

3.1 Duties of the employer

3.1.1 To pay wages

This is the most basic obligation of employers and is normally an express term. Where the contractual pay is not specified, the law requires a reasonable sum.¹ In certain circumstances, however, the law does not leave the employer entirely free to determine the amount of remuneration payable – for example, the application of the national minimum wage or if a sex equality claim is made. These issues are considered in Chapter 5.

3.1.2 To provide work

Employers are generally not obliged to provide work, and an employee who does not receive their full contractual remuneration cannot complain of breach of contract. Nevertheless, in certain circumstances the failure to provide work can constitute a breach of contract.

If a person's earnings depend upon work being provided

Employees who are paid by results or commission, or who are paid a percentage of sales, must be given the opportunity to work because the payment otherwise would deprive them of a substantial part of what they had been promised. It is an opportunity to earn more.

Where the lack of work could lead to a loss of profits or the reputation of an employee

Indeed, in one tribunal case it was held that the higher a person's status in the organisation, the more important it is for work to be given when it is available.

Where an employee needs to practise in order to preserve skills

The Court of Appeal has suggested that such employees are entitled to the opportunity of performing work.³ This is linked to the issue of 'constructive dismissal' (see section 3.2.2), which is the practice of continuing to pay an employee but not allowing him or her to work during that time. It has been held that this can prevent a valuable employee from leaving and immediately joining a competitor. A problem arises when such a period of inactivity has a detrimental effect on an employee's skills.



CASE STUDY 3.1

William Hill Organisation Ltd v Tucker

In *William Hill Organisation Ltd v Tucker*⁴ the Court of Appeal held that the employer had an

obligation to provide work when it was available. This was particularly