

Attendance Management

**HR Guide**

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# Introduction

This guide covers a range of information which includes:

* Time off work
* Management of sickness
* Annual leave
* Statutory sick pay
* Occupational sick pay
* Flexible working
* Working at home
* Short time working
* Sunday trading
* Special leave
* Working time

**See below for more detail**

# Time off work

Employees are entitled to a range of paid and unpaid time off during working hours i.e. any time when, in accordance with the Contract of Employment, an employee is required to be at work.

## The right to time off with some form of payment is applicable in the following situations:

* For a companion to accompany a worker to a disciplinary or grievance hearing
* For a member of an employee’s works council or similar body to perform their duties
* For a negotiating representative to perform their duties
* For an information and consultation representative to perform their duties
* For a pregnant employee to attend ante-natal care
* For an employee representative or candidate in an election in a redundancy situation to perform their duties
* For safety representatives and representatives of employee safety bodies to perform their duties
* For trade union representatives to perform certain trade union duties
* For trustees of occupational pension schemes to perform duties
* For a union learning representative (ULR) to train and perform duties
* For employees under notice of redundancy to look for new employment or training
* For a young person to attend study or training

## The right to time off without any payment is applicable to the following situations:

* Employees between 18 and 70 years of age who attend Jury Service
* For public officials to perform certain public duties
* For trade union members to take part in certain trade union activities
* For employees to care for their dependants within the family

The extent of time off granted depends on the individual situation and is based in general on the requirement for the employer to act reasonably in considering requests of all types of time off.

# Management of sickness

Statistics show that the total annual cost to UK businesses of absence from work is approximately £567 per employee. The vast majority of employers expect and accept a certain amount of absenteeism before deciding to take any action as a consequence.

Before an employer decides if and what action could be taken, the employee’s absence record should be reviewed, taking their personal details into account and comparing them to other employees across the business.

If on reviewing the data, the level of absence has dramatically increased or the reasons for the absence are unconnected or the employer can see no underlying reason connected to the employee’s employment for the periods of absence, or the absence record as a whole of the employee is unsatisfactory, an employer is entitled to consider the implementation of the Company Disciplinary Procedure.

If however, the absences are connected, employers are advised to obtain consent from the employee to contact their doctor and obtain a medical report, at the same time outlining the employee’s rights under the Access to Medical Reports Act 1988. Once permission has been granted, the employer would then need to write to the General Practitioner requesting a prognosis. This will enable an employer to gain information relating to any potential disability and by doing so to minimise the risk of a successful claim under the Equality Act.

On receiving a report from the Medical Professional, you should discuss the contents with an employment law advisor before deciding on what action to take. On all occasions, regardless of an employee’s length of service (and because of the risk of claims under the Equality Act) the employer should treat each individual circumstance with caution. If the underlying reason for absence is connected to the employee’s work, the employer should of course make every attempt to resolve the issue with the same considerations in mind.

# Annual leave

The statutory written statement of main terms and conditions of employment must include confirmation of the amount of annual leave to which an employee is entitled. This amount will then become a contractual right.

The statutory statement should also include the conditions, if any, that apply to the taking of the holiday entitlement.

In the absence of any written confirmation of the holiday entitlement, a verbal commitment may however be relied upon by the employee. The Working Time Regulations 1998 established the basis for paid annual leave and the amount of entitlement was increased by the Working Time (Amendment) Regulations 2007 which came into effect on 1st October 2007. These regulations increased the holiday entitlement to 4.8 weeks, with effect from that date, and a further increase to 5.6 weeks from 1 April 2009.

Contracts of Employment can amend the holiday entitlement and specify fixed days that have to be taken as holiday. Such contracts cannot however provide for less holiday than the statutory minimum laid down by the regulations.

# Statutory sick pay

Employers are required by law to pay an amount of sick pay to any employee who is absent due to sickness. This is known as Statutory Sick Pay or SSP. Since 1st October 2006 all employees (irrespective of age) were entitled to SSP provided they satisfy the other requirements, including the need for their earnings to exceed the lower earnings limit in place at the relevant time.

There is a fixed amount of SSP payable in any week, as set down by the Government. This amount is reviewed from time to time, normally on an annual basis. However, there is a maximum number of weeks over which this payment can be made by employers.

There are also specific SSP rules that state that payments will not commence until the fourth day of sickness although it is possible to link one period of sickness with another and thus avoid the need to have a number of waiting days prior to the payment being made. There is no qualifying period of service before SSP is payable, However, the employee must have actually commenced working for the organisation. The SSP scheme is only open to employees and people holding elective offices for example, directors of companies.

Employers are required to keep certain statutory records in connection with the payment of SSP. This, therefore, means that there is a need to demonstrate that all SSP payments were made in circumstances of genuine sickness. Employees who consider that SSP is being unreasonably withheld may complain to the government department responsible for administering sickness benefits.

Where SSP is paid, there is no obligation upon employers to pay any additional company sick pay. However, where there is an amount of contractual sick pay agreed between employer and the employee, SSP will form part of the total sickness payment of the employee’s normal wage or salary for the period of sickness. It is clearly inappropriate and unnecessary to pay SSP in addition to a normal wage or salary for a period of sickness.

# Occupational sick pay

Where an employer has contractual terms relating to incapacity to work due to sickness and/or an Occupational Sick Pay (OSP) scheme, it is advisable that these are clearly set out in writing in the Contract of Employment.

Where there is no written Contract of Employment or where it does not cover these provisions, employers must by law provide employees with a written statement of particulars relating to them.

Where there is an OSP scheme, the provisions should state how much will be paid, how it will be paid and for how long. An employer can also choose to cover some employees and not others in a scheme provided that, by doing so there is no discrimination against employees on grounds of sex, sexual orientation, race, religion or belief, age or disability.

A typical OSP scheme will give full pay during a period of sickness for a certain length of time reducing to a percentage of full pay for a further set period with no sick pay thereafter. Often no OSP will be payable during a probationary period and/the level of entitlement will often increase with length of service in line with age discrimination legislation. The level to which an employer may exercise their absolute discretion in these situations should also be included.

If no duration for sickness payments is stated, a term may be implied to give effect to the presumed intention of the parties. The presumption may be that the employer will pay for a reasonable period only, which will depend on the term normally applicable in the particular employment, for example, by reference to the relevant national agreement.

Finally, any OSP scheme should also set out any conditions for payment that apply such as a requirement for self-certification for periods of absence up to seven days, and the production of a medical certificate for long periods. Employers are therefore reminded of the need to ensure that their rules are unambiguously communicated to their employees in writing.

# Flexible working

The right to apply to work flexibly has been extended to all employees with over 26 weeks service. Employers are under a legal obligation to consider these requests seriously.

Eligible employees are able to request a change to the hours that they work, a change to the times that they are required to work and/or to work from home. Although the rules that previously applied to flexible working have been relaxed applicants must put their requests in writing. The employee has a duty to consider how the company could accommodate their request.

In order to become eligible, there are a range of considerations that an employee has to satisfy, but the legislation does ask employers to consider all types of working patterns, such as annualised hours, flexitime, job sharing, shift working etc before arriving at a decision.

Within the framework of the regulations there are time limits in which employers need to respond to meet with the employee and there is also the provision for the right of appeal against a decision by an employer.

The employer is under no obligation to agree to the request but will be required to give details of why any such request is being rejected. That reason has to be one of those outlined in the regulations, which are:

* Extra costs which will damage the business
* The business will not be able to meet customer demand
* The work cannot be re-organised between the other staff
* People cannot be recruited to do the work
* Flexible working will have and effect on quality and performance
* There is a lack of work to do in the proposed working times
* The business is planning changes to the workforce
* Flexible working will have a detrimental impact on quality

Employees who are dissatisfied with the employer’s response to their request can potentially pursue the matter through an Employment Tribunal for a remedy or through the ACAS arbitration scheme.

# Working at home

For existing employees, any change to home working for either all or part of their working hours should be done on a trial basis.

Normally, this will be over a two to three month period with a planned review to resolve any issues during the trial period. The Contract of Employment therefore be revised to state the place of work as being the employee’s home.

In such circumstances, employers are entitled if they wish to introduce more comprehensive contractual obligations. These can include requirements such as:

For regular reporting and communication with line managers

* To be contactable at certain times
* Having an agreed timescale to inform the employer when the home worker is on holiday or absent ill
* To work certain hours
* To attend the workplace at certain times
* To be more formally supervised
* To keep a record of time keeping

By the same token, it is necessary to ensure that home workers have appropriate daily and weekly rest periods and that they do not exceed the average working time limit, unless by prior written agreement. Home workers should also retain contact with work colleagues as this will minimise feelings of isolation and lack of motivation. Home workers should be regularly informed of any developments or problems within the employer’s business.

Where they supply home workers with equipment such as laptops and telephones, employers should ensure that the equipment is properly insured under the employee’s own insurance. It is however possible for the employer to extend the company insurance policy to deal with this eventuality. In these circumstances, tighter contractual terms on care of equipment and cost of repair may be introduced.

In relation to security issues, employers can reserve a contractual right of entry to an employee’s workplace to obtain any necessary company information. Naturally employers may make it clear within the Contract of Employment that the home worker is responsible for the security of confidential information, however it is held.

Finally, employers continue to have health and safety obligations towards employees even when they are working from home. At the very least, it is necessary to ensure that home workers have proper inspections of their home work station to ensure it complies with health and safety standards.

# Lay off and short time working

Employees who are given no work on any day they would normally be required to work may be entitled to a statutory payment i.e. a guarantee payment.

An employer wishing to use a statutory lay off period must have either the contractual right or the custom and practice right to do so.

Certain categories of employment are excluded from the right to receive guarantee payments. These include anyone that has not been continuously employed for at least one month before the date on which the suspension begins is not covered by the provision. Anyone who has no normal working hours prescribed by a Contract of Employment, for example, some insurance agents and sales representatives; members of the police and Armed Forces; masters or crew members engaged in share fishing and are paid solely by a share of the catch and employees who ordinarily work outside of Great Britain (excluding offshore oil and gas installations in British sectors of the Continental Shelf) is also not covered by the provision.

There is a qualifying period of one month’s service necessary before guarantee payments become payable. Even if employees potentially qualify, they may lose the right to a guarantee payment in certain circumstances.

The statutory entitlement to a guarantee payment is limited to five days in any three months (except where under a Contract of Employment an employee is required to work less than five days in a week - in those cases the entitlement cannot exceed the number of days that the employee is required to work by that contract).

The amount of the maximum guarantee payment per workless day is adjusted, from time to time by the government, normally on an annual basis.

Employees who have not been paid the guarantee payments to which they are entitled, may bring a complaint to an Employment Tribunal for a remedy.

# Sunday trading

There are regulations in place to protect shop workers and betting workers who wish to exercise their right to object to working on a Sunday. These regulations have been in force in England and Wales since 26th August 1994 and in Scotland since 6th April 2004.

As the law is so specific to the above categories of workers, all other categories of employment are excluded.

There are definitions on what does and does not constitute shop work and betting work but there is no qualifying period of service necessary to attract these rights.

Employees can give a written notice called an ‘opting out notice’ to their employer objecting to working on a Sunday. Employees can also, at any time, provide an ‘opting in notice’ to their employer, signifying a willingness to work on a Sunday.

Employees can gain a remedy through an Employment Tribunal if they are subjected to any detriment on grounds of their refusal to work on Sundays. They are also able to bring a claim if they believe that their dismissal was related to their refusal to work on a Sunday. There is no qualifying period required in order to bring the claim.

However, the protection does not apply to those workers who are specifically employed to work only on a Sunday.

# Special leave

Employees are entitled to be allowed to attend to what may be described as family emergencies involving their dependants during working hours.

An employee is obligated to inform the employer why they need the time off and how long they are likely to away from work. They are also obligated to keep the employer regularly updated.

The amount of time off to be granted by the employer is that which is reasonable in the circumstances. There is currently no statutory right to be paid for the time off under this heading.

Employees who are unreasonably refused the time off requested may bring a claim before an Employment Tribunal to obtain a remedy.

# Working time

There is a range of obligations relating to the hours of work of employees and the rest breaks between periods of working time. The main regulations were contained in the Working Time Regulations introduced in October 1998. There are provisions in the current legislation for the following areas:

The principal regulations are:

* A limit on the maximum hours that can be worked (48) subject to an entitlement to opt out of this requirement
* Limit on night working hours (eight)
* The right for night workers to receive a health assessment
* A right to 11 hours rest each day between periods of work
* The right to one day off work in each week
* The right to an unpaid rest break where an adult worker works for more than six hours a day
* The right to 5.6 week’s paid holiday each year

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