

# Managing the Employment Relationship

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Sherwood

*“Superb knowledge of the law combined with a real world savvy and robustness, a very good combination.”*

**LEGAL 500 2020**



## Winckworth Sherwood Employment Guide

This guide is the second of a three part series of our whistle-stop tour of UK employment law outlining some of the key concepts in UK employment law and what they mean practically for UK employers. We hope that growing businesses and multinational organisations setting up in the UK, in particular, will find our guides useful.

This guide looks at the key employment protections that employees have in relation to equal pay, discrimination and whistleblowing, family friendly rights, how to manage grievance issues and our top tips for managing the employment relationship. The third part of our series focuses on ending the employment relationship.

While we refer to the UK throughout this guide for ease, there are in fact different legal systems in the UK. This guide concerns English employment law. Please note that this guide is not a comprehensive summary of all legal requirements and guidance; rather it highlights some of the key legal areas UK employers should be aware of. Specific legal advice should be taken about particular circumstances. The information is correct as of September 2020.

If you would like to discuss anything raised in this guide, our experienced employment team is here to help. Their contact details can be found at the end of this guide.

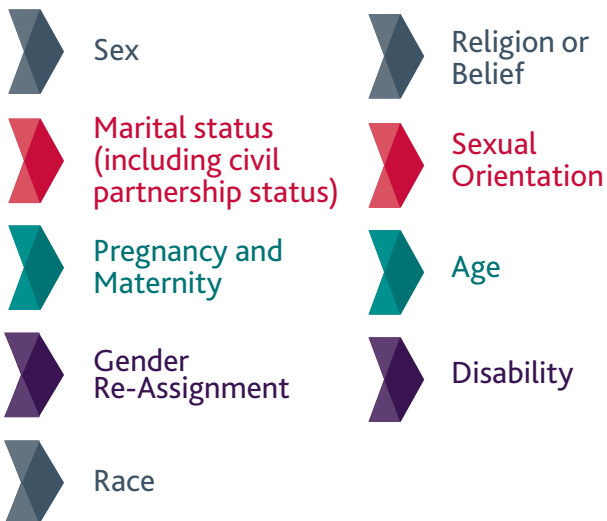
For more information, please visit: [wslaw.co.uk/employment](https://wslaw.co.uk/employment).

# Key Employment Protections

## DISCRIMINATION

The Equality Act 2010 protects a wide range of individuals within the work sphere against discrimination due to a “protected characteristic” including employees, workers, job applicants and members of LLPs. There is no length of service requirement for this type of claim.

The protected characteristics are:



Outlined below are the main types of discrimination:

### *DIRECT DISCRIMINATION*

This occurs where because of a protected characteristic, the employer treats the employee less favourably than it treats or would treat others.

*For example, where an employer decides not to offer a qualified applicant a position because he is disabled.*





## INDIRECT DISCRIMINATION

This is concerned with acts, decisions or policies which are not intended to treat anyone less favourably, but which, in practice, have the effect of disadvantaging a group of people with a particular protected characteristic. Where such action disadvantages an individual with that characteristic, it will amount to indirect discrimination unless it can be objectively justified.

*For example, an employer's dress code which does not allow employees to wear hats or scarves in the office would indirectly discriminate against Sikh men or Muslim women who wear turbans or hijabs, unless this dress code can be objectively justified by the employer.*

## VICTIMISATION

This protects employees who do (or might do) "protected acts" such as bringing discrimination claims, complaining about harassment, or becoming involved in another employee's discrimination complaint.

*For example, failing to promote an employee because she has made allegations of disability discrimination.*

## HARASSMENT

An employer harasses an employee if it engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of either:

- Violating the employee's dignity; or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee.



*For example, teasing an employee about his or her religious convictions.*

## EMPLOYEES WITH DISABILITIES



Employers have a duty to make “reasonable adjustments” for disabled employees. Under the Equality Act 2010 a person is disabled if they have a physical or mental impairment which has a substantially adverse and long-term effect on their ability to carry out normal day-to-day activities. In the workplace such activities can include using a telephone or computer, interacting with colleagues, following instructions, driving and carrying everyday objects.

If a workplace feature or practice puts an employee with a disability at a disadvantage, the employer should look to see what “reasonable adjustments” it can make and meet with the employee to discuss what can be done to help them.

*For example, providing a special keyboard if an employee has arthritis.*

## EQUAL PAY

Employers need to ensure that when they award pay increases or set the remuneration for new employees that they comply with the equal pay legislation. Under this legislation, an “equality clause” is implied into all contracts of employment to ensure that when an employee is employed doing either:

- Like work (that is work which is the same or broadly similar)
- Work which has been rated as being equivalent under a job evaluation scheme or
- Work which is of an equal value

to that performed by a member of the opposite sex in the same employment, any term in the employee’s contract which is less favourable than the comparator’s contract is modified so as to be no less favourable. This is unless the employer can show that the reason for the difference in pay or conditions is a material factor other than sex.

*For example, a female London Store Manager is entitled to the same pay as a male London Store Manager unless the employer has a good reason for the difference, such as past performance.*

## PART-TIME AND FIXED-TERM EMPLOYEES

Employers need to ensure that part-time and fixed term employees are not treated less favourably than comparable full-time and permanent employees in respect of their terms and conditions of employment, unless the employer can objectively justify the different treatment.



## WHISTLEBLOWING

Employees who make “protected disclosures” (blow the whistle) are protected from dismissal or being subjected to a detriment, such as being refused a pay increase or promotion or being selected for redundancy. There is no length of service requirement for this type of claim.

An employee makes a “protected disclosure” where they have made a disclosure of information about certain types of malpractice, such as a breach of a legal obligation, and they make it in an accepted way, for example, to their employer.

## UNFAIR DISMISSAL



Employees with at least two years' service have the right not to be unfairly dismissed (there are limited circumstances where this service threshold is not required). When contemplating dismissing an employee, the employer needs to have a fair reason for dismissal, follow a fair process and act fair and reasonably in all steps relating to the dismissal (see our third guidance note for further details).

# Family Friendly Rights and Flexible Working

Eligible employees in the UK have a number of family friendly rights including:

- 1 Maternity leave of up to 52 weeks and statutory maternity pay for up to 39 weeks.
- 2 Two weeks' paternity leave on the birth or adoption of a child and statutory paternity pay for up to two weeks.
- 3 Shared parental leave which allows the mother and partner more flexibility in how they share the care of the child during the first year and shared parental pay for up to 37 weeks.
- 4 Parental leave (unpaid) for up to 18 weeks for the purpose of caring for a child.
- 5 A "reasonable" amount of unpaid time off work to take "necessary" action to deal with particular situations affecting their dependants.



Eligible employees have the right to make a request for flexible working for any reason. There is a statutory scheme for dealing with the request and a request can only be refused for one or more prescribed statutory reasons such as a detrimental impact on the ability to meet customer demand.



# Managing Grievances

Grievances are concerns, problems or complaints that employees raise with their employers. An employer should follow the ACAS Code on Disciplinary and Grievance Procedures (ACAS Code) on receipt of a grievance. Failure to follow any part of the ACAS Code does not of itself make an employer liable to legal proceedings, however, Employment Tribunals take the ACAS Code into account when considering whether an employer has acted reasonably or not and can award a 25% increase in compensation where it has not been followed



The basic steps in the ACAS Code for dealing with grievances include:

- 1 Holding a meeting to discuss and consider both sides of the matter.
- 2 Writing to the employee with the decision and providing a right of appeal.
- 3 Holding a further meeting to consider the grounds of appeal.
- 4 Providing the employer's final decision to the employee in writing.

An employee has a right to be accompanied at any grievance and appeal meetings by a work colleague or trade union representative, with whom they can confer.

# Managing the Employment Relationship

## TOP TIPS

Our top tips for managing the employment relationship are that an employer needs to:

- 1 Comply with the terms of the contract of employment. If an employer breaches the contract in a serious way, then the employee is entitled to leave without giving notice i.e. there is a constructive dismissal, meaning they can claim for their notice pay, any post-termination restrictive covenants become unenforceable and, depending on the circumstances of the breach, they can also claim unfair dismissal and discrimination.
- 2 Treat employees consistently, fairly and with respect and listen to your employees' views.
- 3 Keep employment records accurate and up-to-date for example, performance reviews and sickness records.
- 4 Undertake regular performance reviews - during the employee's probationary period, on a formal annual basis and also during more informal catch-ups.
- 5 Follow the employer's own policies and procedures and the ACAS Code.

We recommend a Staff Handbook is put in place which includes disciplinary and grievance procedures and a comprehensive set of policies such as equal opportunities, internet and e-mail, dress code, and drug and alcohol.



# Our Team



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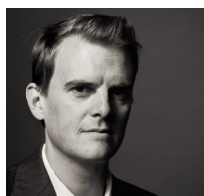
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Sue specialises in resolving disputes arising at or around the end of employment, including the enforcement and interpretation of restrictive covenants, and the impact of compliance and regulatory issues. Sue is a very experienced litigator, handling complex claims for a wide range of claimants and respondents.



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Andrea is a very experienced employment lawyer who is responsive, clear, pragmatic and practical; aiming always to seek solutions based on what is best for the individual client or business in the circumstances. She advises both corporate employers and senior individuals on all employment-related matters in the ET, EAT, High Court and Court of Appeal. Andrea specialises particularly in restrictive covenant enforcement and team moves, breach of contract, TUPE, unfair dismissal and discrimination.



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Harriet specialises in providing employment law advice to a spectrum of clients, ranging from global PLCs, to start ups on business matters and senior executives and partners on individual matters. She is known for her commercial and pragmatic approach and she takes great care in getting to know her clients and understanding their particular circumstances so that she can provide tailored advice and add real value.



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Danielle advises both employees and employers on all aspects of contentious and non-contentious employment matters. Danielle is experienced in dealing with a wide range of employment issues ranging from everyday HR queries to multifaceted and complex disputes and litigation. Danielle ensures that her advice to each client is carefully tailored by considering industry specific and commercial factors as well as the relevant legal issues. Danielle also adopts a collaborative approach with clients in order to devise appropriate and effective strategies.



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Will provides straightforward, strategic and commercial advice to his clients, enabling employers to manage disciplinary and other HR issues in a way that minimises the risk of litigation, and helping employees to achieve excellent financial settlements. Will also has a wealth of experience in advising clients who are involved in employment tribunal litigation.

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Daniel provides tailored, commercial advice throughout the employment relationship, to both individuals and organisations. In addition to litigation, he enjoys assisting clients in exploring alternative means of dispute resolution, such as mediation and arbitration.

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Aleksandra qualified into the Employment team in 2019 having spent five years working in the team as a Paralegal. She has a breadth of experience having worked on a wide range of contentious and non-contentious employment matters, representing both employer and employee/senior executive clients. Her recent experience includes acting for employees in grievances and appeals and negotiating favourable and high-value departure terms as well as helping employers with a range of HR queries.

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James has specialised in employment law since 1995 and has regularly been a recommended lawyer in the Legal 500 directory. His particular professional specialisms are: helping employers resolve crisis situations; managing large scale redundancy exercises; advising on complexity of TUPE consultation and indemnities, conducting and defending complex tribunal litigation.

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outstanding in their field.”*

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