



HRM: People and Organisations

Chapter 2 Employment Law

Contents

- Introducing UK employment law
- Recruiting and promoting people
- Change management
- Pay and working time
- Managing discipline and poor performance
- Other major employment rights



Introduction

- The impact of employment tribunal fees after 2013
- The costs, including reputational costs, associated with defending a claim remain considerable
- It remains the case that employment regulation provides the framework in which many HR decisions are made
- Procedures need to be 'legally compliant'

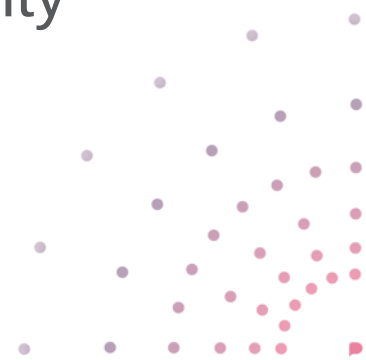


In Favour of Extensive Employment Regulation:

- It balances the power between employers and employees
- It deters employers from exploiting their power unreasonably
- Minority groups need protection and encouragement in order to achieve more equality
- Trade unions would often be powerless without legal support
- It encourages people to work in the UK when they might otherwise choose to retire or work overseas

Against Extensive Employment Regulation:

- It raises unemployment and slows economic growth
- It raises costs for employers and makes our economy less competitive internationally
- It deters inward investment
- It reduces employment opportunities for minority groups



Sources of Employment Law

- Statutes
 - Acts of Parliament
 - Statutory regulations
- European directives
- Common law



The Court Hierarchy

- Employment tribunals
- The Employment Appeals Tribunal (EAT)
- The Court of Appeal / Court of Session
- The Supreme Court
- The European Court of Justice
- The County Court
- The High Court



Discrimination

- The Equality Act 2010
- Protected characteristics
 - age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity
 - race, ethnicity and national origin
 - religion or belief
 - sex
 - sexual orientation



Direct Discrimination

- A person is caused a detriment because of or for a reason related to a protected characteristic
- No defence... except:
 - where there is an occupational requirement
 - in the case of age and disability, where it can be objectively justified



Indirect Discrimination

- A rule, criterion or practice which has an adverse effect on a substantially greater number of people who share a protected characteristic
- A proportionate means of achieving a legitimate aim
- Positive discrimination and positive action



Forming a Contract of Employment

- an unconditional offer
 - an unconditional acceptance of the offer
 - an intention to form a legal relationship
 - consideration
 - certainty
-
- ‘tainted by illegality’
 - ‘of sound mind’
-
- Protection for minors



Employment Status

- Contracts of service
- Contracts for services
- Agency workers
- Self employment
- Casual employment



Changing Contracts

- Core principle is that neither party to a contract can lawfully alter a term unilaterally. But...
 - Flexibility clauses
 - Technical changes
 - Giving notice / working on without protest
 - Collective agreements
 - Paying sweeteners
 - Dismissing and rehiring on new terms
- There must be a detriment suffered



Constructive Dismissal

- Employee resigns in response to a breach of contract on the part of the employer
 - The employer must, through its action, be in actual or anticipatory breach of the contract of employment
 - The employer must be guilty of ‘a significant breach going to the root of the contract’ or show through its action that it no longer intends to be bound by an essential term of the contract
 - The employee must decide to resign shortly after the breach
 - The employee must resign in response to the breach
- The ‘last straw doctrine’



Redundancy

- Reduced headcount (and sometimes hours)
- Identifying a pool of 'at risk' employees
- Consultation
 - individual
 - collective
- Fair selection
 - last in, first out
 - matrix / points systems
 - job application systems



TUPE

- Take overs, mergers, outsourcing
- Transfer of a contract to provide services
- Consultation
- Continuity of service
- Contracts
- Employment-related liabilities
- Unfair dismissal
- Information sharing



Pay (1)

- National Minimum Wage
- The National Living Wage
- Equal Pay Law
 - Like work
 - Work that has been rated as equivalent
 - Work of equal value
 - Material factor defences



Pay (2)

- Lawful deductions from wages
 - to recover overpayments of wages
 - where a court orders that a deduction is made
 - when a worker takes industrial action
 - where it is authorised by legislation
 - where it is authorised by contract
- Statutory Sick Pay (SSP)
- Statutory Maternity pay (SMP)
- Statutory Paternity pay (SPP)
- Statutory Adoption Pay (SAP)



Working Time

- 48 hours' work per week
- 28 days' paid annual leave each year
- 20 minutes' rest in any period of work lasting six hours or more
- 11 hours' rest in any one 24-hour period
- 24 hours' rest in any seven-day period
- night workers
- young workers
- averaging / opt-outs / workforce agreements



Maternity, Paternity, Parental and Adoption Leave

- Compulsory Maternity Leave (CML)
- Ordinary Maternity Leave (OML)
- Additional Maternity Leave (AML)
- Reasonable contact
- Keeping in Touch days
- Paternity Leave
- Shared parental leave
- Rights of adoptive parents



Further Family-friendly Employment Rights

- Ante-natal appointments
- Family emergencies
- Unpaid parental leave
- Right to request flexible working
 - burden of additional costs
 - detrimental effect on company's ability to meet customer demand
 - inability to reorganise work among existing staff
 - inability to recruit additional staff
 - detrimental impact on quality
 - detrimental impact on performance
 - insufficiency of work during periods employee proposes to work
 - planned structural changes



Discipline and Poor Performance

- Unfair dismissal law
- Discrimination law
- Ordinary misconduct
- Gross misconduct
- Poor performance
- Ill health
- Procedure
- Consistency
- Mitigating circumstances



Health and Safety Law

- Civil and criminal arms
- The Health and Safety at Work Act (1974)
- Inspectors
- Risk assessments
- Stressful occupations
- Personal injury claims
- Negligence



Bullying and Harassment

- Criminal law
- Unlawful harassment related to a protected characteristic
- Constructive dismissal
- Breach of trust and confidence



Whistleblowing

- The Public Interest Disclosure Act (1998)
 - a criminal offence
 - a failure to comply with legal obligations
 - a miscarriage of justice (legally, not colloquially, defined)
 - compromised health and safety arrangements
 - something to cause environmental damage
- the employer
- a legal adviser
- a Minister of the Crown
- appropriate enforcing authorities
- media organisations



Collective Employment Law

- Freedom of Association
 - Dismissals
 - Action short of dismissal
 - Exclusion / blacklisting
- Industrial Action
 - Deducting pay
 - Breach of contract
 - Balloting rules
 - Cooling off periods
 - Immunities

