

workSMART

Know Your Rights

www.worksmart.org.uk

This leaflet is for people coming to work in the UK from the eight new member countries of the European Union.

It gives information about your legal rights while you work here.

Working in the UK: Your rights



TUC 

Welcome to the UK.

This leaflet has been written by the Trades Union Congress (TUC). We are the organisation that represents Britain's trade unions. The TUC is the only trade union confederation in Britain, with over 70 member unions, which between them have almost 7 million members.

The TUC is independent of employers, government and any political party.

The legal system of any country is always complex. We cannot explain every detail of UK employment law in a leaflet. You should treat this as a guide to the basics. If you think you are losing out, or your employer or employment agency is breaking the law, you should take further advice. We give some suggestions about where you can get more help later in this leaflet.

Starting work in the UK

As soon as you start work you need to register with the authorities. The Home Office is the name of the government department that registers workers from new EU member states. Register at: www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/worker_registration.html

You also need a National Insurance number in order to work legally. You will need to get this when you have got a job.

National Insurance and tax

To get a National Insurance number, you must make an appointment for an “evidence of identity” interview at the nearest Job Centre. This is a government office that can be found in most large towns or city districts. You will need to take proof of your identity (such as a passport) as well as evidence that you are working. More details can be found at www.dwp.gov.uk/lifeevent/benefits/ni_number.asp

Some employers may offer you a job without paying National Insurance or tax (known as “cash in hand”). This is against the law. If they are breaking this law, it is very likely they will break other employment laws as well, especially those that protect workers. It will be very hard for you to enforce any of your legal

rights if you are not working legally. You should avoid this type of job.

Every worker in the UK has a National Insurance number. It is used to keep track of social security contributions. If you earn more than about £80 a week, then both you and your employer have to pay what are called National Insurance contributions. These are a kind of tax. In return workers gain entitlements to various social security benefits. Paying National Insurance contributions in the UK can also help you build up entitlements in your home country.

You will also have to pay income tax. The amount of tax you have to pay depends on a number of different factors. Every worker in the UK has a tax code, which an employer uses to work out how much tax they should pay on your behalf. If you are starting your first job in the UK you will probably start to pay “emergency tax” until you have been given a tax code. You may also be given a temporary National Insurance number until the proper number is issued.

Note that your employer does not need to keep your passport or identity documents, and has no right to hold them. They may make copies of them for their records.

Worker or employee?

Everyone at work in the UK enjoys some basic rights such as the minimum wage and a right to paid holidays.

There are special rights that apply to those who use an employment agency or gangmaster to find work - see below.

Many workers get better rights because they have the legal status of an *employee*. We will explain this below.

All these employment rights can be enforced in law. This can be done in an employment tribunal - a special court

Employee

Does your employer require you to work specific hours and pay you for these whether or not there is work to be done?·

Does your employer control what you do and lay down how and when you do it?·

Do you have to carry out the work personally, (ie. you cannot ask another worker to carry it out on your behalf?)

Does your employer supply the tools or other equipment for the job?

Do they pay tax and National Insurance on your behalf (although many workers also have tax and NI deducted from their pay so this alone does not prove that you are an employee)

Do you have a written agreement with your employer that includes the phrase "contract of employment"

Worker

Does your employer only offer and pay for work when they need it?

Can you decide when you will work, and even turn down work when offered?

Can you provide another worker to carry out the work in your place if you want?

Do you have to provide your own tools?·

Are you left to pay your own tax and National Insurance?

Do you have a written agreement with your employer that includes the phrase "contract for services"?

that deals with most work-related issues - or with the assistance of a trade union, if you are a member. We say more about this later in this leaflet.

Most people at work in the UK are employees, and therefore get better rights. But many of the jobs likely to be done by those coming to this country to work for short periods - including almost all those provided by employment agencies - may not count as employees.

Look at the table below left. If you answer 'yes' to most of the questions in the employee column you are probably an employee. If you answer 'yes' to most of the questions in the worker column you are probably a worker.

If there is any doubt you will need to take advice. Trade unions and advice agencies understand the legal difficulties, but some cases may need to be determined by an employment tribunal.



Your rights as a worker

Everyone at work, including all agency workers, enjoys these rights from their first day of work:

- the National Minimum Wage;
- working time rights (including breaks, holidays and holiday pay and a limit on the working week);
- health and safety protection;
- the right to join a union; and
- protection from unfair discrimination.

The National Minimum Wage

This is the minimum that you can be paid for each hour that you work:

- if you are 22 or over you should get at least £4.50 an hour, rising to £4.85 in October 2004;
- if you are aged 18 to 21 you should get at least £3.80, rising to £4.10 in October 2004;
- if you are 16 or 17 you will be protected for the first time from 1 October 2004, when you should get at least £3.00 an hour.

Tips given directly to you do not count, but any paid through your pay packet do.

But there are two complications:

What deductions can be legally made from your pay?

If accommodation is provided for you, a maximum of £24.50 a week can be deducted (or £3.50 per day where less than a full week's accommodation is provided). In October 2004 this will increase to £26.25 and £3.75. This doesn't mean you can't be charged more, but only this amount can be taken off your pay before working out whether you are getting the minimum wage.

No deductions can be made for any meals or other refreshments that are provided. If transport is provided to get you to and from work, a deduction can be made. There is no limit on this and it is a common source of abuse.

What if you have no set hours?

Some people are paid by the amount of work they do, rather than how long they work. You still get some minimum wage protection, but the system used to work it out has been abused so much that it is changing, from October 2004.

If you think that you are not being paid the minimum wage you can make a complaint directly to the NMW Helpline on 0845 6000 678 (England, Scotland or Wales) or 0845 6500 207 (Northern Ireland). You can also seek further advice from your union if you are a member, or from an advice agency.

Working time rights

These cover rest breaks, holidays and holiday pay, night work and how many hours you can work each week. There are leaflets that cover these rights available from the TUC's *Know Your Rights* line on 0870 600 4 882.

Rest breaks

You have the right to a rest break of 20 minutes where your working day is longer than six hours. If you are under 18, however, you are entitled to a 30-minute break after working four and a half hours.

Holidays

You should receive four weeks' paid annual leave.

(Some employment agencies have been getting round this by saying that your hourly pay rate includes holiday pay and that they therefore do not have to give extra pay if you take a break. At the very least, your contract must clearly state that your pay includes a sum for holiday pay and what amount that is.)

Note that practices which you may be used to, such as 13th (or 14th) month payments, and holiday subsidy, are not normal in Britain.

Night work

Regular night workers should not work more than eight hours in each 24-hour

period. The Working Time Regulations allow for night work to be averaged over a 17-week period in the same way as weekly hours of work. Night workers are also entitled to a free health assessment.

Working week

You have the right not to work more than 48 hours a week on average. This limit is averaged over a 17-week period. You can sign away this right, but cannot be pressured to opt out, and can opt back in again at any time though you may have to wait for up to three months to gain protection.

Health and safety protection

Your employer has a duty to provide you with a safe and healthy working environment. This should include training you about the health and safety issues in your workplace. There are many special rules that will apply in any workplace where there are special risks to workers.

Protection from discrimination

You have the right not to be treated less favourably than other workers by your agency or the hiring company on the grounds of sex, race, disability, pregnancy, sexual orientation and religion or belief. From 2006 it will also be unlawful for employers to discriminate against workers and job seekers on grounds of age.

Union membership

You are allowed to join a union. You do not have to tell your employer if you are a member. You cannot be discriminated against for being a union member.

Special rights for agency workers

No fees

- An employment agency cannot charge you a fee simply for finding you work or putting you on their books.
- An employment agency cannot insist that you buy other products or services such as CV writing, training, or personal protective equipment as a condition of using the work-finding services of the agency.

Employment agencies are meant to make their money from employers who need workers, not from those seeking work.

Getting your wages

An agency cannot withhold your pay simply because they have not received their payment from the company or organisation where you worked, or because you cannot produce a signed time sheet. Where the hiring company refuses to sign a time sheet, it is the agency's responsibility to establish the hours that you actually worked. You should be paid for these.

A written statement of terms and conditions

When you sign on with an agency you should be given a written statement of terms and conditions before you start any work. This applies whether the agency is trying to find you temporary work or a new permanent job. Once terms have been agreed and confirmed in writing, they should not be changed unless you agree. Any agreed changes must be confirmed in writing within five working days.

If your agency is finding you temporary work then the written agreement must cover:

- whether you are classed as an employee of the agency or a worker who is 'contracted for services'. You will usually be a worker (see page 4 for more about this important difference);
- it must say that you will be paid for all work carried out;
- how much notice you are required to give and entitled to receive in order to end the contract;
- the rate of pay that will be paid or the minimum rate of pay that the agency



reasonably expects to achieve for you. This must be at least the hourly National Minimum Wage rate;

- whether you will be paid weekly or monthly;
- the amount of paid leave that will be given. Most agency workers are covered by the Working Time Regulations and are entitled to at least four weeks' holiday pay per year (see above).

Health and safety

Agencies have a duty to find out about any health and safety risks known to the hirer and the steps taken to prevent or control those risks.

They should check that the hirer has carried out a thorough health and safety risk assessment and ensure that you are made aware of the situation before placing you with the organisation.

Additional rights for employees

If you have the legal status of an 'employee' then you gain extra rights, but you may have to work for a *qualifying period*. This means the rights do not start on your first day of your job, but only after you have had the same employer for a period of time. This section sets out the extra rights employees enjoy and how long you have to wait for them. You also still have all the workers rights described above.

Rights when you apply for a job

- You should not be discriminated against in a job selection process because of your sex, race, nationality, disability, sexual orientation, religion or because you are a trade union member.

Rights from your first day at work

- You should be given a statement showing how much you earn and any deductions that will be made from your pay. (This is not the same as a contract of employment, although a contract of employment can contain this information.)
- You are entitled to 26 weeks maternity leave even if you were pregnant when you started the job.

- You can take unpaid emergency leave for family emergencies.
- You can have time off for medical appointments if you are pregnant.
- You have protection from dismissal on some limited grounds including pregnancy, whistle-blowing and trade union activity.
- You have the right not to be discriminated against for reasons of



your sex (including being pregnant), your race (or in the case of EU nationals, your nationality), sexual orientation, religion or any disability, or for being a member of a trade union.

- You have the right to take a trade union representative or fellow worker into a disciplinary or grievance hearing.
- You have the right for your trade union to be recognised by the employer to negotiate your working conditions if the majority of employees want it.
- You have a right to equal pay with members of the opposite sex doing the same or a comparable job to you.
- You have a right not to have deductions (apart from income tax and National Insurance) made from your pay unless you have agreed to them.
- You can claim breach of contract if your employer sacks you without giving you the agreed notice, or breaks some other term in your contract of employment.
- If you are paying National Insurance contributions, you can claim Statutory Sick Pay after you have been off sick for four days in a row.

Rights after a month

- You must be given one week's notice of dismissal.
- You must be paid if you are suspended on medical grounds.
- You must be paid wages if you are laid off.

Rights after two months

- You are entitled to a written statement of your terms of employment which must include your pay, hours, where you are expected to work, holidays and other benefits such as a pension entitlement. While the written statement is not a contract of employment, it is very important that you have one as it can be used in a court or tribunal if problems do arise.

Rights after six months

- You can have an additional 26 weeks maternity leave (in addition to the 26 weeks mentioned on the opposite page).

Rights after one year

- You are entitled to claim unfair dismissal if your employer sacks you without a good reason or without allowing you to go through a proper dismissal procedure. You are also entitled to written reasons for dismissal from your employer.

Rights after two years

- You can claim redundancy pay if your job has ended and no one has been taken on to do it. The amount depends on your age, your pay and your length of service.

Enforcing your rights: help and information

Employers deny you your rights for a mix of reasons.

Sometimes it is because they don't know what their responsibilities are.

Sometimes it is because they have always managed to get away with it, but will back down if challenged. And sometimes it is because they rely on fear and exploitation to make their profits.

There is a legal remedy for all the rights described in this booklet.

But that does not mean it is always an easy process. Bad employers do victimise staff who insist on their legal rights. The best way to proceed is to take advice from your union, or if you are not a member find out the best one for your and your colleagues to join, and then take its advice. Otherwise consult one of the agencies below.

Taking a case to an employment tribunal

Employment tribunals are a special kind of court that deals with employment issues. They are more informal than courts of law. Sometimes lawyers are

involved, but in more straightforward cases people will use a union officer, someone from an advice agency or present their own cases.

While some people have represented themselves successfully, we would not advise this. You should contact your union, or if you are not a union member then you should take advice about how to proceed.

It is important to understand that most complaints must be made within three calendar months of the event happening. This is extended to six months for redundancy issues.

Useful organisations

There are a range of organisations that can provide advice and assistance. Some are government offices that enforce particular rights, some are independent of government and can provide advice and information on a range of issues.

Citizens Advice Bureau (CAB)

Most towns will have a CAB. The Citizens Advice Bureau Service offers free, confidential, impartial and independent advice. Citizens Advice Bureaux help solve nearly six million new problems every year which are central to people's lives, including debt and consumer issues, benefits, housing, legal matters, employment, and immigration. Advisers can help fill out forms, write letters, negotiate with creditors and represent clients at court or tribunal.

You can find your nearest CAB from www.nacab.org.uk or a phone directory.

Employment Agency Standards Inspectorate

If you work for an agency that is treating you badly and you think it might be breaking the law you can report it to the government office that regulates agencies.

T: 0845 955 5105

Recruitment and Employment Confederation (REC)

Some agencies (usually the better ones) are members of the REC, which sets standards for its members. If your agency has a REC symbol in its offices or on paperwork then you can complain to the REC if you think it is breaking employment law.

T: 020 7462 3260

Health and Safety Executive

The HSE can provide advice and information on health and safety issues.

T: 08701 545 500 (8am-6pm)

National Minimum Wage Helpline

T: 0845 600 0678

Advisory, Conciliation and Arbitration Service (ACAS)

ACAS is a public body that promotes good workplace relations. Their national helpline answers employment questions and provides general advice on rights at work for employees and employers.

T: 08457 47 47 47 (9am-4.30pm)

Employment Tribunal Service Enquiry Line

Information about making a claim or tribunal procedures

T: 08457 959 775

If you think your problem may have a discrimination aspect then you might find the following helpful:

Equal Opportunities Commission

T: 0845 601 5901

www.eoc.org.uk

Commission for Racial Equality

T: 020 7939 0000

www.cre.gov.uk

Disability Rights Commission

T: 08457 622633

www.disability.gov.uk

Lesbian and Gay Employment Rights

T: 020 7704 6066

www.lager.dircon.co.uk



Unions today - your friend at work

The TUC produces a range of free leaflets with more information about the rights at work that we have only described in brief in this leaflet. You can get these from the TUC's *Know Your Rights* helpline on **0870 600 4 882**. The TUC's world of work website **www.worksmart.org.uk** also contains detailed information on employment rights and health and safety at work.

Everyone has the right to join a union - it costs less than you think and your employer doesn't need to know you are thinking of joining up. The average cost of being in a union is only about £1 a week for part-timers and £2 for those working full-time.

Joining a union can help you to get your rights, and to improve on them. Your boss doesn't need to know that you have joined, and anything you tell a union representative will be treated as confidential.

Many workplaces in the UK have long established trade union organisation. If there are no union members or organisation where you work, a union may well still want to help - especially if there are many of you with the same problems and you want to work together to solve them.

Better Pay

The best bosses sit down to agree a fair deal. Unions are democratic organisations, which give working people a strong voice at work.

Training

Unions can help you do that course, get that training or study for that extra qualification. With the union's support, you can make it happen.

Health

Everyone's worked in places where the boss tries to cut corners to keep costs down: union health and safety reps have the power to make employers protect their staff.

Opportunities

Unions take on discrimination and aim to win opportunities for all.

Fairness

With the union, you can win the same rights as everyone else, no matter how many hours you work. And if you get picked on, bullied or sacked, your best bet is calling on union support.

To find out more about how to join a union and which union is the right one for you, phone the TUC's *Know Your Rights* helpline on **0870 600 4 882**, or visit **www.workSMART.org.uk/unionfinder**.

Other languages

English

If you would like a copy of this leaflet in one of the languages below, write or e-mail to the address at the end, giving your name, address and the language you require.

Hungarian

Ha ennek az anyagnak egy magyar nyelvu p dnyt szeretn  megkapni, k rj k, hogy az albbi cmre k ldje el lev lben vagy elektronikus lev lben (E-mail) nev t, cm t, valamint az anyag kvnt nyelv t.

Estonia

Eestikeelse voldiku saamiseks, palun saatke E-post v i kirjutage alloleval aadressil, lisades oma nime, aadressi ning keele, milles voldikut soovite.

Czech

Pokud mte zjem o ceskou verzi tohoto letku, napište nm nebo zašlete email na n e uvedenou adresu, udejte sv  jm no, adresu a jazyk, ve kter m tento letk po adujete.

Latvian

Ja velaties sanemt šo brošuru latviešu valoda, ludzu rakstiet vai sutiet e-pastu uz zemak mineto adresi, noradot savu vardu, adresi un attiecigu valodu.

Slovak

Keď si prajete vytlacok tejto brošry v slovenchine, napišete nm alebo nm pošliete odkaz elektronickou poštou na adresu uvedenu nišie a udajte Vaše meno, adresu a jazyk, v ktorom si vytlacok elte dodat.

Polish

Aby otrzymac kopie tej ulotki w jezyku polskim, prosze napisac lub skontaktowac sie przez poczte komputerowa, uzywajac ponizej podanego adresu, i podac swoje nazwisko, adres i wymagany jezyk tlumaczenia.



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