer or employee giving the required notice of termination. There are certain minimum periods of termination (for example, after one month employees are entitled to one week's notice for the first two years in their job).

***How your Employer should get it right?***

Your Employer should;

- Agree terms and any subsequent changes with employees. □
- Issue employees with a written statement setting out the main terms and conditions of their employment within two months of them starting work. □
- Remember if your Employer terminates a contract they must give at least the statutory minimum notice period or the notice period agreed in the contract if this is more.
- Put as much as possible in writing to avoid confusion. □ If unsure, seek advice.

***What if the Employer get it wrong?***

Confusion can lead to friction, misunderstandings and claims to civil courts, or to employment tribunals for breach of contract. Employees who consider their contracts have been terminated unfairly may apply to a tribunal claiming they have been unfairly dismissed. If your Employer fails to give the required notice, the employee can make a claim to the courts or to an employment tribunal for damages for wrongful dismissal. Where the employee leaves without giving the required notice, your Employer has a similar right to claim damages. If your Employer imposes change, employees could claim damages in the civil courts or resign and claim constructive dismissal before an employment tribunal.

***Health and Safety***

Your employer has a statutory duty to provide a safe environment for you to work in. First aid equipment must be provided and there must be adequate means of escape in case of fire. The Health and Safety at Work Act covers a variety of related issues, and there are specific rules regarding the following: • Cleanliness • Hazardous Substances • Hours and Rests • Toilets • Lifting and Carrying • Machinery

### ***The National Minimum Wage***

Workers in the UK aged 16 (and above school leaving age) are legally entitled to a national minimum hourly wage regardless of where they work the size of the firm or the workers occupation. This includes casual labourers, agency workers, home-workers, workers on short term contracts and workers employed by subcontractors. There are some workers not covered by the national minimum wage. These are workers under 16, some apprentices, some people living and working with a family where they share meals and do not have to pay towards accommodation costs or meals and those who are self employed. It is important to remember that students in higher education on COMPULSORY WORK PLACEMENT schemes AS PART OF THEIR COURSE are not entitled to the minimum wage.

Compliance with the NMW is calculated on the basis of gross pay before deductions such as income tax and National Insurance.

The following items are **included** in pay for compliance purposes:

- basic pay
- incentive pay
- bonuses
- tips (provided they are paid through the payroll)
- deductions for reasons such as misconduct or poor work, advances of wages, or accidental overpayment of wages
- cost of employee-provided accommodation.
- The following items are **excluded** from pay for compliance purposes:
  - an advance of wages
  - loans
  - redundancy payments
  - the premium element only of shift or overtime enhancements
  - unconsolidated special allowances (eg London Allowances, 'danger' or 'dirty' money, on-call payments)
  - expenses
  - deductions or payment for tools, uniforms etc.
  - benefits in kind
  - a reward under a staff suggestion scheme.

### ***Working Time Regulations***

In order that work is carried out safely and effectively the Government introduced a 'work time directive' in October 1998. The Working Time Regulations (WTR) cover many aspects of working hours and help to ensure that employees do not work excessive amounts of time. These include:

- The right to a day off each week
- A limit of an average 48 hour working week
- The right to a break if the working day is longer than six hours
- The right to an 11 hour rest each day
- Night workers should only work an average of 8 hours per shift

Highlighted below are some of the Laws and Acts you should be aware of:

- Sex Discrimination Act 1975 and 1986
- Race Relations Act 1976
- Disability Discrimination Act
- Asylum and Immigration Act 1996
- EU Working Time Directive (Working Time Regulations 1998)
- National Minimum Wage Act 1998
- Data Protection Act 1998
- Freedom of Information Act 2000
- Part Time Workers Legislation (Prevention of Less Favourable Treatment) Regulations 2000
- Rehabilitation of Offenders Act 1974 • Police Act 1997