

**GUIDANCE ON COMPLYING WITH
THE EMPLOYMENT ACT 2006**

A CHECKLIST FOR EMPLOYERS



ISSUED BY THE DEPARTMENT OF TRADE AND INDUSTRY

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Version 1

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Introduction

Whilst the Employment Act 2006 and associated secondary legislation make extensive changes to the Island's employment law many of those changes will have little or no effect on the great majority of employers. The purpose of this document is to present a checklist of those changes which, in the Department's view, are likely to present the most significant practical consequences for employers and to set out the actions which it is considered appropriate to take in response.

This document is not a complete or authoritative statement of the law. For details of the law please refer to the Employment Act 2006, and to the following orders and regulations: —

Employment Act 2006 (Appointed Day) Order 2007 (Statutory Document (SD) 72/07)
Employment Act 2006 (Appointed Day) (Amendment) Order 2007 (SD 213 /07)
Annual Leave Regulations 2007 (SD 102 /07)
Annual Leave (Agency Workers and Trainees) Order 2007 (SD 103/07)
Adoption Leave Regulations 2007 (SD 77/07)
Adoption Leave (Amendment) Regulations 2007 (SD 77/07)
Maternity Leave Regulations 2007 (SD 76 /07)
Maternity Leave (Amendment) Regulations 2007 (SD 463 /07)
Parental Leave (Disabled Child) Regulations 2007 (SD 97/07)
Paternity Leave Regulations 2007 (SD 78/07)
Flexible Working Regulations 2007 (SD 96/07)
Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 (SD 104 /07)
Public Interest Disclosure (Prescribed Persons) Order 2007 (SD 101 /07)
Suspension from Work on Maternity Grounds Order 2007 (SD 98 /07)
Code Of Practice on Disciplinary and Grievance Procedures 2007 (SD 306/07)

In order to explain the new Act the Department has prepared the following Guides:

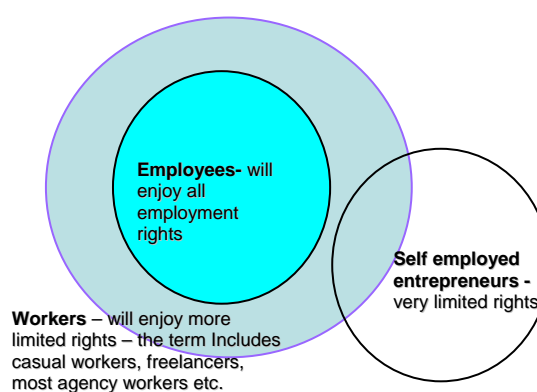
Isle of Man Employment Rights: a Guide for Employers, Employees and Workers
Employment Act 2006 - Timetable Right by Right
Maternity Rights - a Guide for Employers and Employees
Paternity Rights - a Guide for Employers and Employees
Adoption Rights - a Guide for Employers and Employees
Parental Leave for Parents of Disabled Children - a Guide for Employers and Employees
Flexible Working –the Right to Request and the Duty to Consider
Employment Status and Employment Rights of Agency Workers
Guidance on Written Particulars
Holidays and Holiday Pay
The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2007 and Connected Legislation
A Brief Guide to Whistleblowing.

Copies of both the legislation and the Guides can be downloaded from the Department of Trade and Industry website at www.emplaw.gov.im

No responsibility can be accepted for errors or omissions, or their consequences.

1 Know the employment status of your workforce.

Description of changes: Whilst, in general, employees will enjoy all of the employment rights in the Employment Act 2006 (subject to other relevant criteria such as their having worked any applicable qualifying periods) the Act also applies a smaller number of employment rights to persons other than employees known as ‘workers’. This term includes casual workers, some freelancers and the majority of agency workers. A further category to consider is that of self employer entrepreneurs who have a very small number of rights.



Suggested course of action Because employment rights flow from employment status employers should identify who are employees and who are workers. Employers should, in particular, be careful not to overlook any workers; where there are workers they should be granted applicable rights (such as rights under the Annual Leave Regulations 2007).

In some particular cases it may be necessary to take further advice concerning the employment status of particular workers.

Further information For information on employment status see section 1.6 of “*Isle of Man Employment Rights: A Guide for Employers, Employees and Workers*”. Appendix 1 of the Guide lists the rights which apply to the main categories of workers.

2 Issue and / or update employees' written particulars as necessary.

- Description of changes:**
1. From 1st May 2007 the Act prescribes certain new and / or amended particulars.
 2. From 1st May 2007 all part-time employees are entitled to receive written particulars on the same basis as other employees (i.e. within 4 weeks of employment commencing).
 3. Other aspects of the Act may also have a bearing on the currency of some employers' written particulars.
 4. Note that, in addition to existing powers to determine what the particulars should have been, from 1st December 2007 the Employment Tribunal will make an award of 2-4 weeks' pay in cases of failure to comply with the requirement to provide a statement of terms of employment (even in unrelated proceedings such as a claim of unfair dismissal).

Suggested course of action **Templates**

Employers should update any template for written particulars to include the new and amended particulars.

The new particulars

The Act does not require employers to reissue particulars to all employees on account of the additional particulars. However, new employees, and existing employees whose jobs have changed or who request written particulars must be issued with all particulars (the latter category 'within a reasonable time').

Part-time employees

Similarly the Act does not require employers to reissue particulars to part-time employees who were not entitled to particulars at 1st May 2007. However, such part-time employees should be issued with written particulars (including the new particulars) if their job changes, or within 14 days of a request as should any new part-time employees.

Note that the written particulars require employers to put down the date when an employee's continuous

employment begins. In the case of a part-time employee who is working under 8 hours at or prior to 30th September 2007 the appropriate date is September 30th, not the date the employee actually started work (see further at 10).

Regardless of legal requirements, it is good practice to issue written particulars to all employees.

Holidays and holiday pay

There is a requirement to include in the particulars any terms and conditions relating to holidays and holiday pay. Therefore to take account of the Annual Leave Regulations it is suggested that employers check whether existing contractual entitlements are in conflict with any aspects of the statutory right.

Also, employers who wish to use a leave year commencement date other than the default date set by the Regulations (30th September 2007) should ensure that the date of their leave year is contained in the written particulars (but note that a variation of the leave year date can also be specified in other kinds of 'relevant agreements').

Disciplinary rules and procedures

Employers are required to include in the written particulars any disciplinary rules and procedures and a person to whom an appeal can be made. It is suggested that where such rules and procedures are specified that employers check whether these are in general compliance with the standards suggested within the Code of Practice on Disciplinary and Grievance Procedures 2007 (see further at 14).

Maternity and other family rights

Whereas employers are not required to include in the written particulars any contractual maternity rights or paternity rights, where such rights are detailed, employers should ensure that any contractual entitlements are not in conflict with any aspect of the new statutory rights.

Further information

For further information, including details of existing and newly required particulars see "*Guidance on Written Particulars*". Section 8 of the separate Guide "*Holidays and Holiday Pay*" contains additional information about relevant agreements. See also *the Code of Practice on Disciplinary and Grievance Procedures 2007*.

3 Ensure that deductions from workers' wages are lawful.

Description of changes:	<p>From 1st May 2007:</p> <ol style="list-style-type: none">1. Protection was extended from 'employees' to cover 'workers'.2. Deduction or payment of an employment agency's fees from a worker's wages was made expressly unlawful.3. The Tribunal was given additional powers to award a worker up to 4 weeks' pay where the employer has made or received an unauthorised deduction or payment and such an award is just and equitable.
Suggested course of action	<p>Employers should ensure that all deductions made from workers' pay are lawful. For example, should an employer wish to be able to recoup training costs from a worker in the event of his or her leaving then appropriate arrangements should be put in place to permit such a deduction.</p> <p>Note that 'deductions' includes any non payment of sums payable to the worker such as pay in lieu of notice.</p>
Further information	<p>For further information see Section 4.2 of "<i>Isle of Man Employment Rights: a Guide for Employers, Employees and Workers</i>".</p>

4 Ensure that workers receive 4 weeks' paid annual leave each leave year.

Description of changes: The Annual Leave Regulations 2007 give workers (not just employees) a new right to 4 weeks' paid leave each leave year and to payment, when their employment terminates, for any leave to which they are entitled but which they have not taken.

The default date for the Regulations coming into operation is 30th September 2007. However, where there is 'a relevant agreement' which specifies a different leave year commencement date falling after 30th September 2007 then a worker's entitlement will begin from the date specified in that agreement. So for example where the leave year is agreed as 1st January then the Regulations will apply from 1st January 2008 in the case of those workers.

Suggested course of action Employers should check:

- who is entitled to annual leave;
- how much leave workers currently receive and whether it is enough;
- whether workers receive a week's pay for each week of leave and are paid for any outstanding leave at termination;
- whether any contractual leave entitlements are less favourable than any aspects of the statutory right.
- in the case of employees, whether the written particulars are sufficient (see 2 above);
- that sufficient records are kept to establish, in each leave year how much leave every worker is entitled to, and how much leave every worker has taken;

Employer should also ensure:

- where an employer's leave year commencement date is to be other than the default date, that a relevant agreement is in place prior to 30th September 2007. (In the case of employees, inclusion of the commencement date of the leave year in their written particulars should usually be

sufficient to satisfy this requirement);

- where 'rolled-up holiday pay' is to be paid, that the various conditions required by the Regulations are fulfilled;
- where it is proposed to make other permitted variations of the Regulations (e.g. in respect of notice required to take leave or arrangements to recoup the value of any excess leave taken by workers at termination that relevant agreements are in place;
- where employers use agency 'temps', arrangements are in place between the employment business and its client ('the principal') to ensure that the worker is allowed to take annual leave to which he or she is entitled, if he or she asks to do so.

Further information

See the detailed Guide "*Holidays and Holiday Pay*".

5 Know how to deal with requests for Maternity Leave.

Description of change:	Female employees whose expected week of childbirth is on or after 30 th September 2007 qualify for a right to take at least 26 weeks' unpaid maternity leave. Leave can start up to 11 weeks before the baby is due. Some mothers will be entitled to take an additional 26 weeks' leave.
Suggested course of action	<p>Employers should familiarise themselves with the new statutory right including the process and notification requirements for employer and employee.</p> <p>Employers should also check the terms and conditions that are offered to women on maternity leave and review their existing maternity leave policies to ensure compliance.</p> <p>Where UK policies are used as a template, employers should check whether it is intended to make contractual maternity payments (Statutory Maternity Pay not being available on the Isle of Man).</p>
Further information	See the booklet ' <i>Maternity Rights - a Guide for Employers and Employees</i> '.

6 Know how to deal with requests for Paternity Leave.

Description of change:	Where the expected week of childbirth of the child's mother is on or after 30 th September 2007, qualifying employees who have been continuously employed for 26 weeks ending with the 15 th week before the baby is due are entitled to take one or two weeks' unpaid paternity leave.
Suggested course of action	<p>Employers should familiarise themselves with the new statutory right including the eligibility, process and notification requirements for both employer and employee, and review any existing paternity leave policies to ensure compliance.</p> <p>Where UK policies are used as a template, employers should check whether it is intended to make contractual paternity payments (Statutory Paternity Pay not being available on the Isle of Man).</p>
Further information	See the booklet ' <i>Paternity Rights - a Guide for Employers and Employees</i> '.

7 Know how to deal with requests for Adoption Leave.

Description of change:	Employees who have been notified that a child will be newly placed or matched with them on or after 30th September 2007 will have an equivalent right to maternity leave in relation to that child. Where a couple are adopting jointly the other adopter may be eligible to take paternity leave (see 6).
Suggested course of action	<p>Employers should familiarise themselves with the new statutory right including eligibility, the process and notification requirements. Employers should also check the terms and conditions they offer employees who are on adoption leave.</p> <p>Where UK policies are used as a template, employers should check whether it is intended to make contractual maternity payments (Statutory Adoption Pay not being available on the Isle of Man). Please also note that there is no qualifying service requirement in order to take Ordinary Adoption Leave, unlike the UK.</p>
Further information	See the booklet ' <i>Adoption Leave - a Guide for Employers and Employees</i> '.

8 Know how to deal with requests for Parental Leave (Disabled Children).

Description of change: From 30th September 2007 employees with one year's service will have a new right to leave without pay in order to look after a child with a disability. A maximum of 18 weeks may be taken before the child is 18.

Suggested course of action Employers should familiarise themselves with the new statutory right including eligibility, the process and notification requirements and the amount of leave that can be taken in any one year. The definition of disabled child is one who is in receipt of Disability Living Allowance.

Employers may wish to put in place a system to record parental leave entitlement and the amount of parental leave taken.

Further information See the booklet *'Parental Leave for Parents of Disabled Children - a Guide for Employers and Employees'*.

9 Know how to deal with requests for flexible working.

Description of change: From 30th September 2007 employees with caring responsibilities who have 26 weeks' qualifying service will have a new right to request a change in their working hours.

Suggested course of action Employers should familiarise themselves with the eligibility criteria for the new right, the prescribed statutory process and the deadlines in terms of dealing with any requests.

Further information See the booklet '*Flexible Working –The Right to Request and the Duty to Consider.*'

10 Review how you treat your part-time employees and workers.

- Description of changes:**
1. For changes to the coverage of the right to receive written particulars see 2 above. The basic position is that differential treatment in respect of the right is proscribed under the new Act. Connected to this, from 30th September 2007 part-time employees working less than 8 hours a week begin to accumulate continuous employment and hence will start to have access to those rights such as the right not to be unfairly dismissed, for which qualifying periods apply.
 2. From 30th September 2007 the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2007 come into operation giving part-time workers a broad right not to be less favourably than other comparable workers (same or broadly similar work, same type of contract, same workplace or where there is no full-time comparator, a different workplace of the employer) unless the differential treatment can be objectively justified. Note that any worker whose working hours are fewer than the standard full-time working hours in the particular organisation will be treated as a part-time worker for the purpose of the Regulations.
 3. A part-timer worker who believes he or she has been treated less favourably than a comparable full-timer can also make a request to his or her employer for a written statement of reasons for such less favourable treatment.

Suggested course of action Employers should compare the terms and conditions of their part-time workers with comparable full-time workers, check if a pro rata principle is being observed and, if not, decide upon a course of action unless differential treatment is objectively justifiable.

Employer should ensure that any requests for written statements of reasons for less favourable treatment are dealt with within 21 days.

Further information See “*The Part-Time Workers (Prevention Of Less Favourable Treatment) Regulations 2007 and Connected Legislation*”

11 Phase out any 'waivers' in fixed-term employees' contracts.

Description of changes:

Since 1st May 2007:

- any clause in a fixed-term contract of a new employee the purpose of which is to limit or remove that employee's rights to claim a redundancy payment or unfair dismissal; or
- any clause in a fixed-term contract of an existing employee which is being renewed, the purpose of which is to limit or remove that employee's right to claim a redundancy payment

will be unenforceable.

From 30th September 2007:

- any clause in a fixed-term contract of an existing employee which is being renewed, the purpose of which is to limit or remove that employee's right to claim unfair dismissal

will be unenforceable.

Any existing contracts signed before the relevant dates still stand.

Suggested course of action

Employers should ensure that new contracts (including renewals of existing contracts) do not contain any such 'waivers'.

12 Ensure a robust health and safety policy is in place

Description of change: From 30th September 2007 workers have a new right not to be subjected to any detriment and (in the case of employees) not to be dismissed for taking specified actions in the interests of health and safety.

Note that employers already have both a common law duty of care to workers and duties under the Health and Safety at Work etc. Act 1974 of Parliament as applied to the Island by the Health and Safety at Work Order 1998). Further, the Management of Health and Safety at Work Regulations 2003 impose various specific duties on employers (including risk assessments, various emergency procedures, notification of health and safety risks to employment businesses supplying ‘temps’ etc.)

Suggested course of action Employers should ensure that they have robust health and safety policies in place.

Further information See Sections 4.16 and 12 of “*Isle of Man Employment Rights: a Guide for Employers, Employees and Workers*”. Also, “*the Management of Health and Safety at Work Regulations 2003*”, downloadable from www.hswi.gov.im

For advice on health and safety matters generally contact the Health and Safety at Work Inspectorate (part of the Department of the Local Government and the Environment).

13 Consider drawing up an internal ‘whistleblowing’ policy.

Description of change:	From 30th September 2007 workers have a new right not to be subjected to any detriment and (in the case of employees) not to be dismissed for making a ‘protected disclosure’ (‘blowing the whistle’) in certain circumstances.
Suggested course of action	Whilst whistleblowing cases are relatively uncommon some employers may wish to draw up an internal whistleblowing policy both in order to encourage workers to make known any reasonable suspicions they may have and to avoid exposing themselves to the risks of unmanaged public disclosures.
Further information	See “ <i>A Brief Guide to Whistleblowing</i> ”, section 8 of which contains information about devising an internal policy.

14 Review your discipline and grievance procedures.

- Description of changes:**
1. Workers who are required or invited to attend a disciplinary or grievance hearing on or after 30th September 2007 will have a new right to be accompanied by a specified companion (e.g. a trade union official).
 2. The Code of Practice on Disciplinary and Grievance Procedures 2007 comes into operation on the same date, replacing the 1992 code. The new code provides practical guidance on producing and using disciplinary and grievance procedures, on what constitutes reasonable behaviour when dealing with disciplinary and grievance issues, and the right to bring a companion to grievance and disciplinary hearings.

Suggested course of action Employers should ensure that the statutory right of workers to be accompanied at disciplinary or grievance hearing is observed, and familiarise themselves with the new Code.

Whilst there is no statutory requirement to have disciplinary or grievance procedures it is suggested that employers draw up such procedures. Disciplinary procedures should include:

- expectations in respect of behaviour and general conduct;
- policy in respect of harassment or victimisation; and
- policy in respect of use of the organisation's facilities (e.g. e-mail/internet) etc.

Grievance procedures should deal with the scope of such procedures and set boundaries with other procedures (e.g. health and safety matters, equal opportunity policies).

Employers should ensure that existing disciplinary hearings are conducted in a fair and impartial manner and are in compliance with the principles contained in the Code.

Where procures are drawn up or amended this will necessitate updating employees' written particulars (see 2).

Further information

See the Code of Practice on Disciplinary and Grievance Procedures 2007.

15 Ensure that written statements of reasons for dismissal are issued.

Description of changes:	<ol style="list-style-type: none">1. The previous requirement that an employee must have 4 weeks' continuous employment in order to have the right to request a written statement of the reasons for his or her dismissal was removed from 1st May 2007.2. In addition, an employee is entitled to be given a written statement without any request if dismissed whilst pregnant, or on Ordinary or Additional Maternity or Adoptive Leave.
Suggested course of action	Employers should ensure that such statements are issued within 14 days of the request or in the case of a dismissal on family leave within 14 days of the dismissal.
Further information	See section 6.2 of <i>“Isle of Man Employment Rights: a Guide for Employers, Employees and Workers”</i> .

16 Be familiar with the main changes to the unfair dismissal regime.

Description of changes: A modified regime applies where the effective date of termination is on or after 30th September 2007. The conceptual framework is largely unchanged. This includes retention of both the 5 potentially fair reasons for dismissing an employee and existing eligibility conditions: i.e. the right not to be unfairly dismissed will continue to apply to employees, who must have 1 year's service and be under the employer's normal retirement age (or if none 65).

However, the number of grounds for a dismissal which are automatically unfair have been increased. Neither the usual requirement for 1 year's service nor the restriction on being able to claim unfair dismissal if over either the employer's retirement age will apply to any dismissals on those grounds.

The remedies available on a finding of unfair dismissal have also changed. Most notably the Employment Tribunal has new powers to order re-employment and to make an award for injured feelings.

Suggested course of action Employers should:

- observe the new right of accompaniment at any disciplinary and grievance hearings that might precede a Tribunal case (see 14);
- become familiar with the Code of Practice on Disciplinary and Grievance Procedures 2007 and ensure disciplinary procedures hearings that might precede a Tribunal case are conducted in a fair and impartial manner (see 14);
- become familiar with main changes to the unfair dismissal regime, particularly the new categories of automatically unfair dismissal.

Further information See section 7 of *“Isle of Man Employment Rights: a Guide for Employers, Employees and Workers”*.

17 Take action to avoid dismissals on discriminatory grounds.

- Description of changes:** From 30th September 2007:
1. The previous 1 year qualifying period to bring a claim of dismissal on the ground of either racial or religious discrimination is abolished.
 2. Employees have a new right not to be dismissed on the ground of their sexual orientation.

Dismissal of an employee on any of these three discriminatory grounds will be automatically unfair. (It is of course, also unlawful under the Employment (Sex Discrimination) Act 2000 to treat a person less favourably on the ground of his or her sex or because that person is married).

Note that the concept of dismissal includes 'constructive dismissal' –an employee subject to a working environment where, for example, racism or homophobia is prevalent may be entitled to resign and claim constructive dismissal under certain circumstances.

In addition, existing provisions to deal with any discrimination on trade union grounds etc. have also been strengthened. The additional protection applies at recruitment, during employment and at termination of employment. Measures taken include making any inducements to relinquish trade union membership etc. unlawful.

For discrimination on the ground of a worker's part-time status see 10.

Suggested course of action Employers should ensure that equal opportunity policies extend to these types of discrimination.

Further information For further information contact the DTI Equality Adviser. Contact details are as follows:

Tel 682372

Email equalityadviser@dti.gov.im

Web www.gov.im/dti/employmentRights/equality.xml

18 Ensure that the MIRS is involved in any extra Tribunal settlements.

Description of change:	As each Part of the new Act comes into force, the prohibition on contracting-out of the particular rights in each Part is expressly excluded in the case of a conciliated settlement of a claim (i.e. a settlement reached with the assistance of the Manx Industrial Relations Service (MIRS)).
Suggested course of action	Employers should ensure that any settlements arranged other than by the Employment Tribunal are under the auspices of MIRS.
Further information	For further information contact the MIRS. Contact details are as follows: Tel. 672942 Email iro@ir.gov.im Web www.mirs.org.im

Further Sources of Assistance

The Manx Industrial Relations Service
Tel: 672942 iro@ir.gov.im web www.mirs.org.im

Jonathan Clague
Employment Law Policy Officer
Tel: 682371 jonathan.clague@gov.im

Sue Strang
Equality Adviser
Tel: 682372 sue.strang@gov.im

DTI Inspectorate (for advice on written particulars)
Tel. 682385 / 682386

DTI Website (including all downloadable guides) www.emplaw.gov.im

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