

ISLE OF MAN EMPLOYMENT RIGHTS - A SUMMARY

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Isle of Man
Government

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1. About this guide

This booklet is a summary of statutory employment rights as at **July 2020**.

2. Employment rights and contractual rights

Statutory employment rights are the minimum legal requirements - in most cases the contract between the employer and employee (or worker – see section 4) will offer better terms and where this is so the rights under the contract will apply. Contractual rights cannot be less than the rights established by Isle of Man employment law.

Contractual rights may be recorded in —

- a written contract;
- a written statement of terms, (see section 10);
- a staff handbook;
- a letter of appointment; or
- the employer's rules.

Whilst the law of contract and statutory employment rights are intertwined this booklet is primarily intended to be a guide to a person's statutory employment rights. Nevertheless, a practical guide to the law at work cannot avoid the law of contract. Consequently, this booklet includes some basic information about contractual law as well as about statutory employment rights.

3. Infringement of statutory employment rights and breach of contract

If an employment right is denied or infringed, an employee can normally claim a remedy by making a complaint to **the Employment and Equality Tribunal** ('the Tribunal') (see section 39).

There are strict **time limits** for making a complaint to the Tribunal. For most of the statutory employment rights referred to in this booklet, the complaint must be made within 3 months of the incident or dismissal occurring although there are some exceptions (e.g. 6 months for an equal pay claim (see section 14) and 12 months for a redundancy payment (see section 36)). The date of the relevant event is included in the relevant time period.

Example

An employee is dismissed on 9th January; the complaint must be presented to the Tribunal by 8th April.

When the terms of a contract of employment are not adhered to, and a party has suffered a measurable financial loss because the other party has departed from the terms of the contract of employment (or any other contract connected with employment) the party that is not in breach can seek damages for breach of contract in the High Court.

4. Employees and workers

All the rights in this booklet apply to '**employees**' – people who work under a contract of employment and perform their services personally for the employer.

A smaller number of rights also apply to **'workers'** – people who are engaged on a contract for services, which implies the appointment of an independent contractor or person working on a freelance basis. Workers provide their services personally to organisations with whom they contract even though they are not regarded as employees. The term 'worker' can be used to cover a wide range of working relationships e.g. casual workers, freelance workers, employment agency staff and some independent contractors, provided that (subject to the exceptions at the end of this section) the other party to the contract is not their client or customer.

Because employees have all the rights that workers have, where this booklet says a right applies to workers that right will also apply to employees.

Workers have rights in respect of —

- entitlement to the minimum wage/deductions from wages (see sections 12/13);
- paid annual leave (see section 15);
- no discrimination, harassment or victimisation on the ground of a "protected characteristic" under the Equality Act 2017 and rights in respect of equal pay under that Act (see sections 14/16);
- no less favourable treatment on account of being a part-time worker (see section 20);
- taking certain actions in the interests of health and safety (see section 22);
- 'whistleblowing' (see section 24);
- no discrimination on trade union grounds (see section 25);
- accompaniment at any disciplinary and grievance hearings (see section 26); and
- asserting any statutory employment right which applies to a worker (see section 30).

Genuinely self-employed people working for a customer or client are not entitled to workers' statutory employment rights with the following exceptions —

- the right not to be discriminated against on the ground of a 'protected characteristic' under the Equality Act 2017 (see section 16); and
- the right to a safe and healthy working environment on clients' premises under health and safety legislation (see section 22).

5. Qualifying periods

Some employment rights described in this booklet depend upon an employee having worked a qualifying period of 'continuous employment' with his or her employer. For example —

- 1 year's continuous employment is required to bring a complaint of unfair dismissal, although there are exceptions to this rule where no qualifying period is required (see section 34); and

- 2 years' continuous employment is required to qualify for a statutory redundancy payment.

Qualifying periods are the same for all employees, irrespective of the number of hours worked. Where no qualifying period is stated in this booklet none is required.

6. **Contracts of employment**

The contract of employment sets out the relationship between an employer and employee ('the parties to the contract'). The terms and conditions, rules, obligations and entitlements related to an employee's employment (other than statutory employment rights) are established by reference to the employment contract.

Types of contractual terms include —

- **Express terms**

These are the verbal or written terms explicitly agreed upon by the employer and the employee. An express term cannot seek to deprive a person of any statutory employment right.

- **Implied terms**

In addition to the express terms in an employment contract, there are implied terms that may not be recorded in the written contract of employment or the written statement (see section 10). Some common implied terms are —

Implied duties of the employer

- to pay wages;
- to provide a safe working environment; and
- to provide a reference which does not create an unfair impression.

Implied duties of the employee

- to serve his or her employer faithfully;
- to co-operate with the employer including obeying lawful orders;
- to take reasonable care for his or her own safety and that of fellow employees;
- to work with due diligence and care; and
- not to use or disclose the employer's trade secrets or confidential information.

Implied duties of both parties

- not to destroy the relationship of mutual trust and confidence which exists between them.

- **Statutory terms**

These derive from employment statutes. For example the Equality Act 2017 incorporates an 'equality clause' into every contract of employment (see 14).

- **Incorporated terms**

These derive from other sources such as a **collective agreement** between the employer and trade union or an employer handbook.

Workers (see 4) are not engaged on a contract of employment but a contract for services.

7. **Types of employment contract**

An employment contract may be —

- **open-ended**, sometimes called '**permanent**' (subject to any notice provisions – see 31); or
- for a '**limited term**' whereby it expires on a particular date or on the occurrence of an event, such as the completion of a particular task (subject to any notice provisions).

Either type of contract may be '**full-time**' or '**part-time**' although there is no statutory definition of these terms for employment rights purposes. The number of hours worked does not affect a person's entitlement to employment rights although gaps between periods of employment may break 'continuity of employment' (see section 5).

Most contracts are between an employee (or worker) and an employer. In the case of **employment agency workers**, however, an employment business typically engages a worker and then supplies him or her to work for its client (the 'principal') in some capacity. The employment business typically pays the worker's remuneration directly, whilst the **principal** pays the employment business a fee which covers the worker's remuneration, national insurance contributions etc. together with a profit element for the business. People working under such arrangements will usually be 'workers' for employment rights purposes.

Unlike a traditional contract of employment, a **zero-hours contract** or arrangement offers no guarantee of work. In this case if an employer seeks to impose a contractual restriction on a person working for other employers (an 'exclusivity clause') this cannot be legally enforced.

8. **Young workers**

No child may be employed in any work if he or she is under the age of 13 years.

The Department of Education, Sport and Culture (DESC) regulates the type of occupations in which children over the age of 13 and under the school leaving age may be employed, and other conditions of their employment, including the types of employment that a child can undertake, the maximum number of hours which can be worked and rules regarding rest breaks.

For further information contact DESC —

tel: 685820

Web: www.gov.im/about-the-government/departments/education-sport-and-culture/policies-and-procedures-a-to-z/e/employment-of-children/

9. Rights at recruitment

Job applicants have the right not to be discriminated against at recruitment on the following grounds —

- a 'protected characteristic' under the Equality Act 2017 (see section 16);
- for any criminal convictions if the offences are 'spent' under the Rehabilitation of Offenders Act 2001 although there are exceptions (see section 21); and
- for trade union reasons (see section 25).

10. Written statements

Employees (except those who are to be employed for less than 4 weeks) have a legal right to a written statement of their terms and conditions of employment no later than 4 weeks after their employment begins. Statements must include —

- the names of the employer and employee;
- the date employment began;
- the date when 'continuous employment' began (see section 5);
- the scale or rate of pay or how it is calculated;
- intervals of pay (whether weekly, monthly etc.);
- hours of work and any terms and conditions relating to normal working hours (in the case of shop employees see section 29);
- holiday entitlement, including any entitlement to public holidays, and details of holiday pay and how it is calculated (for minimum entitlement see section 15);
- any sickness and pension entitlements, including the normal retirement age in the employment;
- entitlement as to the period of notice which the employee is both obliged to give and entitled to receive (for minimum periods see section 31);
- the job title;
- where the employment is not intended to be permanent, the period for which it is expected to continue or the event on which it is to end;
- the place of work or, where the employee works at different places, an indication that that this is the case and of the employer's address;
- any collective agreement between the employer and a trade union which directly affect the employee's terms and conditions;
- details as to any work required outside the Island;
- disciplinary rules and procedures, if any, and a person to whom an appeal can be made in relation to a breach of those rules and procedures; and
- a person to whom the employee can apply for the purpose of seeking redress of any grievance, how this should be done and details of any further steps there may be in the process.

A written statement need not contain all or any of the specified particulars provided that reference is made to written documents in specified places which are reasonably accessible to employees.

The employer has a general obligation to notify the employee of any change to his or her terms of employment within 4 weeks of the change coming into effect.

Where a statement is not issued or updated or is incomplete the Tribunal may, on receiving a complaint, award an employee up to 4 weeks' pay depending on the circumstances of the case.

Failure by an employer to give a written statement is also an offence.

11. Pay statements

An employee has the right to be given an itemised statement, setting out his or her gross earnings, net pay, and fixed and variable deductions, at or before the time when any payment of wages is made.

Where no statement is issued the Tribunal may award an employee up to 4 weeks' pay depending on the circumstances of the particular case.

Failure by an employer to give an itemised statement is also an offence.

12. Minimum wage

A worker's hourly rate of pay must not be less than the appropriate rate of the minimum wage. The hourly rates from 1st October 2019 are as follows —

Description of worker	Rate
Worker over compulsory school age but under 18	£6.15
Worker aged over 18 (except a development worker)	£8.25
Development worker (see below)	£7.30

A '**development worker**' is a worker who —

- is 18 or over;
- is within the first 6 months of his or her employment with the employer;
- has not previously been employed by that employer or an associated employer; and
- has entered into an agreement with the employer requiring the worker to take part in accredited training on at least 26 days. ("Accredited training" means training to a recognised industry standard which is approved by the Department of Education, Sport and Culture.)

The minimum wage does not need to be paid to an **apprentice** (i.e. a trainee under formal training agreement with his or her employer and the Department of Education, Sport and Culture) who —

- is under 19; or
- is 19 or over but is within the first 12 months of his or her apprenticeship.

But an apprentice who is 25 or over is entitled to receive the minimum wage.

Any **benefits in kind** cannot be taken into account for the purpose of calculating the minimum wage except where living accommodation is provided. The value of such 'accommodation offset' cannot exceed £1.05 an hour or £6.00 a day (whichever of the daily rate or the number of hours worked by the hourly rate is the lesser amount).

Tips or gratuities received either directly or indirectly from customers or paid through the payroll may not be counted towards the minimum wage.

13. Deductions from wages

With some exceptions, a deduction from the wages of a worker or receipt of a payment from a worker is unlawful unless —

- required or authorised by statute (such as national insurance and income tax);
- required or authorised by any relevant provision of the worker's contract; or
- the worker has previously agreed it in writing.

The term 'deduction' includes any non-payment of sums payable to a worker such as pay in lieu of notice.

Where an employer makes an unlawful deduction the Tribunal will order repayment of the amount of money that was unlawfully deducted, and may make an additional award of up to 4 weeks' pay to a worker depending on the circumstances of the case.

Recovery from a worker of any employment agency fee or for a fee for a work permit issued under the Control of Employment Act 2014 is unlawful.

14. Equal pay rights

Contracts of employment are deemed to contain a 'sex equality clause' and occupational pension schemes are deemed to contain a 'sex equality rule'. Each secures equal pay or equal pension, as the case may be, if a man and a woman are both employed —

- **in the same employment**, that is in the same 'establishment', or in another establishment of the same (or an associated) employer, where common terms and conditions are applied either generally or to relevant persons, and
- are also doing —
 - **like work**, that is work of the same or a broadly similar nature and, if there are differences between their work, they are not of practical importance;
 - **work rated as equivalent** in accordance with a job evaluation study by reference to certain factors; or
 - **work of equal value**, that is different work in respect of which there has been no job evaluation study but the work is nevertheless equal in terms of the demands made on the man and woman by reference to factors such as effort, skill and decision-making.

However, the employer will have a defence that they have not breached a sex equality clause or sex equality rule if they show that the reason for the difference in pay is not sex discrimination and it can be objectively justified.

Pay secrecy clauses are unlawful, so any term in a contract which inhibits workers from discussing their pay for the purpose of finding out if there is discrimination will be unenforceable.

15. Paid annual leave

Workers have an entitlement to —

- 4 weeks' paid leave in each leave year ('statutory leave'); and
- payment for any leave to which they are entitled but which they have not taken when their employment terminates.

A 'week' means the same amount of time as the worker's working week.

Examples

A person who works a 5 day week is entitled to 20 days' leave in a leave year.

A person who works 3 hours a week is entitled to 12 hours' leave in a leave year.

The employer may include any paid bank holidays that are provided as counting towards the 4 week entitlement to paid leave in each leave year.

In the first year of a worker's employment, his or her entitlement accrues at the rate of one twelfth of the annual entitlement per month.

Example

In his or her third month of employment, a person who has an annual entitlement to 20 days' leave per year will have built up an entitlement to $3/12 \times 20 = 5$ days' leave.

Workers are required to give notice to their employers if they wish to take a holiday. The notice must be twice as long as the period of leave requested

Example

A worker wanting one week's holiday must give 2 weeks' notice.

The employer can refuse permission by giving notice at least as long as the leave requested.

An employer may require a worker to take all or any of his or her annual leave at specific times, provided that the worker is given prior notice of at least twice the period of leave to be taken.

The employer must give a worker the opportunity to take his or her leave during the leave year to which it relates and there is no general right to carry over statutory leave from one leave year to another, (though carrying forward some leave may be unavoidable where the worker is unable to take the leave because he or she is on sick leave or family leave (see 18)). Nor is there a right to receive a payment in lieu of any untaken leave, except when the employment ends (but see the exception below).

Carrying forward annual leave as a result of the effects of Coronavirus

There is an exception to the restriction on carrying forward annual leave where, as a result of the effects of Coronavirus (whether on the worker, the employer, the wider economy or society or otherwise), it has not been reasonably practicable for a worker to take some or all of the statutory leave to which the worker was entitled in a leave year (“unused leave”).

Such unused leave may be carried forward but must be taken in the two leave years immediately following the leave year in respect of which it arose.

Where employment terminates and the worker still has unused leave the employer must make a payment in lieu of such leave.

When calculating how much holiday a worker can carry forward, the employer must give the worker the opportunity to take any leave that he or she cannot carry forward before the end of the leave year.

16. Protection against discrimination under the Equality Act 2017

Under the Equality Act 2017 it is unlawful to discriminate against people in work (and job applicants) on the ground of any of the following nine ‘**protected characteristics**’ —

1. **sex** (being male or female) (for discrimination on the ground of sex in respect of pay and other contractual terms of employment see section 14 below);
2. **pregnancy and maternity**. The period during which protection is provided (*‘the protected period’*) is the period of the pregnancy and any statutory maternity leave to which a woman is entitled or if she has no such entitlement the 2 weeks’ compulsory maternity leave period (see further at section 18).

Specific protection for women is provided in respect of certain aspects of any contractual maternity-related pay and any occupational pension entitlements via the insertion of a ‘**maternity equality clause**’ into a woman’s contract (unless one is already expressly included) and a ‘**maternity equality rule**’ into an occupational pension scheme (if the scheme does not have such a rule already).
3. **marriage and civil partnership**;¹
4. **sexual orientation** (whether towards persons of the same sex, opposite sex, both sexes or neither sex);
5. **gender reassignment/transgender status** (the person is undergoing, has undergone or is proposing to undergo all or part of a process to reassign his or her sex by changing physiological or other attributes);
6. **race** (including colour, nationality, ethnic or national origins and caste);
7. **religion or belief** (any religious or philosophical belief, including a lack of belief);
8. **age**, (whether by reference to a particular age or to a range of ages);

¹ But this protected characteristic does not include being single.

9. **disability** (a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities). 'Long term' means the impairment has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of the life of the person affected.

Coverage: protection against discrimination covers all aspects of the employment relationship, including —

- recruitment and selection arrangements;
- a refusal to offer employment;
- the terms of employment offered;
- the terms of employment applied;
- access to opportunities for promotion, transfer or training or to other benefits, facilities or services; and
- dismissal or other detriment (e.g. demotion); and
- any unfair treatment by the employer following the end of employment if it arises out of and is closely connected to the former working relationship.

General forms of prohibited conduct include the following (although there are exceptions) —

- **direct discrimination** – treating a person less favourably than others because of a protected characteristic. This includes an employer treating a worker less favourably —
 - because of the worker's association with another person who has a protected characteristic² (*direct discrimination by perception*); or
 - because the employer mistakenly thinks that the worker has a protected characteristic³ (*direct discrimination by association*).

There is no defence of justification for direct discrimination except in relation to age discrimination or to meet a genuine occupational requirement (for example, someone of a particular race, sex or age might be required for a particular acting role).

- **indirect discrimination** – applying a provision, criterion or practice which places a person with a protected characteristic⁴ at a disadvantage to others and which cannot be justified.
- **harassment**
 - engaging in unwanted conduct to do with a protected characteristic which has the purpose or effect of violating a person's dignity or creating an intimidating, degrading, humiliating or offensive environment;
 - engaging in unwanted conduct of a sexual nature and the conduct has the same effect or purpose as that referred to above; or

² Except marriage and civil partnership or pregnancy and maternity.

³ Except marriage and civil partnership or pregnancy and maternity.

⁴ Except pregnancy and maternity.

- engaging in unwanted conduct of a sexual nature or related to sex or gender reassignment that has the same effect or purpose as that referred to above and because the person rejects or submits to that conduct treating him or her less favourably than would otherwise have been the case.
- **victimisation** – subjecting a person to a detriment because he or she has —
 - brought legal proceedings about a protected characteristic;
 - given evidence or information in connection with such proceedings; or
 - made an allegation that someone has broken the law on equality.

There are two additional forms of prohibited behaviour which apply to the protected characteristic of disability. These are -

- **discrimination arising from a disability**

Treatment of a disabled person amounts to discrimination where —

- an employer treats a disabled person unfavourably;
- this treatment is because of something arising in consequence of the disabled person's disability; and
- the employer cannot show that this treatment is objectively justified, unless the employer does not know, and could not reasonably be expected to know, that the person has the disability.

- **Failure to make a reasonable adjustment**

Failure to comply with the duty to make a reasonable adjustment (see below) is unlawful discrimination.

Employers' duty to make reasonable adjustments

Employers have a duty to make reasonable adjustments to the job or working environment where —

- a provision, criterion or practice,
- a physical feature, or
- the absence of an auxiliary aid,

puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled.⁵

Pre job-offer enquiries about disability and health

With some exceptions, it is unlawful for an employer or for an agent or employee of an employer to ask any job applicant about their health, including any previous sickness absence, or whether or not that person has a disability until —

- the applicant has been offered a job (on a conditional or unconditional basis); or

⁵ In the third case the duty is fulfilled by providing the aid.

- has been included in a pool of successful candidates to be offered a job when a position becomes available.

The **Statutory Code of Practice on Employment**, which can be downloaded from the Government's website, contains much more detailed information about the Equality Act (see 39).

17. Protection against discrimination on other grounds

Separately, discrimination is prohibited on the following grounds —

- being a **part-time worker** (see section 20);
- for **trade union reasons** (see section 25); and
- because of a **'spent' criminal conviction etc.** within the meaning of the Rehabilitation of Offenders Act 2001 (see section 21).

18. Family rights

An employer must not allow an employee or other worker to work for the 2 weeks immediately following childbirth. This period is known as **compulsory maternity leave**.

Women who are employees are entitled to —

- **reasonable paid time off work to attend ante-natal sessions;**
- up to 26 weeks' unpaid **Ordinary Maternity Leave;** and
- if they have 26 weeks' continuous employment (see section 5), up to 26 weeks' unpaid **Additional Maternity Leave;** and
- up to 39 weeks' **Maternity Allowance** @ a maximum of £179.85 a week from the Treasury provided they meet the conditions of entitlement to the benefit.

If they are suspended from work on maternity grounds, new or expectant mothers who are employees have **the right to be offered suitable alternative employment**, or if none, to be paid.

Men and, in some circumstances, women who are employees are entitled to —

- 1 or 2 weeks' unpaid **Paternity Leave** (26 weeks' continuous employment required);
- 1 or 2 weeks' **Paternity Allowance** @ a maximum of £179.85 a week from the Treasury provided they meet the conditions of entitlement to the benefit.

Adoption leave and **Adoption Allowance rights** are analogous to those for maternity/paternity leave and allowance.⁶

⁶ But note that the qualifying period for adoption allowance is employment for at least 26 of the 66 weeks immediately preceding the week in which the person is notified of being matched with the child for the purposes of adoption.

Employees with 1 year's continuous employment are entitled to **Parental Leave if parents of a disabled child under 18 years old**, in which case up to 18 weeks' unpaid leave can be taken before the child is 18.

19. Right to request flexible working

All employees have the **right to request flexible working** for any purpose. There is no qualifying period for this right.

A request may not be made within 12 months of a previous request.

An employee can request —

- a change in working hours;
- a change in the times when he or she is required to work; or
- to work from home.

If a request is accepted, it will lead to a permanent change in the employee's terms and conditions of employment.

A request must be made in writing and state —

- that it is an application for a change in the terms and conditions of employment;
- the change requested and the date when it is proposed it should take effect;
- what effect the employee thinks the change will have on the employer and how, in the employee's opinion, that effect might be dealt with;
- whether the employee has previously made such a request to the employer and, if so, when; and
- the date of the application.

The employer must deal with the application in a reasonable manner and notify the employee within a standard period of three months (which can be extended by agreement), including any appeal that the employer allows.

20. Part-time workers

Part-time workers have the right to be no less favourably treated than comparable full-time workers unless the difference can be objectively justified. Where appropriate, terms and conditions should be applied on a pro rata basis e.g. pay, training, sick pay, pensions, leave and promotion.

A part-timer worker who believes he or she has been treated less favourably than a comparable full-timer has **the right to request a written statement of the reasons for less favourable treatment**. The employer must respond to the request within 21 days. Where the employer fails to provide a statement or where the statement that is provided appears to be evasive or equivocal the Tribunal may draw an inference that the employer has infringed the worker's rights.

21. Treatment of spent criminal convictions etc.

After a period of good behaviour ('rehabilitation period') certain convictions are 'spent' (treated as if they had never occurred), depending on the sentence imposed.

However, a person must disclose all his or her convictions, even those which are 'spent', when applying for specified employments and occupations including health care professionals, vets; advocates; accountants; police; traffic wardens; teachers; social workers and youth workers.

Information on rehabilitation periods and excluded employments can be found on the following webpage -

<https://www.gov.im/categories/working-in-the-isle-of-man/rehabilitation-of-offenders/>

Subject to the above, a job applicant does not have to disclose a spent conviction. Failure to disclose a spent conviction by an applicant is not a proper ground for an employer to refuse to engage that person while dismissal of an employee for a spent conviction reason is automatically unfair.

22. Health and safety: general

There is an implied term (see 6) in every employment contract that the employer must provide a reasonably safe system and place of work including ensuring that the equipment and employees are reasonably safe. Any failure in this respect, including a failure to offer alternative employment when it is not possible to comply with the requirement, may amount to constructive dismissal (see 33).

In addition, all employers in the Isle of Man are subject to the UK Health and Safety at Work, etc. Act 1974 (as applied to the Island), which sets minimum standards of health and safety at work.

For further information contact the Health and Safety at Work Inspectorate —
Tel: 685881 8.30am to 5pm or, for urgent matters, 313626

Email: worksafe.doi@gov.im

Web: www.gov.im/hswi/

23. Right not to suffer detriment etc. for health and safety reasons

Workers have the right not to suffer any detriment for —

- being health and safety representatives;
- raising health and safety concerns;
- being absent due to circumstances of danger that the workers reasonably believed to be serious and imminent, and where they could not reasonably have been expected to avert that danger; or
- taking appropriate steps, including unilateral action, to protect themselves or other persons (not just other workers) from danger which they reasonably believed to be serious and imminent.

See also 24 below.

24. Disclosures in the public interest ('whistleblowing')

Workers are protected if they disclose information about alleged wrongdoing either to their employer or to one of a number of categories of person such as a prescribed regulator or a legal adviser.

The information being disclosed must relate to one of the following which has happened, is happening or is likely to happen —

- a criminal offence;
- a failure to comply with a legal obligation;
- a miscarriage of justice;
- a danger to the health or safety of an individual;
- damage to the environment; or
- concealment of any of the above.

25. Trade union rights

Workers (and job applicants) have the right not to suffer detriment on the grounds of their trade union membership or activities.

Where a union is recognised by the employer, employees are entitled to reasonable paid time-off for trade union duties and reasonable unpaid time off for trade union activities.

Inducements by employers to workers to relinquish trade union membership in return for pay rises etc. are unlawful.

Industrial action

Employees have the right not to suffer a detriment for taking lawfully organised, official industrial action lasting up to 4 weeks. More limited protection applies where the action is unlawful and / or unofficial or in the case where the action lasts longer than four weeks.

26. Right to be accompanied at disciplinary hearings etc.

Workers have the right to be accompanied by a colleague or a representative from a trade union at disciplinary hearings and certain grievance hearings. The right applies irrespective of whether or not the employer recognises the union.

27. Time off for public duties/jury service

Employees who carry out specified public duties are entitled to reasonable unpaid time off work for undertaking those duties.

In the case of jury service there is an absolute right to take time off.

28. Time off for pension scheme trustee duties

Employees who are trustees of their employer's occupational pension scheme have the right to reasonable time off with pay to perform duties as trustees or to undergo relevant training.

29. Shop employees

Shop employees, except those employed only to work on Sundays, have the right to "opt out" of working on a Sunday (either generally or on a specific Sunday), Good Friday or Christmas Day.

An employer must give a shop employee an explanatory statement entitled "Statutory Rights in Relation to Shop Work on Sundays, Christmas Day and Good Friday" within 2 months of commencing employment.

The written statement (see section 10) of a shop employee must state that the employee is not obliged to work —

- longer than 5 hours without an interval of at least 30 minutes;
- for a total number of hours, excluding intervals allowed for meals and rest, of more than 10 hours in any 24 hours or 44 hours in any week.

30. Protection for exercising employment rights

Workers have the right not to be subjected to any detriment for exercising any statutory employment right that applies to them (as employees or workers as the case may be — see section 4) or for alleging that the employer has infringed their rights.

31. Notice

The contract or written statement should set out the statutory entitlement as to the notice which an employee is both obliged to give and entitled to receive.

<i>Period of continuous employment</i>	<i>Statutory minimum notice to be provided by employer</i>
Less than 2 years	1 week
2 years or more but less than 12 years	1 week for each complete year of continuous employment
12 years or more	12 weeks

<i>Period of continuous employment</i>	<i>Statutory minimum notice to be provided by employee</i>
Less than 2 years	1 week
2 years or more but less than 4 years	1 week for each complete year of continuous employment
4 years or more	4 weeks

If the contractual notice period is greater than the applicable statutory notice period then the contractual notice will apply.

If an employer dismisses an employee in breach of a contractual or statutory employment obligation to give the employee notice, the employer may become liable to pay the employee damages for **wrongful dismissal**.

An employee who has been wrongfully dismissed may make a complaint of unlawful deduction from wages to the Tribunal or claim damages in proceedings in the High Court.

32. Unfair Dismissal

Employees who have one year's continuous employment have the right not to be unfairly dismissed.

An employee who has been dismissed has **the right to request a written statement of the reasons for dismissal**. An employee who is dismissed

while pregnant or while on statutory ordinary or additional maternity or adoption leave must be given such a statement without request.

Any dismissal should be procedurally fair. Guidance on fair disciplinary and capability procedures is contained in the Department for Enterprise *Code of Practice on Disciplinary and Grievance Procedures in Employment 2007*.

It is for the employer to show what the reason for the dismissal was and that it was justified. A dismissal will be potentially admissible if the reason for it –

- related to the capability or qualifications of the employee to do the work he or she was employed to do;
- related to the employee's conduct;
- was that the employee was redundant;
- was that continued employment in the particular position would be illegal; or
- was some other substantial reason justifying the dismissal.

The right to bring a complaint of unfair dismissal applies only to employees. A worker whose contract has been terminated may make a complaint to the Tribunal but on a smaller number of grounds (see section 4).

33. Constructive dismissal

Constructive dismissal is a type of dismissal whereby the employee terminates the contract with or without notice, as a result of treatment by the employer which is so bad that the employee is entitled to treat the contract as having been terminated by the employer. Examples of such treatment might include —

- a serious breach of contract (e.g. not paying an employee or demoting an employee for no reason);
- forcing an employee to accept unreasonable changes to his or her conditions of employment without agreement;
- bullying, harassment or violence by work colleagues;
- making the employee work in dangerous conditions.

In order to bring a successful complaint of constructive dismissal the employee must establish that —

- the employer was in breach of an express or implied term (see 6) of the contract of employment;
- the breach (or series of breaches) was so serious as to entitle the employee to treat the contract as having been repudiated by the employer; and
- the employee resigned because of that breach of contract (and did not delay resigning for too long).

A complaint of unfair constructive dismissal is dealt with in the same way as other unfair dismissal complaints (see 32); in most cases one year's service is required.

34. Automatically unfair dismissals

In almost all cases, where the reason for dismissal (including dismissal by way of redundancy) of an employee was because the employee exercised a statutory employment right which applied to him or her as described in this booklet, the dismissal will be automatically unfair. In such cases it does not matter if the employee has less than a year's continuous employment.

Dismissal on the ground of a protected characteristic (see section 16) is both automatically unfair and unlawful discrimination.

In addition, irrespective of an employee's age or length of service, the Tribunal has jurisdiction to hear a complaint of unfair dismissal, where the reason for the dismissal is because or connected with —

- **the employee's membership of HM Reserve Forces; or**
- **the employee's political affiliations or opinions.**

In neither case, however, will a dismissal on one of these grounds be automatically unfair.

35. Compensation etc. for unfair dismissal

On a finding of unfair dismissal, where the Tribunal does not make an order for re-employment, it makes an award of compensation, calculated as follows —

- a **basic award** of one week's gross pay, capped at a maximum of £540 a week, for each completed year for which the employee has been continuously employed, up to the calculation date. The maximum amount of years to be taken into account is 26;
- a **compensatory award** based on the employee's loss, including any expenses reasonably incurred in consequence of the dismissal and any other benefits including pensions that might reasonably have been expected but for the dismissal; the award must not exceed £56,000 except in health and safety or whistleblowing cases (see 22 and 24) or the case where an employer refuses an order of re-employment made by the Tribunal; and
- a **compensation for injury to feelings award**, if the Tribunal thinks it just and equitable, up to a fixed maximum of £5,000.

36. Redundancy

An employee who is:

- dismissed because of redundancy; or
- laid off or kept on short time working (see below) for a certain time,

is in certain cases entitled to be paid a lump sum (a 'redundancy payment') by his or her employer.

Only employees who have been continuously employed for at least 2 years are eligible to receive a redundancy payment. There is no upper age limit for claiming a redundancy payment.

The amount of a redundancy payment is one week's gross pay, capped at a maximum of £540 a week, for each completed year for which the employee

has been continuously employed, up to the calculation date. The maximum amount of years to be taken into account is 26 and the maximum statutory payment is £14,040. If a contractual redundancy payment is greater than the statutory maximum then the contractual payment will apply.

A small employer who makes a statutory redundancy payment to an employee is entitled to a rebate from the Manx National Insurance Fund of a certain proportion of the payment.

Lay-off and short time working

An employee is 'laid-off' if he or she receives no work and no pay of any kind from the employer. An employee is on 'short time' if in any week, because of a shortage of work, he or she receives less than half a week's pay.

Where an employee is laid-off or on short time for:

- 4 consecutive weeks, or
- any 6 weeks (of which not more than 3 are consecutive) in a 13-week period,

the employee is entitled to give a notice in writing to the employer stating that he or she intends to claim a redundancy payment. If within 4 weeks of doing so the employee gives notice to terminate the employment, he or she is entitled to a redundancy payment, unless the employer serves a counter-notice.

Unfair dismissal and redundancy

Depending upon the reason for making an employee redundant, dismissal on the ground of redundancy may be automatically unfair. It may also be unfair where —

- the employer has failed to give employees as much warning or opportunity for consultation as practicable;
- the selection criteria are unreasonable or are applied unreasonably; or
- the employer has failed to offer the employees any suitable alternative employment which is available.

Employees under notice of redundancy are also entitled to **reasonable paid time off to look for work** or to arrange training.

37. Insolvency of employer

If their employer becomes insolvent or ceases business in the Island, employees can claim various specified debts including up to 8 weeks' pay, any accrued holiday pay and unpaid pension contributions (subject to certain maxima), from the Treasury. The value of a week's pay is capped at £540 a week.

38. Contracting out of employment rights

With one exception, employees and workers cannot contract out of their employment rights (for example giving up the right to make a complaint of unfair dismissal in exchange for a payment).

The exception is a contract which settles a complaint with the assistance of an Industrial Relations Officer (see section 39 below).

39. Further information and assistance

More detailed information about employment rights including the much longer guide 'Isle of Man Employment Rights: a Guide' and the 'Equality Act Statutory Code of Practice on Employment' can be downloaded from the Department for Enterprise employment rights webpages at www.emplaw.gov.im.

The following are useful sources of advice and information.

<i>Body</i>	<i>Function</i>
<p>The Manx Industrial Relations Service (MIRS) Tel.: 672942 E-mail: iro@mirs.org.im Web: www.mirs.org.im</p>	<p>Industrial Relations Officers (IROs) provide advice and guidance about employment rights and help to settle disputes between employers and workers.</p> <p>IROs will also attempt to promote a settlement where a complaint has been made or could be made to the Employment and Equality Tribunal.</p>
<p>Equality Adviser Tel.: 687580 Email Equality@gov.im Web: /about-the-government/equality-act/</p>	<p>For general information about the Equality Act 2017.</p>
<p>Department for Enterprise web pages on employment law www.emplaw.gov.im</p>	<p>For more detailed information on employment rights, including various guides and Codes of Practice.</p>
<p>The Department for Enterprise Employment Inspectorate Tel.: 682385 / 682386 / 689344 E-mail: inspectorsdfe@gov.im</p>	<p>Inspectors carry out a range of employment related functions in respect of matters such as written statements, pay statements, paid annual leave, work permits, the minimum wage, employers' liability compulsory insurance, and inspection of employment agencies.</p>
<p>The Clerk to the Employment and Equality Tribunal Tel.: 685941 (Mon - Fri 9 a.m. to 5 p.m.) Fax: 685573 Email: tribunals@gov.im Web: www.courts.im/court-procedures/tribunals-service/tribunals/</p>	<p>This is the appropriate contact point where a complaint to the Tribunal has been made.</p> <p>(MIRS (see above) should first be contacted where a complaint has not been made or is being considered).</p>

<p>Department of Education, Sport and Culture Tel.: 685820 Web: www.gov.im/about-the-government/departments/education-sport-and-culture/policies-and-procedures-a-to-z/e/employment-of-children/</p>	<p>For information on the employment of children.</p>
<p>The Health and Safety at Work Inspectorate Tel.: 685881 8.30am to 5pm or, for urgent matters, 313626 Email: worksafe.doi@gov.im Web: www.gov.im/hswi/</p>	<p>For guidance and enforcement in respect of health and safety issues.</p>
<p>Social Security Division of the Treasury Tel.: 685106 E-mail: generalbenefits@gov.im Web: www.gov.im/categories/benefits-and-financial-support/</p>	<p>For information on Maternity Allowance, Paternity Allowance, Adoption Allowance and other family benefits.</p>
<p>Department of Home Affairs Tel.: 694305 Web: www.gov.im/categories/working-in-the-isle-of-man/rehabilitation-of-offenders/</p>	<p>For advice on the Rehabilitation of Offenders Act 2001.</p>
<p>Isle of Man Legislation website www.legislation.gov.im/cms/</p>	<p>For current versions of Isle of Man Acts.</p>

40. Disclaimer

This short booklet is intended to be a summary of some of the most important employment rights. It cannot cover all circumstances or exceptions to general rules. It is written in general terms and is not intended to be a complete or authoritative statement of the law. No responsibility can be accepted for errors or omissions or their consequences.

Notes

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