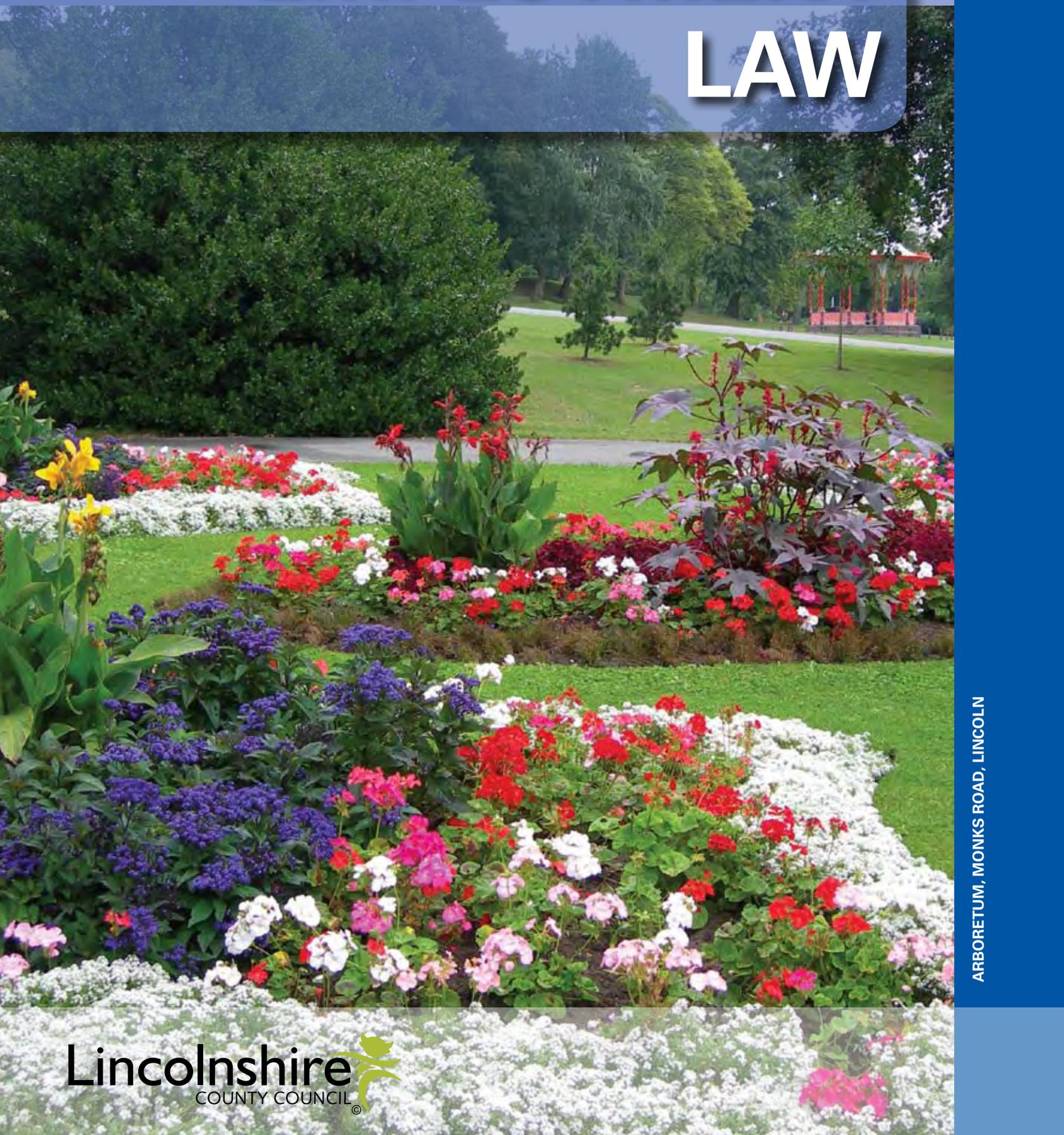


Really Useful Stuff

EMPLOYMENT LAW



ARBORETUM, MONKS ROAD, LINCOLN

Really Useful Employment Law Stuff

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Introduction

Why do we need this chapter?



Photo: Stockxpert.com

Being an employer is becoming increasingly complex and tied up with legislative procedures. Managers in the voluntary sector often feel vulnerable and in need of support and guidance, which is what this Really Useful chapter hopes to provide.

Its purpose is to help managers and trustees address their employment problems and stay abreast of current employment legislation.

Unfortunately it can only offer an overview of the legal position at the point of publication.



Individual problems and difficulties need to be addressed on their own merits and employers would be wise to seek professional advice.

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Data Protection

The guidelines and advice given in this chapter require employers to routinely gather and collect personal data.

It is recommended that you check your legal obligation under Data Protection Legislation and possibly register with the Data Protection Commission. This costs £35 and they can be contacted at www.data-protection-act.co.uk



See **Running your group Chapter**

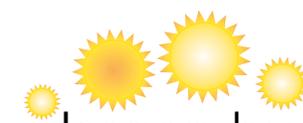
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Employment contract

1



Jargon buster

BACS	Electronic money transfer between banks
Contract	Contracts of employment exist the minute an individual starts to perform work for an organisation on the understanding that payment will be received for these services. The contract is primarily determined by the current statutory framework of employment legislation, plus any express terms agreed between both employee and employer. The employer is legally obliged to provide a written illustration of the terms and conditions relating to the contract of employment, within eight weeks of the worker beginning their employment
Probationary period	A nominal period of time commencing from the start of an employee's employment, during which the employee is expected to reach an acceptable level of performance at work, and the employee has an opportunity to determine whether or not they are suited to the job. The probationary period has no legal status, however it is usually less than 12 months in duration to enable the employer to dispense with the worker's services should it wish to do so, without concern about claims for Unfair Dismissal being made
Redundancy	An employer's need for a particular post or posts has ceased or diminished, or is expected to cease or diminish
SMP	Statutory Maternity Pay; taken during Ordinary Maternity Leave
SSP	Statutory Sick Pay

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Employment contract

The following need to be included in paid workers' written terms and conditions, the employment **contract**.

1 Name and addresses of Employer

2 Name and addresses of Employee

3 Date Employment Commenced

4 Job Title

5 Probationary Period

Three to six months, managers can extend the period by up to 12 months.

6 Location of Employment

7 Salary / Hourly Rate

£_____

8 Payment Arrangements

Wages are paid by Cash / Cheque / **BACS** Transfer on a weekly / monthly basis.

9 Pension Entitlements

Minimum stakeholder plan required if the organisation employs five or more.

10 Hours of Work

_____ per week.

11 Holiday Entitlement

At least 4.8 weeks' equivalent paid leave per annum from October 2007.

12 Maternity Leave

All female employees are entitled to 52 weeks' Maternity Leave, which consists of nine months' ordinary paid leave (if eligible) and an optional three months additional unpaid leave.

13 Paternity Leave

New fathers with more than six months' continuous employment, are entitled to two weeks' paid paternity leave. Paid at the same rate as **SMP**.

14 Illness and Statutory Sick Pay

Employees whose weekly wage exceeds the National Insurance Lower Earnings Limit are entitled to claim Statutory Sick Pay (**SSP**).

**15 Grievances and Discipline
Gross Misconduct**

Acts of Gross Misconduct, **if proven after appropriate investigation**, can result in dismissal.

**16 Termination of Employment
Notice Required by Employees**

Notice provided by the organisation — one week for each year of continuous employment.

17 Redundancy Procedure:

- 1 Issue a Notice of Threat of **Redundancy**.
- 2 Provide those individuals affected with a 30-day period of consultation.
- 3 Conduct a Formal Meeting to discuss the outcome of the consultation.
- 4 If required, conduct an Appeal against the Formal Decision.

18 Retirement

The normal retirement age for all staff is 65. Employees wanting to work beyond their 65th birthday may make a formal request to the organisation's management to do so.

See **Policy and Procedure Chapter**

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13



Photo: Shannon Pifko

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Informal Grievances and Discipline

If a member of staff feels that they have a grievance with the organisation they should discuss the matter with their line manager informally. The same will apply to managers who are unhappy with a worker's performance.

Formal Grievances

A formal written approach is required to the management. As a consequence a formal meeting will be held to address the matter. If the employee making the grievance is unhappy with the response to the meeting, they can issue an appeal, in writing.

Formal Discipline

This is a four-step procedure (see below), which increases in the severity of its outcome if the issue isn't resolved at the previous step. Each step involves a formal meeting between the affected employee and a manager, at which the employee will be given every opportunity to put their side of the issue.

STEP NO	ACTION TAKEN	LIVE PERIOD	MANAGER RESPONSIBLE
1	Formal Oral Warning	Six months	Line Manager
2	Formal Written Warning	Six months	Line Manager
3	Final Written Warning	12 months	Director or Trustee
4	Termination of Contract of Employment	N / A	Director or Trustee

Appeal Procedure

Employees have the right to appeal against a decision made at any formal disciplinary step. Appeals should be made to a director / trustee in writing.

Managing absenteeism and sickness

2



ACAS	Advisory Conciliation and Arbitration Service provided by the Government and free to employers and employees
BERR (DTI)	Department for Business Enterprise and Regulatory Reform; previously known as the Department for Trade and Industry (DTI)
Contract	Contracts of employment exist the minute an individual starts to perform work for an organisation on the understanding that payment will be received for these services. The contract is primarily determined by the current statutory framework of employment legislation, plus any express terms agreed between both employee and employer. The employer is legally obliged to provide a written illustration of the terms and conditions relating to the contract of employment, within eight weeks of the worker beginning their employment
TUC	Trades Union Congress

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Managing absenteeism and sickness

The problem of managing sickness absence and poor attendance has two important aspects:

- Absenteeism costs money. In particular those staff who take the 'odd day off' here and there, such as Fridays and Mondays. This causes disruption, affects productivity, upsets the morale of other employees and increases business costs
- On the other hand, mismanagement of the problem can cause the employer to infringe Disability Discrimination legislation, which can prove very costly.

Advice from organisations such as **ACAS** and the **BERR (DTI)** is for employers to:

- 1 **Objectively assess and measure employees' levels of attendance.**
- 2 **Conduct a reasonable investigation into those employees whose absenteeism stands out.**
- 3 **Have a formal procedure to address the problem.**

STEP 1 Objectively assess and measure employees' levels of attendance

For small organisations with up to 20 staff it would be sufficient to simply keep a record of attendance, such as that used for payroll purposes.

For larger organisations the following formula is recognised by ACAS, the DTI and **TUC** as being a fair and objective way to help managers keep a record of the effects of staff sickness.

Each member of staff is allocated a **Sickness Index** based on the following calculation:

$$\begin{array}{l} \text{No of} \\ \text{days} \\ \text{absent} \\ \text{during} \\ \text{the 12} \\ \text{month} \\ \text{period} \end{array} \times (\text{No of} \\ \text{sickness} \\ \text{absence} \\ \text{episodes})^2 = \text{Individual} \\ \text{Index}$$

The purpose of this formula is to emphasise the number of times the individual is absent, not the number of days they are off work.

The rationale behind this is that numerous 'odd days off' cause more disruption and are less likely to be the result of serious illness, compared to the individual who needs to take a significant length of time off in a single block.

Example No 1

An employee has nine episodes of sickness, each of one day only in duration.

Their index would be calculated as follows:-

$$9 \times (9)^2 = 729$$

Example No 2

An employee has one episode of sickness during the twelve-month period, which lasts for a total of 40 days, presumably as a result of a significant health problem or hospital admission.

Their index would be calculated as follows:-

$$40 \times (1)^2 = 40$$

As a result, the individual who took a number of 'odd' days off has an index of almost 20 times that of the individual who only had the one period of absence. The formula has therefore brought attention to the more disruptive member of staff, as opposed to the one who is more likely to have a serious health problem.

STEP 2 Conduct an investigation into those employees whose absenteeism stands out

Employees whose sickness index exceeds a threshold set by the company's management receive a Return to Work interview, after the period of absence which took them over the threshold.

The purpose of this interview is to discuss:

- What difficulties the employee is suffering
- What alterations to their job / adaptations to their working environment / alternative work can be allocated to help the individual overcome the problem
- How the employee and management can work together to assist the individual overcome their sickness problem.

If the employer believes that the employee in question has a long-term (potentially lasting for more than 12 months) health problem (physical or mental health), they would be wise to seek professional, third party advice such as medical reports, at this point.

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The purpose of this report would be to answer questions such as:

- Does this person have a long-term health problem?
- Does it affect their ability to do their job? (Include a copy of their Job Description)
- What support and assistance can their employer provide to help them attend work?
- What is the long-term prognosis with regards to their ability to do their job.

The employer requires no personal or confidential information from the doctor, which the employee should find reassuring as they need to provide their consent for the doctor to conduct the investigation. Furthermore the cost of such a report is usually around £150 to £400, which may be extremely cost-effective in the long term.

The employer also takes advice from people such as the Employment Services' Access to Work Team, regarding installing equipment and making adjustments to the employee's place of work to help them, as well as what financial assistance may be available.

STEP 3 Have a formal procedure to address the problem

The steps described previously would inform an employer if an employee has a genuine health problem.

- **If they do not**, but their absenteeism figures don't improve, the employer can take formal disciplinary action
- **If they do** have a genuine health problem, the employer must discuss offers of alternative work, adapting their job, or adjusting their working environment to help them attend work
- If the employer can prove that these adjustments are **unreasonable, and prohibitively expensive**, they can terminate the employee's **contract**.



Photo: Lincolnshire County Council

Redundancy procedures

3



Jargon buster

Unfair (Constructive) Dismissal

Occurs when an employee feels that they have no other option than to leave their employment and make a claim for Unfair (Constructive) Dismissal at a tribunal because their employer had either:

- 1** Not addressed their Formal Grievance through the organisation's Grievance Procedure
- 2** Failed to follow the formal procedures set out in the company's written Grievance Procedure
- 3** Didn't have written details available to its employees of its Formal Grievance procedures

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Redundancy procedures

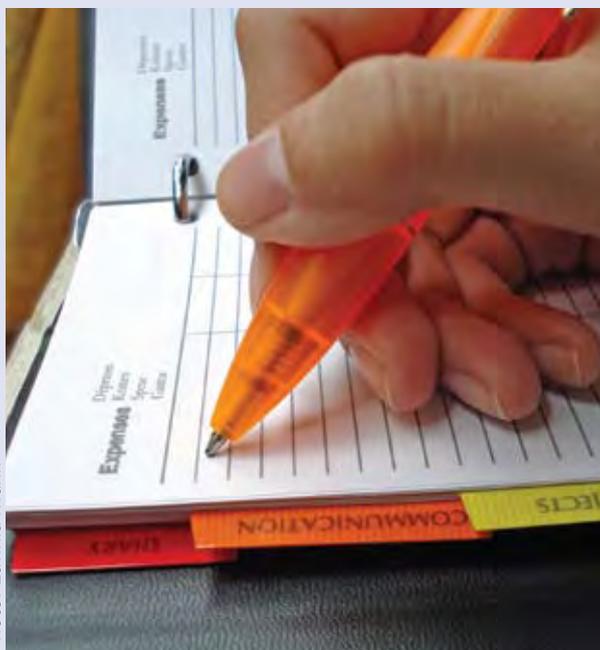


Photo: Lavinia Marin

Voluntary organisations who employ paid workers through specific funding may need to make these workers redundant when the funding runs out. If the worker has been employed for 12 months or more, failure to follow the correct procedure may result in a claim being made to an Employment Tribunal for **Unfair Dismissal.**

If the worker has been employed for two or more years, they are entitled to Redundancy Compensation.

Formal Redundancy Procedure:

- 1 Issue a Notice of Threat of Redundancy; this will include notice of a 30 day period of consultation and the date consultation will begin.**
- 2 During the consultation period the organisation will discuss with the affected employees:**
 - Finding alternative work within the organisation
 - Reasons for the redundancy
 - Calculating the amount of redundancy compensation employees with two or more years' continuous employment are entitled to, based on the Statutory Formula (see opposite).
- 3 After the period of consultation a Formal Meeting will be arranged to discuss the outcome of the consultation.**

Individuals will be invited by letter to this meeting and informed of their right to be accompanied.
- 4 Conduct an Appeal against the Formal Decision, should the affected employee wish to do so.**

Appeals must be submitted in writing within seven days of the Formal Meeting.

During the consultation period, affected individuals are entitled to paid time off to attend job interviews and / or for retraining purposes.

Statutory Formula:

Employees Aged 18 – 21 years old	Half a week's pay for every year employed
Employees Aged 22 – 40 years old	One week's pay for every year employed
Employees Aged 41+ years old	One and a half weeks' pay for every year employed
Maximum weekly wage limit – £330*	Up to a maximum of 30 years

* 2008 figure; reviewed each February

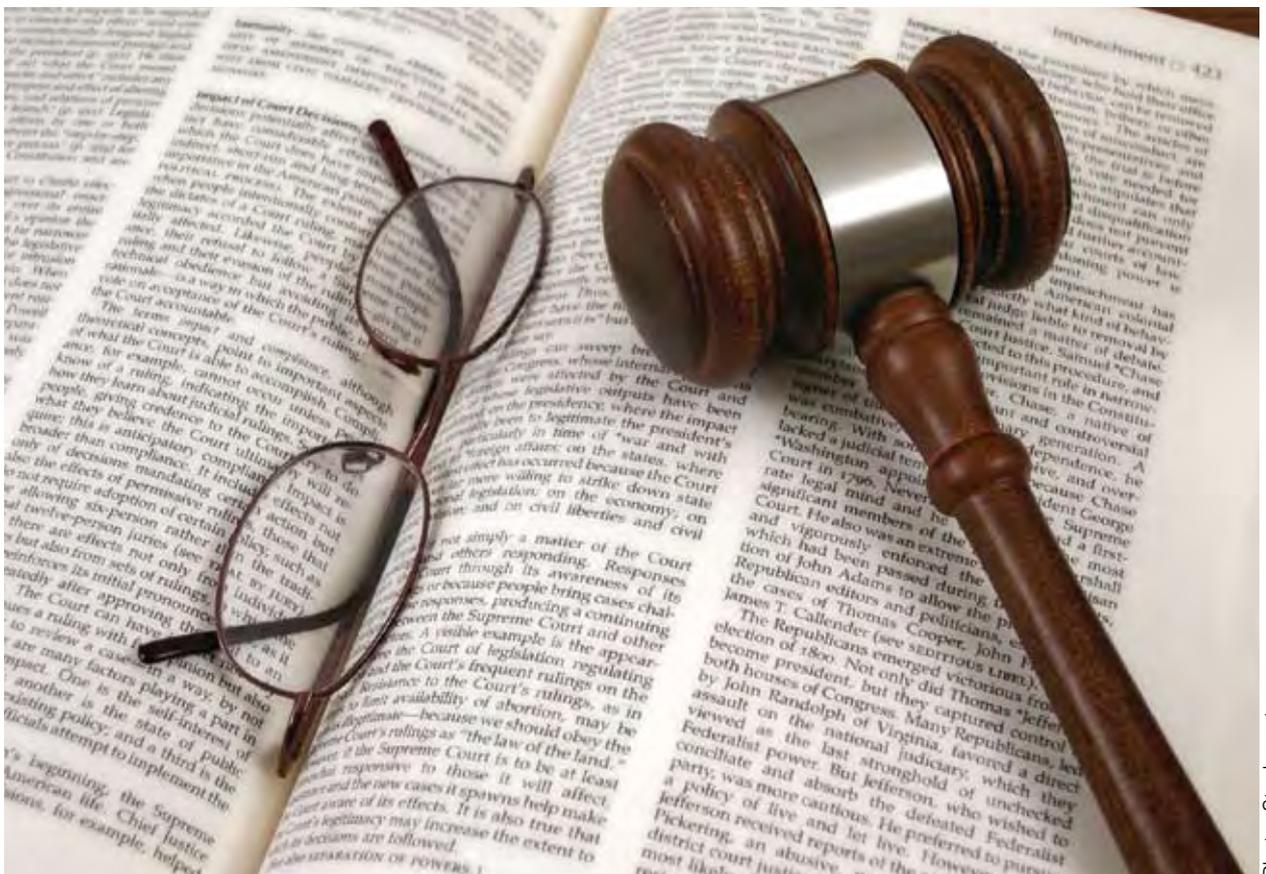


Photo: Stockxpert.com

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Employer's Frequently Asked Questions (FAQs) regarding current redundancy procedures

- Q** Do we have to go through the Redundancy Procedure for workers whose funding is coming to an end?

A Yes, if they've been employed for 12 months or over they would claim Unfair Dismissal if you fail to follow the procedure.
- Q** How long do workers have to be employed before they qualify for redundancy compensation?

A Two years.
- Q** If we have an alternative job we could offer to someone who is being made redundant, how do we go about it?

A They are entitled to a four-week trial period. If at the end of the four weeks they decide they don't like the job, they can claim all their redundancy / severance entitlements.

If they do like it, they can be offered the new post and their continuity of employment is unbroken.

Flexible working time requests for carers



Discrimination

Discrimination occurs when an employer:

- Refuses to employ
- Provides less favourable terms and conditions of employment
- Refuses to promote
- Dismisses or disciplines
- Fails to provide access to opportunities such as training, promotion to an individual on the basis of their
 - Race
 - Gender
 - Disability
 - Age
 - Sexual Orientation
 - Beliefs – religious / political

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Flexible working time requests for carers



Photo: Simona Balint

- **Employees with caring responsibilities for immediate members of their family, and who have more than six months' continuous employment, are able to request shorter working hours than their full-time colleagues**
 - **All terms and conditions are pro rata the full-time equivalent for workers who reduce their working hours, ie their pay and entitlements will depend on the reduced hours they work**
- **The employer is not obliged to accept this request, however refusal will be based on one or more of the following:**
 - 1 The additional costs to the business.
 - 2 Reduced ability to meet the needs of customers.
 - 3 Inability to share the person's workload amongst other staff.
 - 4 Potentially damaging effects upon the quality of work produced.
 - 5 Potentially damaging effects upon performance.
 - 6 Inability to recruit extra staff to provide cover.
 - **Requests to change working hours must be made in writing to a line manager**
 - **The process of holding a meeting with the employee making the request and providing a written response to them should take no more than 28 days**
 - **If the employee who made the request is unhappy with management's decision, they must address the issue through the company's grievance procedure.**

Employer's Frequently Asked Questions (FAQs) regarding flexible working time requests for carers

- Q** How much detail do we have to go into if we wish to refuse someone's request?

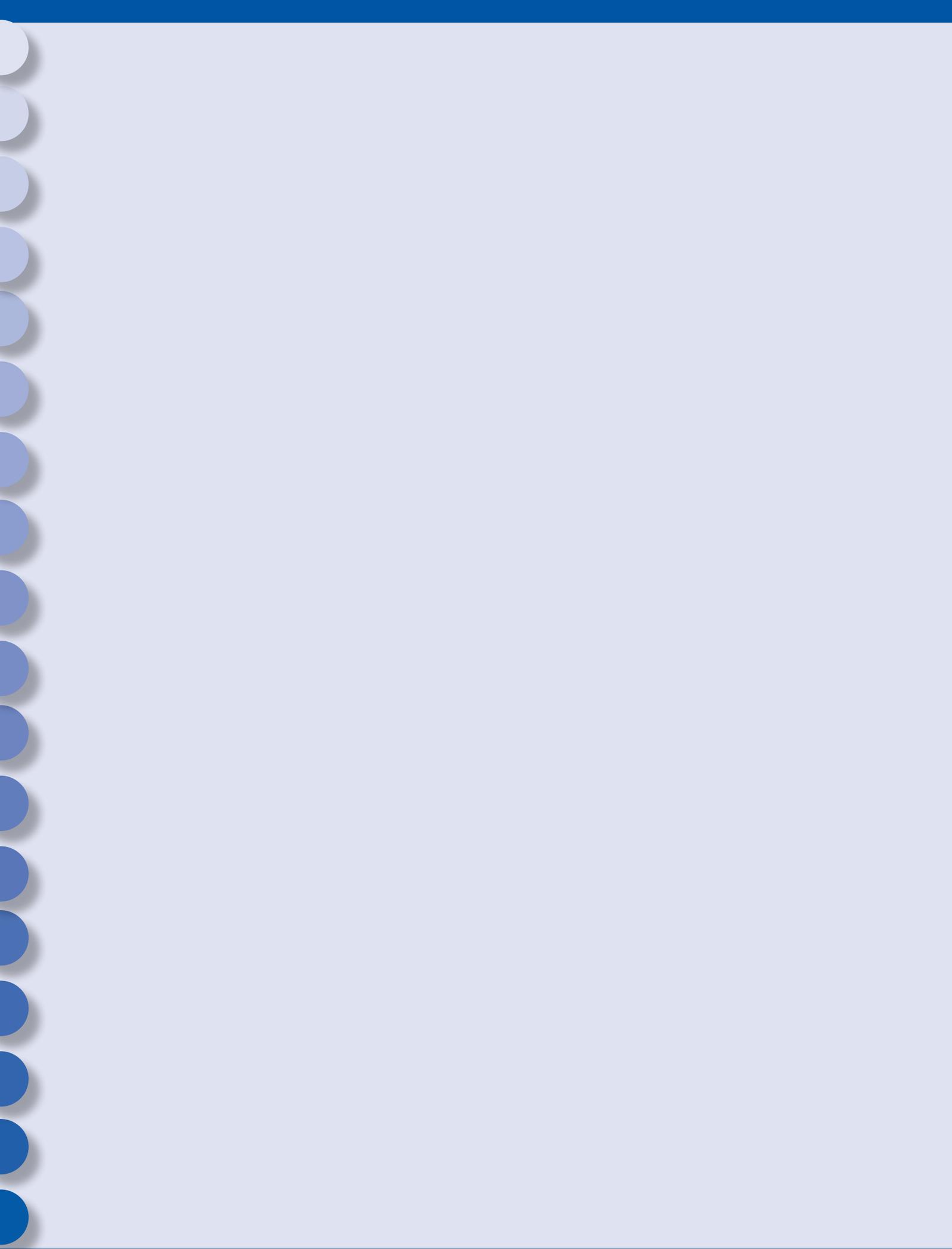
A As much factual detail as possible. If you fail to provide sufficient detail, the worker can appeal and if they are still unhappy they can take the employer to an Employment Tribunal and possibly claim **Sex Discrimination** .
- Q** If we grant one person's request to change their working hours, do we have to do the same for everyone else who makes the same request?

A No. You need to address each person's claim on its own merit, if subsequent requests prove difficult to accommodate, for example because it is now difficult to share out the work amongst other employees, the employer can refuse the request as long as they have sufficient detail to prove their case.
- Q** Can an employee revert back to their old hours as and when they choose?

A No. This would have to be dealt with as a new request, and addressed on its own merits.

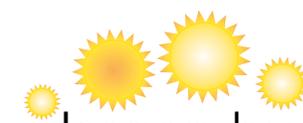


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Maternity entitlements

5



Jargon buster

AML	Additional Maternity Leave; three months' unpaid leave entitlement taken after nine months' paid leave
KIT days	Keep In Touch days. A maximum of ten days, spread across maternity leave, when a worker by arrangement with management can come into work to keep in touch
OML	Ordinary Maternity Leave; up to nine months' paid Maternity Leave
SAP	Statutory Adoption Pay; taken during OML
SMP	Statutory Maternity Pay; taken during OML
WTR	Working Time Regulations

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Maternity entitlements

Photo: Stockxpert.com



From April 2007 the Work and Families Act introduced new maternity entitlements for female workers taking maternity leave.

In summary these changes are as follows:

- Statutory Maternity Pay (**SMP**) and Statutory Adoption Pay (**SAP**) are extended to nine months. This replaces the current provision of six months
- Employees will need to give their employer eight weeks' prior notice if they wish to return to work early from maternity leave

- By April 2009 new fathers will be entitled to take part of their partner's maternity leave, if the mother wishes to return to work. The father can take up to six months of the remaining unused leave. Fathers wishing to take up part of their partner's unused Maternity Pay and leave entitlement need to discuss the matter with management two months prior to commencing the leave
- 'Keeping in touch' days were introduced from 1 April 2007. Workers taking maternity leave will be able to arrange with management to return to work for short periods during their leave; ie up to a maximum of ten days; and receive their normal rate of pay on these working days without damaging their entitlement to Maternity Pay.

Employer's Frequently Asked Questions (FAQs) regarding current maternity entitlements

- 1 Q** The rules on what to pay for 'Keeping In Touch' (KIT) days are confusing. What should we pay an employee on maternity leave attending our annual three-day sales conference?

A The regulations merely state that statutory maternity pay is still payable during **KIT days**, so the issue is more a contractual one. On that basis, it is advisable to pay employees their normal rate of pay on KIT days. Not doing so may result in an equal pay claim. Ordinarily, it would not be possible for an employee on maternity leave to identify the male comparator required in an equal pay claim, but the employee would be at work on KIT days, rather than on leave, and could compare her pay with that of a male colleague.
- 2 Q** An employee wants to save all her annual leave and public holiday entitlement to take at the end of her maternity leave. Can we prevent her?

A Annual leave accrues as normal during **OML** but employers can limit employees to the statutory minimum Working Time Regulations (**WTR**) entitlement during the **AML** period. This often results in employees returning to work with several weeks of unused annual leave following maternity leave. Under WTR, statutory holidays cannot be carried over into the next leave year. If the woman's contract does not allow annual leave to be carried over either, and the maternity leave period straddles two leave years, she may lose some accrued annual leave. In this case, women may choose to take the holiday before going on maternity leave. If a woman's contract allows contractual holiday to be carried over, this could be exercised in her favour. In practice, it is better to reach agreement in advance on when holiday will be taken.

Women entitled to paid time off on public holidays, as well as the statutory minimum 20 days, are not automatically entitled to anything other than maternity pay for public holidays during OML (and no pay during AML). Many employers do allow employees on maternity leave to accrue days off in lieu of public holidays, but this is not a legal requirement. Employees whose 20 days' holiday includes public holidays should be allowed to accrue any that fall during their maternity leave.

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3 Q Will holiday accrual during maternity leave change when the statutory holiday entitlements are increased?

A **WTR** holiday entitlement has risen to the equivalent of 24 days a year from 1 October 2007, to take account of bank holidays, and it is likely that the additional four days' annual leave will be accrued during maternity leave. The proposals allow these additional days to be carried over into a new leave year, by agreement between employer and employee.

4 Q What's the up-to-date position on bonuses during maternity leave?

A A bonus payment amounting to contractual remuneration is not payable unless it relates to work done prior to the start of maternity leave (*Lewen v Denda*, 2000 IRLR 67; ECJ). However, women are entitled to any attendance-related bonus payments relating to the compulsory maternity leave period (*Hoyland v Asda Stores*, 2006 IRLR 468; CS).

The situation is less straightforward for discretionary bonus schemes that are not remuneration, such as a one-off profit-related bonus. If this is payable to all employees, then withholding this type of bonus from women on maternity leave is likely to constitute sex discrimination. Any discretionary bonus not classed as wages or salary will almost certainly be payable for the ordinary maternity leave (**OML**) period, too, but there is arguably more scope for employers to withhold discretionary bonus payments during the additional maternity leave (**AML**) period. This is because most employee benefits do not apply during AML. Employers should remember that OML and AML are still 26 weeks long, even though statutory maternity pay may be paid for up to 39 weeks under the new rules.

Workplace bullying and harassment

6



Bullying	A bully is someone who creates a hostile, threatening or intimidating environment, in the mind of the recipient
Discrimination	Discrimination occurs when an employer: <ul style="list-style-type: none">• Refuses to employ• Provides less favourable terms and conditions of employment• Refuses to promote• Dismisses or disciplines• Fails to provide access to opportunities such as training, promotion to an individual on the basis of their<ul style="list-style-type: none">• Race• Gender• Disability• Age• Sexual Orientation• Beliefs — religious / political
EOC	Equal Opportunities Commission
Harassment	Harassment occurs when someone believes that they have been subjected to a hostile, threatening or intimidating environment, at work
Policy	A policy is a deliberate plan of action to guide decisions and achieve rational outcomes
Vicariously	The employer is directly responsible for the acts and welfare of its employees and any other third party who is involved with their company's activities

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Workplace bullying and harassment

(ie unwanted and hostile behaviour of any nature)

- Employers are now liable for **harassment** or **discriminatory** behaviour their employees receive from clients under new rules imposed by the High Court
- In a recent legal challenge brought by the Equal Opportunities Commission (**EOC**) the High Court agreed with the EOC that employers should be **vicariously** liable for discriminatory acts carried out by their clients against their employees
- It is worth remembering that it is the individual employee who decides whether or not they consider themselves to have been subjected to harassment. An employer cannot use the defence that such behaviour is commonplace in their environment and people who work there should be aware of 'what they are letting themselves in for'
- According to the EOC this will affect employers in the hospitality industry particularly, because it employs around 670,000 women and sexual harassment by customers is rife.

What should employers do to protect themselves?

- 1 Make it clear to customers that such behaviour will not be tolerated.**
Such as erecting signs, adding notices to purchase orders, or adding clauses to customer contracts stating that harassment, hostile or intimidating behaviour towards staff will not be tolerated and may result in legal action.
- 2 Provide staff with training to handle difficult / unwanted customer behaviour.**
- 3 Introduce a Lone Working **Policy** to ensure workers are not exposed to unnecessary risk.**
- 4 Have a simple, accessible and effective grievance procedure which allows employees the opportunity to make their employer aware of problems of this nature.**

- Recent **bullying** cases (Majrowski v Guy's and St Thomas's NHS Trust [2006 UKHL 34]) and Green v DB Group Services Limited (EWHC/ QB/2006/1898) made it abundantly clear that employers could be vicariously liable for harassment committed by their employees under the Protection from Harassment Act 1997 (PHA)
- The act carries criminal liability and alleged victims of harassment may also bring a personal claim for damages against their alleged harassers
- There is no set tariff of damages in the act, and any compensation is based on actual financial loss suffered by the victim as a result of the harassment. But there may also be a payment for the 'anxiety caused by the harassment'
- As is usual for civil claims, **there is a six-year time limit within which claims must be brought**, not three months as in employment tribunals
- In the Majrowski case, Majrowski argued his departmental manager had bullied and harassed him in the course of his employment, and he sued the trust directly over the manager's actions

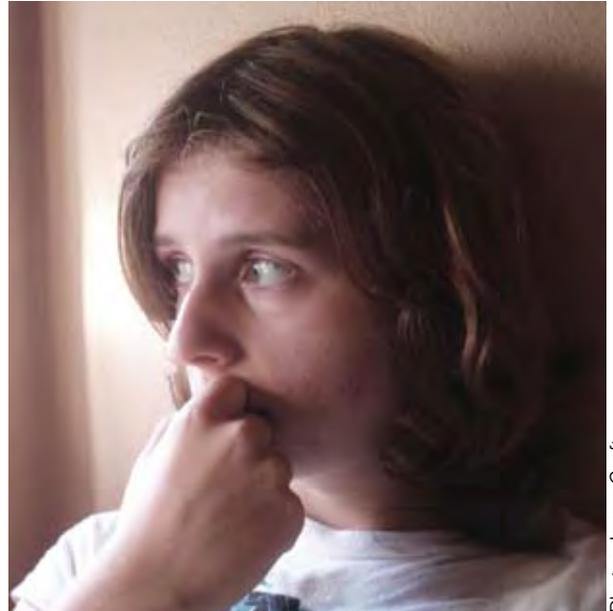


Photo: Joana Croft

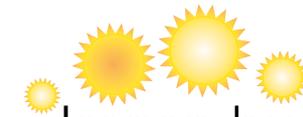
- Green claimed under the PHA and for personal injury. The case received extensive press coverage when the claimant was awarded £800,000 in damages. The House of Lords found there had been a breach of the Act, but the damages were awarded entirely for the psychiatric injury caused by the bullying
- Vicarious liability is well-established in employment law. The principle behind it is that because an employer derives economic benefit from its employees' actions, it should be liable for any adverse consequences flowing from those actions

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- It is now clear that in any situation where there is an allegation of bullying, there is a series of potential claims that an employee may choose to run against their employer, including Constructive (Unfair) Dismissal, personal injury claims and claims under the PHA
- All of these claims can be triggered by the actions of a single rogue employee, without the employer having any real opportunity to do anything right – or wrong – about it
- In addition, as the claim will be brought in the civil courts, unsuccessful employers will end up paying damages, and their own and the victim's legal costs, although it is possible that the risk of paying the employer's legal costs may put off some claimants
- This is certainly an area in which there is likely to be considerable activity over the coming years.

Recruitment procedures

7



Jargon buster

CV	A curriculum vitae is a written description of your work experience, educational background, and skills
Induction	A period of introduction for an employee when they are expected to be provided with all relevant knowledge and information required to do their job to an acceptable standard, including all necessary health and safety training
Policy	A policy is a deliberate plan of action to guide decisions and achieve rational outcomes

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Recruitment procedures

Job advertisements

'Do we have to advertise?'

There are no legal requirements to advertise a post externally. If a suitable candidate already exists and there are no other internal candidates, the employer can simply appoint.

It is wise, however, to advertise a vacancy internally to ensure that all those who would like to apply can do so. This will help to prevent allegations from current employees who would have liked to apply for the post, that they have been prevented from doing so.

Be aware that some funding organisations do require their beneficiaries to advertise all vacancies externally.





Sending information to job candidates

- Job Application Form
- Job Description
- Person Specification
- Summary of the post's Terms and Conditions of Employment
- Background information concerning the organisation and the post
- The organisation's Equal Opportunities / Anti-harassment Policy and Procedures
- Medical Screening Form.

The above could be sent with a letter of invitation to those candidates who have been selected for interview on the basis of their CVs.



Photo: Stockxpert.com



Selecting applicants

- Rank all of the criteria contained in the Job Description in order of priority
- Give each of the criteria a score, based on its priority and value to the organisation. The better the answer, the higher the score
- Assess application forms / CVs against each of the criteria and award each candidate a score based on the number of criteria points they achieve. Those with the highest scores are selected for interview
- Prepare interview questions based on the Job Description's criteria
- Score interviewees against each of the criteria, based upon the responses they provide to the questions
- The candidate with the highest score is successful.



Photo: Stockxpert.com

Panel interviews v one-to-one interviews

Panel interviews	One-to-one interviews
More intimidating for candidates	More relaxed for the candidate
Candidates are less likely to be open and forthcoming	Candidates can be more open and forthright
Line managers can end up with an employee they don't want, because of the opinion of other panel members	Can be open to individual interviewer's bias
Can result in a conflict of opinion amongst the panel	Can be difficult for individuals to make the final decision on their own
Can be difficult to arrange for all panel members to be available on a given date	Easier to arrange
Mostly appropriate for middle to senior level appointments	Mostly appropriate for junior posts or internal appointments

Use of Medical Screening Forms

Purpose: To help an employer to make reasonable adjustments to accommodate candidates with disabilities.

How to use:

- Send a form to all applicants, along with a sealable envelope
- The candidate completes the form, seals the form inside the envelope and writes their name on the envelope
- The form is returned to the organisation with the application form, or brought to the interview
- Only the successful candidate's form is opened, once a job offer has been made
- If the candidate does have disabilities, the employer needs to use the information on the form to help them make reasonable adjustments to accommodate the recruit
- All candidates' forms should be kept for three months and then the unopened ones should be shredded.

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Carrying out an induction of a new employee

- Have you explained the profile of the organisation and identified key posts and people?
- Have you provided a copy of the Job Description?
- Have you provided written terms and conditions of employment and ensured that the employee fully understands them?
- Have you fully explained the pay arrangements and ensured you have all relevant information; eg P45?
- Have you provided Personal Protective Equipment and explained the company's policy and procedure regarding this equipment?
- Have you fully explained the company's Health and Safety procedure?
- Have you fully explained the company's Fire and Evacuation procedure?
- Have you fully explained the company's break procedure and shown them rest facilities / canteens?
- Have you conducted a training needs assessment for the new employee as part of the **induction** ?
- Have you discussed and agreed a training programme for the new recruit?



Photo: Alex Furr

Conducting disciplinary action at work



Jargon buster

ACAS	Advisory Conciliation and Arbitration Service provided by the Government and free to employers and employees
COSHH	Control of substances hazardous to health
Reasonable	There is no set measure for what is considered 'reasonable'. It is important to keep evidence of what measures you have taken in order to show these have been reasonable. If in doubt contact ACAS
Unfair (Constructive) Dismissal	Occurs when an employee feels that they have no other option than to leave their employment and make a claim for Unfair (Constructive) Dismissal at a tribunal because their employer had either: <ol style="list-style-type: none">1 Not addressed their Formal Grievance through the organisation's Grievance Procedure2 Failed to follow the formal procedures set out in the company's written Grievance Procedure3 Didn't have written details available to its employees of its Formal Grievance procedures

See also the Resources Chapter  **Page 19**

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Conducting disciplinary action at work

Seven steps to ensure your disciplinary procedures are up to date, 'reasonable' and avoid claims of unfair dismissal .

STEP 1 Informal counselling

Guidance given by ACAS to employers is that 'reasonable' disciplinary procedures are intended to be corrective and supportive to employees, to help them improve and overcome their problem. To enable an employer to demonstrate the reasonable nature of its disciplinary procedures, its first step must involve informal counselling, rather than resorting to Formal Action as the first course of action. This counselling session needs to produce an Action Plan of improvement to help the employee get back on track.

To do this, managers should hold a specific meeting, conducted in a confidential environment. Simply having a word with someone at their place of work would not be adequate.

To help the employer prove that they have taken this step, minutes of the meeting should be produced as well as the written Action Plan.

STEP 2 Stick to the ACAS Guidelines on Managing Grievances and Discipline

These are the four levels of disciplinary action that can be taken against employees, and can be summarised as follows:

- Stage 1 Formal Verbal Warning**
- Stage 2 Formal Written Warning**
- Stage 3 Final Written Warning**
- Stage 4 Termination**

Although not a legal requirement, tribunals use these guidelines as a benchmark to judge a company and assess whether or not it had acted reasonably in disciplining an employee.

Remember to keep a written account that the Formal Verbal Warning has taken place. A note should be kept on the employee's personnel records and they should be sent either minutes of the formal disciplinary meeting at which the warning was issued, or a written notice that they have received a verbal warning.

Inform employees how long the warning will remain 'live'. If they further transgress during this live period, the employer can move to the next – higher – stage of the procedure. A common misconception is that once the live period has expired, the employer must return to the start of the procedure if the problem happens



Photo: Stockxpert.com

again. Tribunals do allow an element of flexibility on this matter, and if the problem happens 'reasonably soon' after the end of the live period, they can simply move to the next stage without starting again.

Employers faced with acts of misconduct that are considered serious, but don't constitute Gross Misconduct, can go straight to a Formal or Final Written Warning, missing out stages 1 and / or 2. However they must be consistent in the way they treat all employees.

STEP NO	ACTION TAKEN	LIVE PERIOD	MANAGER RESPONSIBLE
1	Formal Oral Warning	Six months	Line Manager
2	Formal Written Warning	Six months	Line Manager
3	Final Written Warning	12 months	Director or Trustee
4	Termination of Contract of Employment	N / A	Director or Trustee

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STEP 3 The right to be accompanied

The Employment Relations Act 1999 gives employees the right to be accompanied by a colleague from the same place of work, or a Trade Union Representative (even if the company doesn't recognise the union).

STEP 4 Letter of invitation

Send the employee a letter, clearly informing them that they are required to attend a disciplinary meeting. The Employment Act 2002 makes this a legal obligation for employers.

The letter should contain brief details of the allegation made against them, the time, date and venue of the meeting and details of their right to be accompanied. The letter should be sent in sufficient time to give the employee reasonable notice, to allow them time to prepare for the meeting; 48 hours or more would be considered as reasonable.

STEP 5 Right of appeal

Inform employees of their right to appeal against formal disciplinary action. Appeals procedures should be in writing, inform employees who they should address their appeal to and stipulate time limits for submitting it.

A common misconception is that appeals must be heard by a different manager to the one who conducted the disciplinary meeting. Although ideal, in many small firms this isn't always easy as there may be a very limited number of managers present. Employment Tribunals are prepared to accept this apparent breach of natural justice if it offers the only practical way for an employer to facilitate an appeal.



Photo: Stockxpert.com

Gross Misconduct

STEP 6 Written details

Ensure all employees have written details, or access to written details, of their company's formal disciplinary procedures. The 2002 Employment Act makes this a legal obligation for employers, with the intention of improving the rate at which companies resolve their difficulties internally, without the need for them to progress to an Employment Tribunal.

Procedures need to be simple, easy to understand, accessible to all employees and confidential.

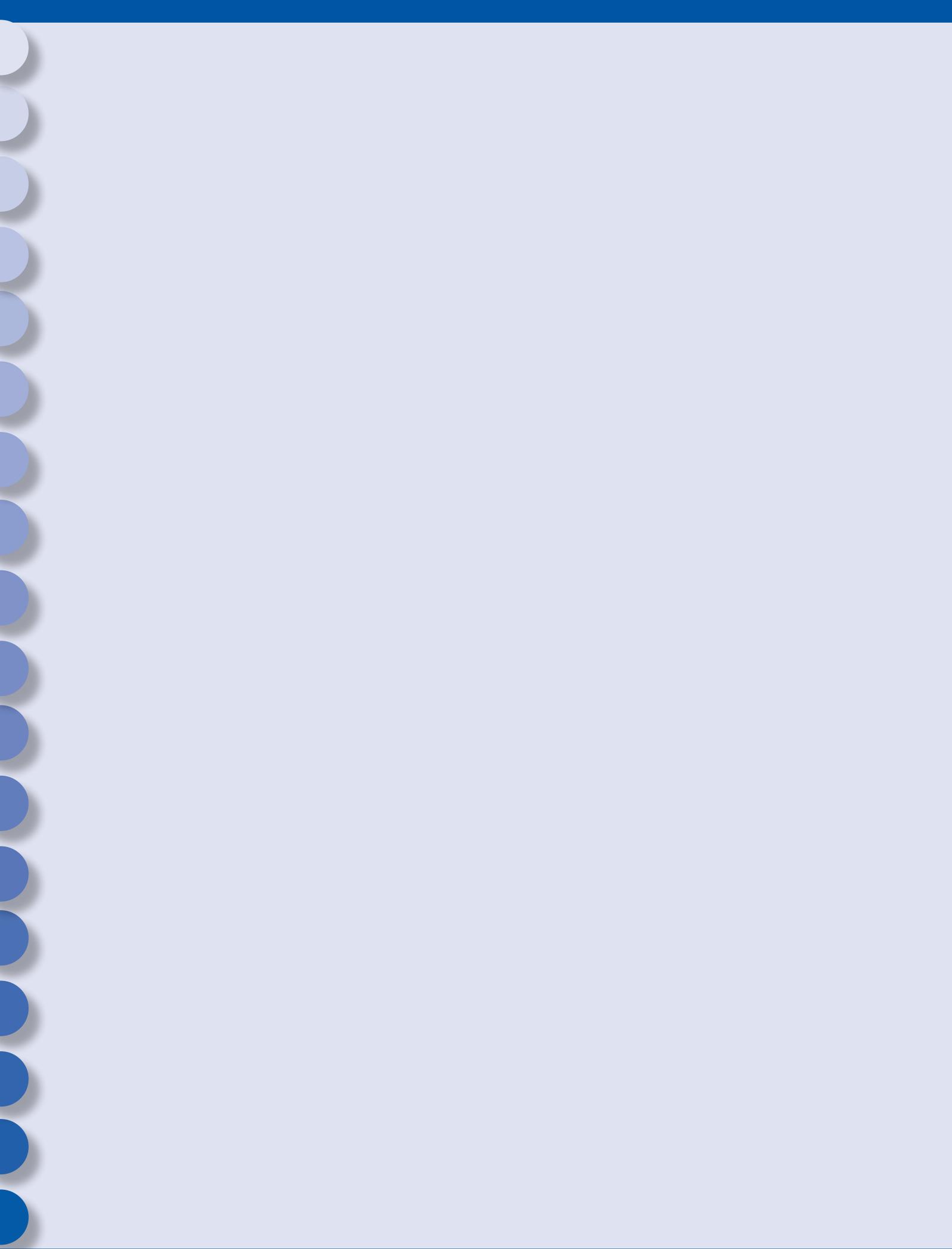
STEP 7 Gross Misconduct

Acts of Gross Misconduct, if proven after a full Disciplinary Hearing, conducted in the same manner as all Disciplinary Hearings, will result in dismissal.

The following are generally seen as actions by employees which would constitute Gross Misconduct in the workplace.

- 1 Theft.
- 2 Abusive or threatening behaviour of any nature.
- 3 Being under the influence of alcohol or drugs.
- 4 Dishonesty in dealings with management.
- 5 Sexist, racist or any other behaviour against an individual, which could be classed as creating a hostile, intimidating or threatening environment.
- 6 Breach of company confidentiality.
- 7 Failing to carry out reasonable management instructions.
- 8 Fighting and acts of aggression.
- 9 Deliberately damaging company property.
- 10 Deliberate breaches of company Health and Safety procedures.
- 11 Unauthorised access to company computer files, software or any other such breach of confidentiality.

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Sample personnel documents

• Letter of Appointment	page 42
• Induction Training Policy	page 43
• Staff Appraisal Form	page 44
• Formal Disciplinary Letter	page 47
• Invitation to a Formal Disciplinary Hearing	page 48
• Medical Screening Form	page 49
• Sickness Self-Certification Form	page 51
• Medical Request Letter	page 52
• Invitation to a Formal Sickness Meeting	page 53
• Notice of Threat of Redundancy	page 54

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Sample personnel documents designed by Christopher Moses, Personnel Advice and Solutions Ltd. 01529 305056 or email p.d.solutions@zen.co.uk

Photo: Steve Woods





DATE

NAME

ADDRESS

ADDRESS

ADDRESS

Insert appropriate details, names etc in the sections highlighted in red.

Dear **NAME**

Thank you for attending the interview on _____
for the post of _____.

We have given full consideration to all interviewees and are delighted to be able to offer you the post.

As discussed, this is a fixed term position, starting _____.

Enclosed with this letter are / Upon starting you will receive two copies of a contract of employment and a staff handbook. You are required to sign both copies of the contract and also the Acknowledgement of Receipt form for the staff handbook. Please return all of these to _____, who will countersign the contracts and return one copy to yourself.

Yours sincerely

NAME OF MANAGER

cc File

Training Policy and Programme

_____ (Company name) provides all workers with fair and reasonable access to training and development which allows them to enhance their skills, knowledge and ability to achieve their best potential in their work.

All employees have access to training on the basis of the needs of their job and the requirements of each individual.

No account is taken of race, belief, gender, length of service, hours worked or physical ability of individuals in providing access to training. The only limiting factor will be the relevance of training to the needs of the post, the individual and the financial constraints upon the company.

Introduction Training Report

TRAINING	DATE PROVIDED	TRAINEE'S SIGNATURE	TRAINER'S SIGNATURE
Basic operative skills — based on the job description			
Manual handling			
Sanitary facilities; ie drinking water, toilets, canteen, etc			
Use of Personal Protective Equipment			
First Aid procedures and accident reporting			
Fire evacuation procedure			
COSHH awareness			
Safe use of plant and machinery			
Site risk awareness			

Staff Appraisal Form

PERSONAL PERFORMANCE AND DEVELOPMENT REVIEW

NAME _____

JOB _____

DATE OF APPRAISAL _____

PURPOSE

- i To talk about and review your performance
- ii Discuss future work and progress
- iii Agree training and development

Please complete this form and bring it with you to the appraisal as it will form the basis of the meeting.



1 Progress review from previous appraisal's action plan.

2 What are the main tasks you are involved in or have altered since your last appraisal?

3 Which elements of your work have you been most successful at and why?

4 Which elements of your work have you enjoyed the least?

5 If you could change parts of your job to improve your performance, which would they be?

6 What has been your best achievement in the last year and how could you build on this?

7 What extra skills and / or knowledge would make you feel more confident?

8 What would you most like to achieve in the coming year?

9 Agreed action for the coming year?
(Please use additional paper if needed)

Appraisee's signature _____

Manager's signature _____

Date _____



DATE

NAME

ADDRESS

ADDRESS

ADDRESS

Insert appropriate details, names etc in the sections highlighted in **red**.

Dear **NAME**

Formal _____ **Warning (verbal, written or final)**

Following today's Formal Disciplinary Hearing I am writing to confirm the decision taken by the Company's management to issue you with a Formal _____ Warning.

This action has been deemed necessary for the following reasons:

The decision regarding your misconduct was based on the following facts:

This warning will stay live on your records for the next ____ months. The likely consequences of further misconduct or failure to improve will result in further disciplinary investigations.

You have the right to appeal against this decision. Appeals must be in writing, addressed to the Managing Director and submitted within seven working days of receipt of this letter.

Yours sincerely

NAME OF MANAGER

cc Personnel File

DATE

NAME

ADDRESS

ADDRESS

ADDRESS

Insert appropriate details, names etc in the sections highlighted in **red**.

Dear **NAME**

I am writing to inform you that you are required to attend a Formal Disciplinary hearing, on **DATE** at **TIME**, to be held at **COMPANY NAME'S** office.

The purpose of this meeting is to investigate an allegation of misconduct by you involving **DETAILS, TIMES, DATES**.

As this meeting represents part of the company's Formal Disciplinary procedure, you have the right, and are encouraged to be accompanied by a work colleague, or Trade Union representative if you hold such membership.

I believe you have a copy of the company's Grievance and Disciplinary procedure, however if you would like me to provide you with another copy, please feel free to ask for one.

Yours sincerely

NAME OF MANAGER

cc File



Medical Screening Form

Title:

Surname:

Forenames:

Address:

Home phone number:

Doctor's name:

Doctor's phone number:

Doctor's address:

Are you suffering from, or have you ever suffered from any of the following?

Skin Diseases / Dermatitis	Y	N	Recurring Cough	Y	N
Boils, Styes or Septic Fingers	Y	N	Asthma	Y	N
Discharge from Eye, Ear, Nose, Gums	Y	N	Heart Problems	Y	N
Earache / Ear Infection	Y	N	High Blood Pressure	Y	N
Impaired Hearing	Y	N	Varicose Veins	Y	N
Colour Blindness	Y	N	Migraine / Recurring Headaches	Y	N
Eye Problems	Y	N	Fits / Epilepsy	Y	N
Bowel Disorder / Infection	Y	N	Fainting Attacks / Giddiness	Y	N
Food Poisoning	Y	N	Nervous Disorder	Y	N
Typhoid / Paratyphoid / Dysentery	Y	N	Back Injury / Back Problems	Y	N
Tuberculosis	Y	N	Muscle / Joint Problems	Y	N
Bronchitis	Y	N	Arthritis	Y	N
Recurring Chest Infection	Y	N	Diabetes	Y	N
			Hay Fever	Y	N
			Allergies	Y	N

If you have answered YES to any of the above, please give details, including any time off work or in hospital:



SAMPLE Medical Screening Form

When was your last eye test?

Do you wear glasses or contact lenses? Y N

Do you have any disabilities affecting standing, walking, lifting or the use of your hands? Y N

Have you now, or within the last seven days, suffered from diarrhoea and / or vomiting? Y N

Do you consider yourself to have a disability? Y N

If you have answered YES above, please state the nature of your disability.

Have you ever had an industrial accident or suffered from any industrial disease? Y N

If you have answered YES above, please give details, including time off work or in hospital.

Are you receiving medical treatment for any condition (eg Physiotherapy, tablets, injections, diet, etc.) Y N

If you have answered YES above, please give details, including time off work or in hospital.

Please give details of any conditions affecting your limbs, back, neck or joints.

Is there anything you feel you ought to disclose about your health that is not mentioned above? If YES, please do so here.

I declare that all of the above statements are true and complete to the best of my knowledge.

Signature

Date



Sickness Self-Certification Form

This form is to be filled in for sickness absences lasting for a period of four days or more.

Name
Clock number
NI number
Job title / department
Supervisor

Period of incapacity: state the first day the illness started, including weekends, holidays etc.

Day 1
Final day of illness
If you attended work on the first day of illness, please indicate leaving time: am / pm.
Total number of days absent from work

I certify that I have been absent from work for the period stated above due to illness. I understand that further enquiries may be made at the discretion of the management.

Employee's signature
Date
Supervisor's signature
Date



DATE

DR _____

ADDRESS

ADDRESS

Insert appropriate details, names etc in the sections highlighted in red.

Dear DR _____

RE: NAME OF EMPLOYEE
DATE OF BIRTH

The above is employed by COMPANY NAME as a POST NAME, and has been suffering with NAME OF ILLNESS.

To enable us to accommodate this employee to the best of our ability I would be most grateful if you could please provide us with a report regarding the following:

- 1 Can you please confirm the diagnosis?
- 2 Is her health compatible with the requirements of her job — see enclosed Job Description?
- 3 What reasonable adjustments can we, her employers, make to help this lady cope with the job?
- 4 How should her employer manage her return to work?

Please send all correspondence and appointments to myself.

Please feel free to contact me if you have any questions.

Yours sincerely

NAME OF MANAGER

cc File

I fully consent to my employer making this request and ask that you provide the information requested.

EMPLOYEE NAME _____

SIGNATURE _____

DATE _____

DATE

NAME

ADDRESS

ADDRESS

ADDRESS

Insert appropriate details, names etc in the sections highlighted in red.

Dear **NAME**

I am writing to request that you attend a Formal Meeting on **DATE** at **TIME**, at **COMPANY NAME'S** offices, to discuss your current health problems and the medical report we have recently received concerning you from **Dr** _____.

The purpose of this meeting is to discuss:

- 1 What difficulties you may be experiencing.
- 2 The information we have received from the medical report.
- 3 How we can work together to assist you in your return to work and to consider what adjustments can be made to achieve this.

If you wish, you may be accompanied at this meeting by a colleague, or union representative.

Yours sincerely

NAME OF MANAGER

cc File

DATE

NAME

ADDRESS

ADDRESS

ADDRESS

Insert appropriate details, names etc in the sections highlighted in red.

Dear **NAME**

Re: Notice of threat of redundancy.

I am writing to inform you that your post has been deemed to be under threat of redundancy. As a consequence we shall be initiating a formal consultation process, starting from **DATE** and lasting until **DATE (30 day min)**.

The purpose of this consultation period is to enable you to discuss the following topics with management:

- 1 The reason that your post is under threat of redundancy.
- 2 The possibility of alternative work within the organisation.
- 3 Your severance entitlement, should your post be made redundant.

Following the consultation we shall be holding a formal meeting with yourself to discuss the outcome. I shall be writing to you to invite you to this meeting, at which you will be entitled to be accompanied by either a work colleague, or Trade Union Representative if you should hold membership.

Please feel free to talk to me about anything relating to this matter, and I look forward to arranging a meeting with you as part of this consultation process.

Yours sincerely

NAME OF MANAGER

cc File

Useful contacts

9

Advisory Conciliation and Arbitration Service (ACAS)

Website: www.acas.org.uk

Chartered Institute of Personnel and Development (CIPD)

Website: www.cipd.co.uk

Department for Business Enterprise and Regulatory Reform (BERR) formerly DTI

Website: www.berr.gov.uk

HM Revenue and Customs (HMRC)

Website: www.hmrc.gov.uk

Business Link

Website: www.businesslink.gov.uk/bdotg/action/home

Healthy Communities at Lincolnshire County Council

Website: www.lincolnshire.gov.uk

Data Protection Agency

Website:

www.data-protection-act.co.uk

Equal Opportunities Commission (EOC)

Website: www.eoc.org.uk

Employment Tribunals

Website:

www.employmenttribunals.gov.uk

National Association for Voluntary and Community Action (NAVCA) formerly NACVS

Website: www.navca.org.uk

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