

Employment



Burgess Salmon
A guide to UK
Employment Law

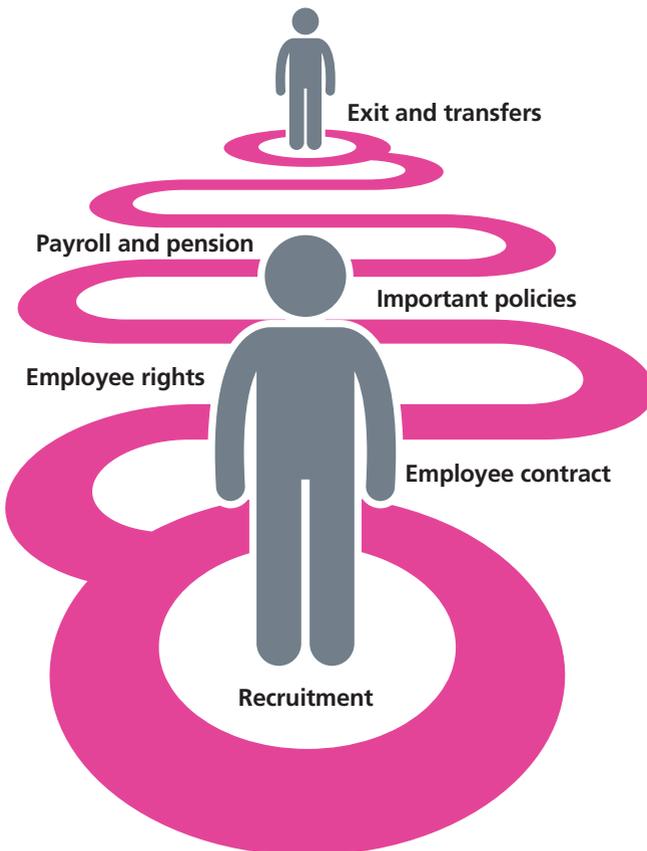
Contents

Introduction	3
The team	4
Recruitment	4
The contract of employment	6
Statutory rights	7
Family friendly rights	8
What else?	9
Policies	10
Collective issues – trade unions	11
TUPE transfers	11
Dismissal	12
Redundancy	13
Retirement	13
Key contacts	14

Introduction

This short guide takes you through the key legal issues arising in the UK in relation to the employment relationship and explains some of the key risks to be aware of under UK law, when they might arise, and some of the practical issues involved in addressing them.

It will start with a guide to recruitment, followed by a summary of the employment contract and an employee's rights in the UK. It will take a look at the policies which an employer should consider having in place, and then give a brief overview of the transfer processes that can arise under the UK's TUPE Regulations. Finally, it will cover dismissals and the procedure which employers should follow to avoid having a claim brought against them following the end of the employment contract.



The team

Working closely with our clients to understand the outcomes they want to achieve, Burges Salmon's employment team advises on all areas of employment work. This includes strategic and complex project work, for example business restructurings and executive terminations, through to day to day advice on employment contracts and policies, performance and absence management and disciplinary and grievance procedures. We also handle the full range of employment tribunal claims, including unfair dismissal, discrimination, whistleblowing and TUPE claims as well as dealing with High Court litigation.

Recruitment

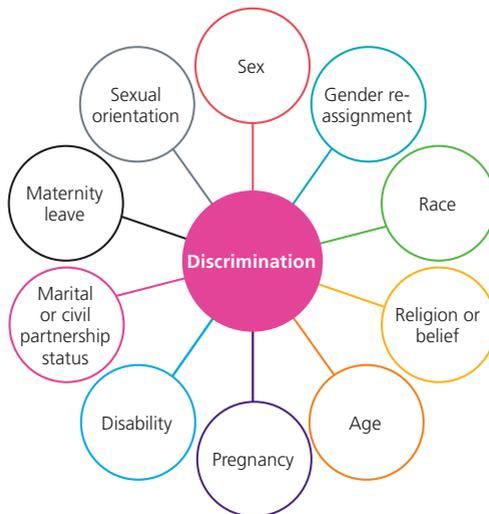
What are the key legal issues to be aware of when recruiting?

- Discrimination
- Immigration compliance

Discrimination

When recruiting, you need to make sure you have in place processes which reduce the risk of discrimination taking place.

It is unlawful to discriminate against an employee, worker or job applicant in relation to the following protected characteristics:



These rights are not dependent on length of service and, if a claimant is successful in their claim, compensation is uncapped. The actual level of compensation awarded will depend on the claimant's future losses and there is an additional award that is made for injury to feelings, the amount of which will depend on the gravity of the discrimination and its impact on the candidate.

Throughout the employment relationship you should avoid treating employees less favourably because of the protected characteristics set out on the previous page.

Minimising discrimination risks when recruiting

- Ensure arrangements for interviews don't put certain groups at a particular disadvantage – e.g. providing disabled access
- Both in adverts and at interview: be careful when using language such as "gravitas", "youthful" or "mature" and so on, which gives an impression that could be seen as excluding applicants because of their age
- Keep selection criteria objective and ask the same key questions of all candidates
- Don't base your decisions on any of the discriminating factors mentioned above
- Keep a written record of your decision making process.

Immigration

Workers who are nationals from the European Economic Area (EEA) and Switzerland are free to live and work in the UK (with a few limited exceptions).

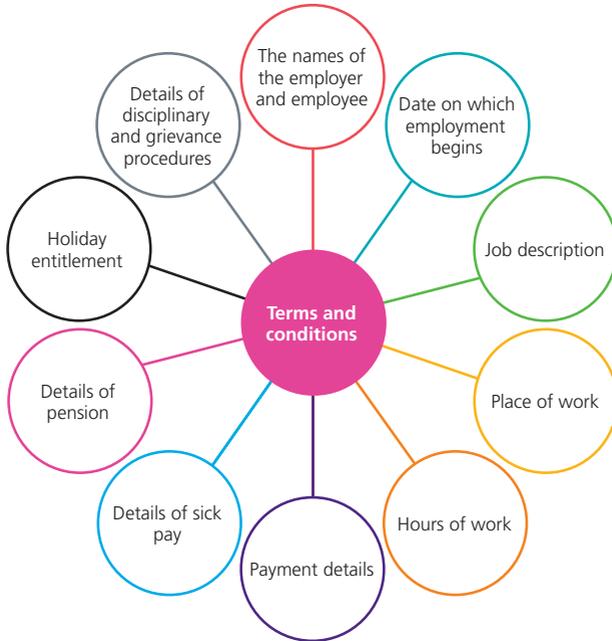
If you wish to employ workers from outside of the EEA, you will need to register with UK Visas and Immigration. Non-EEA workers will need to satisfy a points-based test before being allowed to work in the UK.

If you do employ foreign national workers, make sure you carry out appropriate document checks. Failure to do so could lead to civil and criminal sanctions.

The contract of employment

The key document in UK employment law is the employment contract.

Every employer in England and Wales is obliged to provide its employees with a written statement containing minimum information in relation to their terms and conditions of employment. Required terms include:



You should provide this statement before the employee starts work and, in any event, within two months of the employment start date.

Employers will often include more terms than those listed above in their contracts in order to protect their business. You may want to consider including provisions covering:

- Trial periods
- Restrictive covenants
- Intellectual property
- Confidential information
- Deductions from wages
- Outside interests
- Company property
- Garden leave
- Termination

Statutory rights

These rights are not dependent on length of service. There are certain minimum terms of employment (known as “statutory rights”) which will be deemed to be included in any contract of employment. These will override any contractual terms which are less generous. We have detailed some of the more important statutory rights below.



National minimum wage

A National Living Wage applies in England and Wales for workers age 25 and over. There are separate National Minimum Wage rates for those aged under 25.



Holiday

Full time (five days per week) employees are entitled to at least 28 days’ paid holiday in each holiday year. This is pro-rated for part-time workers. This entitlement can include the usual eight public holidays, but often public holidays are provided in addition to the statutory minimum entitlement.



Statutory sick pay

Most employees who are absent from work due to sickness are entitled to be paid a statutory rate of sick pay for up to 28 weeks in any three year period.



Working time restrictions

Most employers will need to take into account working time restrictions which are designed to ensure that employees’ health and safety is protected and that they do not work excessive hours and/or fail to take rest breaks.

Employees cannot be compelled to work more than an average of 48 hours per week spread over a 17 week period. At present, it is possible (and common) for employees to sign an “opt-out” whereby they waive this right.



Equal pay

Employees also have the right to receive equal pay to that received by members of the opposite sex if they are doing equivalent work or work of equal value. This not only refers to salary but also covers other contractual benefits.

Family friendly rights

There are also statutory rights which apply to qualifying employees with a family. These are:



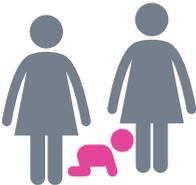
Maternity

- 52 weeks' maternity leave plus right to return to existing job after maternity leave
 - Statutory maternity pay for 39 weeks
-



Paternity

- Two weeks' paid paternity leave
-



Adoption

- 52 weeks' adoption leave plus right to return to existing job after adoption leave
 - Statutory adoption pay for 39 weeks
 - Five paid adoption appointments for main adopter and two unpaid adoption appointments for second parent
-



Shared parental leave

- 52 weeks' leave available to share between parents (minus the time the mother takes on maternity leave and she must take at least two weeks' compulsory maternity leave)
 - Statutory shared parental pay available for up to 39 weeks (minus the statutory maternity pay already received)
-



Unpaid parental leave

- In addition, parents are entitled to unpaid leave in the first 18 years of the child's life.

What else?

Fixed-term and part-time employees

When employing fixed-term or part-time employees, employers should be careful not to treat those workers differently to permanent employees – unless that treatment can be objectively justified. For example, it may well be possible to objectively justify not providing a benefit to employees on fixed term contracts of three months or less because of the disproportionate cost or administrative burden in doing so. However, in this case you may be expected to offer financial compensation in lieu.

Fixed-term employees

right not to be treated less favourably than *permanent employees* unless that treatment can be objectively justified

Part-time employees

right not to be treated less favourably than *full-time* employees unless that treatment can be objectively justified

Agency workers

Temporary agency workers have the right to basic working conditions no less favourable than those to which they would have been entitled had they been recruited directly by the hirer.

In particular, once a temporary agency worker has been engaged by a hirer for 12 weeks they will be entitled to the same level of pay as if they had been recruited directly by the hirer.

Payroll

An employer setting up in the UK will need to put a payroll system in place to enable them to deduct income tax and National Insurance contributions from the employees' wages at source. HM Revenue and Customs provides further information on operating a payroll system and the possibility of outsourcing your payroll function to a third party.

Further information is available from the HM Revenue and Customs website.

Pension

From October 2012 onwards (the exact date depending on the size of the employer in terms of number of employees and the national insurance they pay), employers are required to:

- Automatically enrol certain workers into a pension scheme
- Make contributions on their workers' behalf
- Register with the UK Pensions Regulator
- Provide workers with certain information about the changes and how they will affect them.

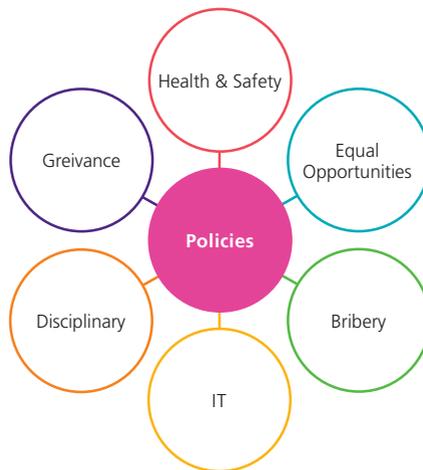
Employers will be able to enrol job holders into their own pension schemes, or, if they do not have any, a government-run scheme. Reform will be implemented over a number of years. Further information is available from the UK Pensions Regulator website.

Policies

It is a good idea to have in place a number of work place policies.

Make sure the employees read them and line managers implement them consistently and fairly.

It is worthwhile making sure there is regular employee and manager training to cover the key issues.



Whistleblowing

Employees and workers who disclose information about alleged wrongdoings involving their employer have the right not to suffer a detriment nor to be unfairly dismissed for doing so.

If such a claim is successful, the amount of compensation is uncapped.

Collective issues – trade unions

The trade union movement in the UK has some seven million members.

If a trade union has sufficient support within the workplace, it can acquire the right to negotiate collectively with the employer on such issues as pay, hours of work, holidays, health and safety, collective redundancies and business transfers.

Employers with 50 or more employees are required to provide information to their employees about whether or not they recognise a trade union.

TUPE transfers

Another way in which a specific employment relationship with a particular employer may come to an end is with what's known as a "TUPE transfer". TUPE (or Transfer of Undertakings (Protection of Employment) Regulations 2006 to give TUPE its full name) is a piece of government legislation which aims to protect the rights of employees for example when the business they work for is sold or transferred to another owner (this does not apply to share sales).



The terms and conditions of the employees transfer with them, so Company B takes on all the employees assigned to Company A on their existing terms and conditions.

If the sole or principal reason for dismissal of employees (by either Company A or Company B) is the transfer itself, or a reason connected with the transfer, then the dismissal will be automatically unfair, subject to a few exceptions.

Consultation

TUPE requires both Company A and Company B to inform and consult with appropriate representatives of any employees affected by the transfer. Failure to do so entitles the employees to bring a complaint in the employment tribunal.

Note

Changing terms and conditions post-transfer is complicated and legal advice should be taken in these circumstances.

Legal advice should be sought before dismissing an employee in a TUPE situation.

Dismissal

When it comes to the end of an employment relationship, you should take particular care to act fairly and in a non-discriminatory way – following provisions or procedures set out in the contract of employment or relevant policy. It is particularly important to avoid treating employees less favourably because of a protected characteristic (see earlier) when it comes to disciplining and/or dismissing employees.

There is a government-produced guide known as the ACAS Code of Practice on Discipline and Grievance which provides practical guidance to employers and employees in disciplinary and grievance situations which line managers and HR should be familiar with.

Unfair dismissal

Qualifying employees have the right not to be unfairly dismissed. In most cases, employees will need a minimum of two years' continuous employment to benefit from the right not to be unfairly dismissed.

In order for dismissal to be fair, the employer must show there was:

- a fair reason (e.g. Capability Misconduct Redundancy)
- that the employer acted reasonably in treating that reason as sufficient
- and that a fair procedure was followed when carrying out that dismissal.

If a dismissal be found to be unfair, an employee is likely to be awarded compensation. There are two categories of compensation:

- a compensatory award which is currently capped, but is largely based on the employee's actual and future losses following the dismissal
- a basic award which is dependent on age and length of continuous employment and is currently capped. It is calculated in a similar way to statutory redundancy payments.

Notice period

There is a legal minimum period of notice that must be given by an employer to terminate an employee's employment. (It is not uncommon for longer notice periods to be agreed in an employee's contract). However, where an employee is found to have committed gross misconduct or gross negligence it may be possible to dismiss the employee without notice.



Redundancy

If an employer in England or Wales proposes making large scale redundancies (20 or more) then it will have to go through a collective consultation process. Consultation must be with appropriate representatives of the employees and cover a range of topics prescribed by law. The financial penalties that can be awarded for failing to consult can be significant – up to 90 days' pay per employee.

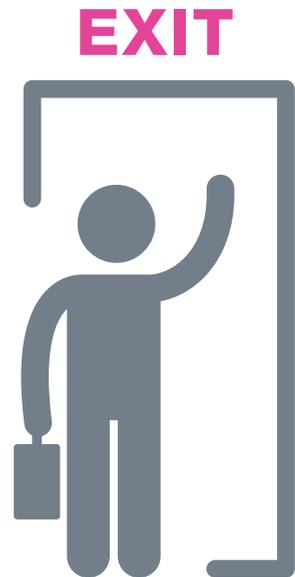
There is no obligation to consult on a collective basis where fewer than 20 employees are made redundant. However, there is still a need to go through a fair procedure in order to avoid claims for unfair dismissal. The most important elements of a fair procedure are fair selection and adequate consultation.

If an employee has been employed for more than two years, he/she will be entitled to a statutory redundancy payment. This is calculated on the basis of the employee's age, length of continuous employment and the amount of a week's pay. The maximum amount of the statutory redundancy payment is currently capped.

Retirement

Employers are not permitted to retire employees solely on the basis of their age. The only situation in which an employer can lawfully retain a compulsory retirement age is where it has a legitimate aim in retaining it and to do so is a proportionate means of achieving this aim. This is a very high threshold to satisfy.

Employers must therefore have clear succession and workforce planning policies in place that are not based on age.



Key contacts

You can find out more about how we can help your business at:

www.burges-salmon.com/expertise/core-expertise/employment/

Who to contact



Adrian Martin / Partner
Head of Employment

T +44 (0) 117 939 2279

E adrian.martin@burges-salmon.com



Chris Seaton / Senior Partner
Employment

T +44 (0) 117 939 2213

E chris.seaton@burges-salmon.com

This guide gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Notes

www.burges-salmon.com

One Glass Wharf, Bristol BS2 0ZX **T** +44 (0) 117 939 2000 **F** +44 (0) 117 902 4400

6 New Street Square, London EC4A 3BF **T** +44 (0) 20 7685 1200 **F** +44 (0) 20 7980 4966

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX.

A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out on the Burges Salmon website at www.burges-salmon.com. © Burges Salmon LLP 2018. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged.

BRO-00154