

(AC 1.1)

Employment regulation is in place to regulate 'the relationship between employers and employees' (CIPD, 2024). There are multiple aims and objectives for employment regulation, beginning with protecting the rights of employees. This can include but is not limited to entitlements such as holiday, notice periods upon termination, adequate rest break time and ensuring equal pay as well as protecting them from 'unfair treatment' (Daniels, 2022a) and eradicating modern day slavery.

Linked to this, employment regulation also aims to ensure economic stability, by having minimum wage standards, this will help to reduce income inequality. Employment regulation can also 'increase job stability and productivity' (Deakin, 2011) by ensuring employers meet the needs of employees.

With constant changing nature of work, regularly reviewed employment regulations enable the further protection of employees and employers. An example of this could be an increase in the popularity of remote working since COVID-19 which has meant that employees may want to request this flexible working arrangement, and as of April 2024, they are now able to make this request from day one of employment. However, with this, employees who work from home are expected to 'take care of their own health and safety' (GOV.UK, 2024). This is likely because as employees are in their own environment, it is difficult for an employer to oversee and mitigate any potential HSE risks.

Despite the benefits the aims and objective of employment regulation displayed above, there are also drawbacks. Regulation in general if excessive or insufficient can have 'negative' (Deakin, 2011) effects and with some believing employment regulations are too 'complex' (CIPD, 2017). This is likely due to the multiple political parties that have been in government shaping and changing the regulations multiple times, showing how sometimes, employment regulation can become convoluted and difficult to navigate, such as 'TUPE' (CIPD, 2017) regulations.

Similarly, despite having regulations such as the Equality Act 2010, there are still very prevalent issues such as the 'gender pay gap' and 'glass ceiling' affecting women every day, likely due to the 'breadth of regulation' that there currently is. Showing, that despite there being legislation and laws in place, they can only be so effective in resolving issues, and often don't prevent problems like this arising in the first place. Showing how regulation may be present but it cannot stop everything that is 'unlawful' happening.

(AC 1.2)

Employment law is primarily governed by civil law but also has elements of criminal law. Civil law, which most employment law falls under is about resolving disputes between two parties relating to 'law of contract, of tort and of property' (Daniels, 2022f).

Most civil law cases will therefore be solved at an employment tribunal, usually resulting in the payment of 'damages' (Daniels, 2022f) to winning employees. The structure of the Employment Court Hierarchy can be displayed below:

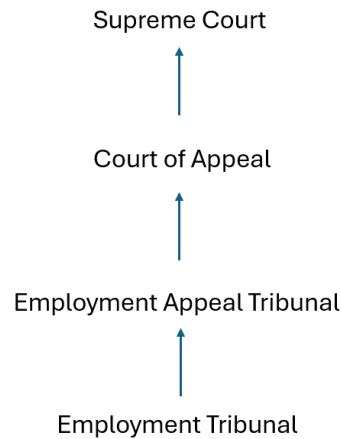


Figure 1: Court system for employment related claims

Employment tribunals are a 'judicial body with responsibility for workplace justice' (Courts and Tribunals Judiciary, 2024) that are in place to solve disputes relating to employment law. This is the first step, where most employment law cases are heard before they progress up the above diagram. To win a case in civil court, it must only be proved that 'on the balance of probability' (Daniels, 2022f) the individual did as alleged.

To submit a claim to the employment tribunal, claimants must fill out an 'ET1 form' (Daniels, 2022f), which serves as a legal document whilst providing details of the claim. Once this is sent off, the employment tribunal receive the claim and send a copy to the respondent along with an 'ET3' (Daniels, 2022h) form that must be responded to within 28 days, where after this, the case is listed for hearing. This gives the respondent a chance to respond, admitting or denying the allegations and potential chance for a resolution before the claim goes to tribunal. Some cases may have a preliminary hearing prior to this to try and settle the dispute via ACAS, again to try and resolve the claims without the need for legal proceedings.

If a case goes to tribunal and a party is dissatisfied with the outcome decided by the tribunal, they can appeal this to the Employment Appeal Tribunal on a point of law/findings, not just unhappiness with the decision. Appeals must be made within '14 days' (Daniels, 2024). There is a more detailed sift process of claims at this stage, due to the fact that appeals can only be made on a 'point of law' (Daniels, 2022f) otherwise, they will be kicked out of the process, preventing them from going any higher up the judicial court system.

If cases make it through to this stage, they will progress up the court system to be reviewed again, jumping up to the Employment Appeal Tribunal, Court of Appeal and Supreme Court.

Each level of appeal court will review decisions made by lower-level courts or tribunals with more complex cases relating to issues such as disputes over legal definitions being most prominent at higher levels. These are cases where the judgement has a larger impact than on just one individual, which also creates much of the 'case law' (Daniels, 2022f) we see today.

Decisions here can either be overturned due to 'binding' principles of previous precedents set from other case rulings or reach the same verdict as previous due to the 'persuasive' (Daniels, 2022f) principle of due respect to lower court decisions. Despite this, case law cannot override Statute Law, which are acts of parliament forming most 'legislation' (Daniels, 2022f) that governs the UK such as the Equality Act 2010. Linking closely, to this, codes of practice issued by bodies such as ACAS are

also used to determine decisions, though they are not strictly employment law, there must be significant good reasons for these to be breached in any way.

Ultimately, the final deciding decision is made by the Supreme Court as this is the final appeal court within the UK.

(AC 1.3)

Cases can be settled in many ways both before and during legal procedures. In many cases, before a claim is made, issues can be settled by having 'protected conversations' (Clarke, 2023) enable both parties to have an off the record conversation which can lead to exploring the possibility of settlement agreements. Settlement agreements involve a 'financial sum' (Daniels, 2022h) that is paid when both parties reach an agreement, this is usually done to avoid legal procedures. These agreements can include multiple complaints and are used to settle these before the employment tribunal become involved. ACAS has a 'Code of Practice' (ACAS, 2013) for settlement agreements that can be used to facilitate one correctly, which can be important if you are settling before or during dismissal or an issue without legal procedures occurring.

During legal procedures, claims can be withdrawn at any point, which inevitably settles the claim. However, if this is not done, early conciliation can be conducted. Early conciliation usually begins when a claimant makes 'contact with the service' (Daniels, 2022h) and provides details for both parties and the issue. An Early Conciliation Support Officer will then contact the claimant to see if they want to pursue a settlement agreement, if they do, the respondent will be contacted and given '6 weeks' (Daniels, 2022h) to facilitate a settlement agreement. If this settlement is agreed, the claim then goes no further and does not progress to tribunal. Settlement agreements can happen at any point before the tribunal begins, later in the legal process, settlements through ACAS can be carried out, where a 'COT3' (Daniels, 2022h) form must be signed in agreement to ensure no further action can be taken on the claim. A COT3 is used after a dispute has been raised to settle a claim taken to employment tribunal.

(AC 2.1)

Discrimination can take many forms; however, this approach to recruitment is direct discrimination. Direct discrimination is the act of 'treating someone less favourably than someone else on the grounds of a protected characteristic' (Daniels, 2022c). Appointing only young men to avoid having to deal with retirement and maternity leave is a both age discrimination and sex discrimination as you are choosing to only employ a specific age group and sex.

The Equality Act 2010 states that you must not treat someone 'unfavourably because of pregnancy' (Equality and Human Rights Commission, 2022) and that you must not be discriminated against because you are 'in a certain age group' (Equality and Human Rights Commission, 2020). Therefore, if Charlotte and Madeline continue to appoint only young men to avoid retirement and disruption due to maternity leave, they are in breach of employment law, which can result in legal action, fines and even more disruption than any maternity leave would have caused. An example of a case of discrimination is '*Amnesty International v Ahmed (2009) IRLR 884*' (Daniels, 2022c), where an individual was not given a role due to their ethnicity, which is direct discrimination.

When recruiting candidates, it is important that you are not discriminating against anyone for any protected characteristics they may have/you think they may have. For Charlotte and Madeline, it may be better to focus on the requirements of the role to recruit and select i.e. if the role is a senior

management role, previous experience managing people/teams may be required experience relative to the role, this is not discrimination if it is a 'requirement of the role' (GOV.UK, 2024).

This will enable Charlotte and Madeline to select candidates based on who are likely to perform the best in the role, which would likely benefit them than selecting a candidate just because of their age and gender. By doing this they will also not be in breach of any laws, so therefore, they should opt for this.

(AC 2.2)

The Equality Act 2010 states that an employer must 'give women (and men) a right to equal pay for equal work' (Equality and Human Rights Commission, 2011). If Cat is doing the exact same role (like work), work of equal value or her role is 'rated as equivalent' by job study to Kit's, she would be entitled to equal pay. Charlotte refusing to increase Cat's salary to match Kit's, just because she thinks Kit deserves the extra money could be discrimination if Cat's role corresponds to one of the 3 reasons listed above. Charlotte may want to look at the case of *Copper Pass v Lawton (1977) ICR 83* to understand how she may be at fault for not raising Cat's salary, as even though the chefs had different titles (Cook & Assistant Chef) it was proved they did 'like work' so should be paid the same. However, as we do not have much detail to go off, we do not know that this is the case.

In this case, I would advise Charlotte to investigate whether Cat is entitled to pay equal to Kit's before she refuses to raise her salary. Charlotte should not be paying an employee extra money because "they deserve it" but maybe base the decision to pay extra based on 'experience' i.e. if Kit has been managing for a longer period at higher levels than Cat has. If this is the case, Charlotte should explain this to Cat properly and in depth, so that Cat has clear legal reasoning for why her salary is lower.

If Cat remains unhappy in this situation i.e. her salary does not get raised, Cat could raise a discrimination claim under the Equality Act 2010, where a potential remedy to this case 'arrear of pay or damages' (Daniels, 2022e) if Cat "wins" in the tribunal by up to two years. To minimize the risk of this, I would suggest Charlotte raises Cat's pay to match Kit's as a matter of urgency as it seems that there is a little reason that abides by legislation to not do so.

(AC 3.1)

Redundancy is described as 'a form of dismissal from your job that happens when employers need to reduce their workforce' (GOV.UK, 2024). As an employee the main rights in terms of consultation state that any organisations making less than 20 employees redundant must demonstrate a 'reasonable consultation' (GOV.UK, 2024) period only.

Notice periods and payments for redundancy also vary depending on length of service (GOV.UK, 2024). For this scenario, it will also differ for the employees being dismissed.

- a. Angelica would be entitled to 8 weeks' notice as a statutory minimum as she has 8 years' service with the company, she would be entitled to £700 per week for 8 weeks. Two weeks' notice is not legally allowed for Angelica due to her length of service. Angelica would be entitled to one and a half weeks' pay (£8,400.00 statutory redundancy pay) due to her age and length of service.
- b. Saffron would be entitled to 5 weeks' notice as a statutory minimum as she has 5 years' service with the company, she would be entitled to £350 per week for 5 weeks. Two weeks'

notice is not legally allowed for Saffron due to her length of service. Saffron would be entitled to a weeks' pay (£1,750.00 statutory redundancy pay) due to her age and length of service.

- c. Chip Cherry, Reese and Carmel would not be entitled to statutory redundancy pay as they only have 1 year's service with the company. However, Charlotte and Madeleine will pay 2 weeks' notice pay to each of them. Given this, they would then be receiving to £450 each.

This approach is risky because both Angelica and Saffron would not be getting the statutory minimum notice they are entitled to, when Chip, Cherry, Reese and Carmel and being given more than the statutory minimum notice required. It is also risky because the payment amounts for Angelica and Saffron do not meet the legally required statutory amounts. Instead of offering everyone two weeks' notice pay and dismissing them, it would be better to follow the notice periods and payments listed above for each person unless their contract terms are more favourable in line with the Employment Rights Act 1996, however an employer can choose to pay more on top of this as an extra.

(AC 3.2)

TUPE stands for 'Transfer of Undertakings (Protection of Employment)' (ACAS, 2024e) and is regulated by the Transfer of Undertakings (Protection of Employment) Regulation 2006. Prior to this it was the Transfer of Undertakings (Protection of Employment) Regulation 1981, because of the 'Acquired Rights Directive 77/187/EEC' Protecting the rights of employees who work in an organisation that is 'transferred to a new owner' (Daniels, 2022j).

In this situation, as there are 12 employees who are being TUPE'd over, there must be a reasonable length consultation period for this transfer, as there is no legal timeframe, if this is not adhered to, then this presents a risk of liability to both the transferer and transferor of up to '13 weeks' pay' (Daniels, 2022j) that could be awarded to each effected employee. If there is no trade union or employee representatives then 'employer must facilitate an election of representatives by the affected employees' (Suff, 2023)

As well as this, before the TUPE happens, Transferors must give the transferee 'written information about the transferring employees and all the associated rights and obligations towards them' (Suff, 2023) otherwise they can be fined a minimum of £500 per employee.

It is also important to remember that contractual variations are void unless it is for an ETO reason (economic, technical or organisational) so changing the 'contracts of employment' (ACAS, 2024) for the employees of Crumbly Cakes to the same terms as Peachy Desserts Ltd's existing employees would not be advisable. They must keep these terms and conditions, such as 'continuity of service' and collective agreements, for the TUPE'd staff the same as what they are currently are to minimize the risk of a claim. The case of '*Taylor v Connex South Eastern Ltd (2000) EAT 1243/99*' (Daniels, 2022j) highlights the importance of this as even after a subsequent amount of time, any changes to the conditions of employment can be rejected and the employee cannot be penalised for this.

If Charlotte and Madeleine wish to make changes to the terms and conditions of employment, they should negotiate these changes with the affected employees or their representatives. Any changes should be agreed upon voluntarily and documented in writing unless they want to face potential legal action in the future.

(AC 4.1)

In accordance with the Equality Act 2010, depending on the age of the employee, there will be different national minimum wage rates. If the employee is aged between 16 years of age and 20 years of age, then £9 per hour is adequate as the national minimum wage for these age groups is below £8.60 or £6.40 per hour. However, if the employees are 21 years of age or older, this would not be lawful as the national living wage for this age and over is £11.44 (GOV.UK, 2024) per hour. Therefore, if Charlotte and Madeline have employees that are age 21 and over in this role, they must increase their pay to comply with the new NLW requirements regardless of how hard they work. If they don't do this, they could face a maximum of £20,000 (Daniels, 2022e) per employee fine.

Similarly, employers are also required to pay Statutory Sick Pay (SSP) to any employee who qualifies for this i.e. an employee who has been sick continuously for 'four or more calendar days' (Daniels, 2022e) and have earnings equal to the lower earnings limit. If certain employees aren't being paid correctly according to the NMW regulations, and have lower working hours than others, they may not reach this amount, and therefore not be entitled to SSP.

There are also rights relating to pay statements that must be complied with. These include employees being entitled to itemised 'payslips from their first payday' (ACAS, 2024b) onwards, including any lawful deductions that may be taken from wages i.e. pension deductions, tax and NI or sickness deductions. If an itemised payslip is not given and an employee makes a claim that wins, any unnotified deductions made during the '13 weeks' (Daniels, 2022e) prior to the application to the tribunal being made will likely be required to be refunded by the employer.

(AC 4.2)

In terms of working time, the requirements of the Working Time Regulation 1998 must be adhered to. In any seven days, an employee must 'not exceed an average of 48 hours' (GOV.UK, 2024) work, unless an agreement has been signed by the employee, which Kit does not state he has. During any working period that lasts six hours or more, an employee is entitled to '20 minutes' (GOV.UK, 2024) rest. If none of this is being adhered to, Kit would have a cause for legal complaint.

As well as this, Kit may also have cause for legal complaint if he is not receiving adequate rest between shifts. In any one 24 hours period, there must be 11 hours rest and in any seven-day period there must be '24 hours' (GOV.UK, 2024) rest. If Kit is having to cover shifts for his supervisor in their absence, then this may not only breach the points in the paragraph above, but these too.

In accordance with this, Kit should also be entitled to '5.6 weeks paid leave' (Daniels, 2022e), including the eight public holidays, which is accrued throughout each holiday year (i.e. January to December) or each year from the date the employment commenced where the pay should be equal to that of a normal working day.

Dependant on Kits' age, there would be even more legal cause for complaint if Kit is a young worker, then he must work no more than 40 hours a week, with a '30 minute' (ACAS, 2024c) break every 4.5 hours. They must also receive '12 hours' (ACAS, 2024c) rest in any 24-hour period, and 48 hours in any seven-day period. The 48-hour maximum can be manipulated slightly where an employee can work more than 48 one week and less than 48 another week, as long as no more than 48 hours average is not exceeded over a '17-week period' (Daniels, 2022e). A case that highlights the importance of adhering to these regulations regarding working hours is '*Kepak v Grainne O'Hara (2018) ADJ-00008654*' (Daniels, 2022e), where the employee was awarded 7,500 euros as compensation due to excessive working hours.

Ultimately, if Kit has not signed a waiver to enable him to exceed the 48-hour maximum, then he has legal cause for complaint. He does not state details above regarding his rest break lengths or annual leave, however, if these don't meet the required amounts stated above, this is also an issue. Charlotte should investigate Kit's complaint considering what is stated above and make the adjustments to Kit's contractual hours, working hours, rest breaks and annual leave to ensure compliance with the regulations.

(AC 4.3)

Coco is legally entitled to 52 weeks of maternity (ACAS, 2024d) leave made up of 26 weeks ordinary maternity leave and 26 weeks additional maternity leave, it is up to Coco how much of this she chooses to take, if she takes 2 weeks after the birth of her baby, this is known as compulsory maternity leave. Maternity leave and pay stays the same no matter how many children you have. Employees would be entitled this from day one of employment.

Coco will also be entitled to 39 weeks' statutory maternity pay as she has been employed for 26 weeks before her "qualifying week". For the first 6 weeks, she will be entitled to '90% of her average weekly earnings' (ACAS, 2024d). For the further 33 weeks, she will be entitled to £184.03 or 90% of average weekly earnings (whichever is lower) statutory maternity pay (SMP) a week. This is paid by the employer but can be claimed back from HMRC.

Throughout maternity leave, employees are still entitled to all the benefit of terms and conditions of employment that would have been applied if they hadn't been absent. They also have the right to return to the same role if their leave is 26 weeks or less. If they have taken more than 26 weeks, they have the right to return to a suitable alternative job role.

If an employer refuses to pay maternity payments to an employee who meets the requirements to receive these, this is illegal and could be viewed as discrimination in a court of law as to do this it would be seen as 'treating someone less favourably than someone else on the grounds of a protected characteristic' (Daniels, 2022c). As well as this, an employer is also unable to change/dictate the amount of maternity leave an employee can take (up to 52 weeks) as they are legally entitled to the time, given that they notified their employer no later than the '15th week' (ACAS, 2024d) before the child is due. This could also be a case for discrimination.

Adoption leave and pay follows the same rules as maternity leave and pay. There are slight differences in the names of the leave and pay, where maternity is replaced with adoption i.e. Statutory Adoption Pay (SAP).

Paternity leave and pay differs slightly, where qualifying employees can choose to take either 'one or two' (ACAS, 2024a) non-continuous weeks from the date the child is born till 12 months after that date. Statutory paternity pay is also £184.03 a week or 90% of their average weekly earnings (whichever is lowest) for up to two weeks. Again, this would be paid by the employer but can be claimed back from HMRC.

The employee taking paternity has the right to return to the same job they were employed to do after returning from their leave. If they take more than 4 weeks (OPL and statutory leave/shared parental leave), they have the right to be given a suitable alternative role.

Some employers offer 'enhanced' versions of these leave payments; however, it is not a legal requirement. Charlotte should allow Coco to decide how long she would like to take off out of the 52 weeks she can take for maternity leave and pay her SMP for 39 of these weeks that she is on leave

for. Failure to do this may result in legal action and fines costing much more than the maternity leave and pay for Coco would cost.

(AC 4.4)

Following the Flexible Working (Amendment) Regulations 2023, employees have the right to request flexible working from ‘day one’ (Jackson, 2024) of employment and have not made 2 requests within the last 12 months as of April 2024, and these requests must be considered and responded to within 2 months of receipt of the request, any request that is accepted can be accepted for a trial period or as a permanent change.

If Charlotte and Madeline want to decline the request, they can only decline it due to one of the reasons below from the UK Government (2024):

Reasons for declining flexible working requests:	
Extra costs that will damage the business.	If accepting the request presents significant costs that may cause harm such as opening an office in a different location for to accommodate one request.
The work cannot be reorganised among other staff.	If the current staff cannot accommodate the extra work that may come due to accepting a request, the request can be declined.
People cannot be recruited to do the work.	If the business is unable to backfill the space left by accepting the request this may result in a lack in persons to complete said job, meaning the request can be declined.
Flexible working will affect quality.	Meaning that if the standard of work done could drop and this may cause issues, the request can be declined.
Flexible working will affect performance.	Again, if the request causes a drop in productivity or performance that could cause issues, the request can be declined.
The business will not be able to meet customer demand.	So, there is potential financial detriment if the business cannot meet the demands due to the accommodating this request.
The business is planning changes to the workforce.	If the business is restructuring or undergoing changes like such, the request does not have to be accepted.
There's a lack of work to do during the proposed working times.	The business may have specific times where work is at a high and times where it is at a low, if the request means an employee would have no work to do, the request can be declined.

Figure 2: Table displaying reasons that a business can decline a flexible working request with explanations.

If they want to decline the request because it will mean Peachy Desserts Ltd is being affected by any of the above, that would be acceptable in the eyes of the law, but they must allow Chelsea to make the request. They may also want to trial this request to see if they can accommodate it, rather than potentially lose a member of staff, which may lead to any of the above points occurring at a higher degree.

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