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Department for Employment and Learning
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ER 1 Individual Rights and Responsibilities of Employees

May 2011

Individual Rights and Responsibilities of Employees

Introduction

This booklet outlines employees' and workers' individual rights and responsibilities and the corresponding obligations for employers. Except where the booklet states that a right applies to wider groups of workers, it applies only to employees.

The precise definition of who is an employee and who is a worker differs slightly from one area of legislation to another but usually *workers* include those who have a contract of employment but also a wider group who have any other contract where an individual undertakes to do or perform personally any work or services but are not in business on their own account. They are entitled to core rights. These include entitlement to at least the National Minimum Wage and Working Time rights, including paid annual leave.

Those who are employed on a contract of employment – employees – are additionally entitled to all minimum statutory rights, including unfair dismissal, redundancy rights, etc – some of which are subject to a qualifying period of employment.

Genuinely self-employed people are not usually defined as workers or employees. If there is a dispute about an individual's status, an Industrial Tribunal will make its decision based on all the circumstances of the case.

Please note that this booklet gives general guidance only and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described. Further information can be obtained from the Labour Relations Agency (LRA). For the addresses of its two offices see Appendix 2: Useful addresses.

The contents of this booklet apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout.

Any reference throughout this booklet to Jobs and Benefits offices includes JobCentres.

This booklet, others in the series and related publications are free to download from the Departmental website at www.delni.gov.uk/erpublications. Alternatively they may be obtained upon request from your local Jobs and Benefits office. For information on Jobs and Benefits offices: FREEPHONE 0800 353530. Where amounts of money are alluded to these are often *subject to annual revision.*

Upon request, consideration may be given to making this booklet available in alternative formats and in other languages for people who are not proficient in English.

N. B.

The rights and obligations of employers and employees are also affected by statutory provisions which are outside the scope of this booklet. You are advised to approach the relevant organisations for details of, for instance:

Health and Safety legislation (HSENI) - see Appendix 2

National Insurance (H.M. Revenue and Customs)*

Statutory Sick Pay (Department for Social Development)*.

[*Your local H.M. Revenue and Customs Office, Social Security Office, Jobs and Benefits Office or Incapacity Benefits Branch can advise you further.]

For employees seeking advice there is the employee section of the NIDirect website: www.nidirect.gov.uk/index/employment which provides a single comprehensive source of information for employees about their rights and responsibilities.

For employers there is the Business Link website: www.businesslink.gov.uk which provides practical advice for business.

The Equality Commission has also produced an 'Equal Opportunities Statement' poster which is available at:

http://www.equalityni.org/archive/pdf/5165_commissions%20_poster.pdf

The Employment Rights ('ER') series of booklets is updated on a regular basis. As part of this updating process the Department would welcome any comment/s from members of the public regarding the content of these booklets.

All comments should be addressed to:

Department for Employment and Learning
Employment Relations Policy and Legislation Branch
Room 203
Adelaide House
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Belfast
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Alternatively comments may be sent via e-mail to: erbooklets@delni.gov.uk

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Most of the provisions covered by this booklet were consolidated into the Employment Rights (Northern Ireland) Order 1996. Since then there have been some additions and amendments to the Order, principally by the Employment Relations (Northern Ireland) Order 1999, the Employment (Northern Ireland) Order 2002, the Employment (Northern Ireland) Order 2003 and the Work and Families (Northern Ireland) Order 2006.

Some rights outlined in this guide are contained in other legislation, including subsequent amendments, in particular in the following, although this is not intended as a definitive list:

Disability Discrimination Act 1995;

Employment Equality (Sexual Orientation) Regulations (Northern Ireland) Order 2003;

Equal Pay Act (Northern Ireland) 1970;

Fair Employment and Treatment (Northern Ireland) Order 1998;

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002;

Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999;

National Minimum Wage Act 1998;

National Minimum Wage Regulations 1999;

Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2001;

Paternity and Adoption Leave Regulations (Northern Ireland) 2002;

Public Interest Disclosure (Northern Ireland) Order 1998;

Race Relations (Northern Ireland) Order 1997;

Rehabilitation of Offenders (Northern Ireland) Order 1978;

Safety Representatives and Safety Committees Regulations (Northern Ireland) 1979;

Sex Discrimination (Northern Ireland) Order 1976;

Social Security Contributions and Benefits (Northern Ireland) Act 1992;

Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002;

The Employment Equality (Age) Regulations (Northern Ireland) Order 2006;

The Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations 2004;

The Employment Rights (Time off for Study or Training) Northern Ireland Order 1998;

The Flexible Working (Eligibility, Complaints and Remedies) Regulations Northern Ireland Order 2002;

The Industrial Tribunals (Northern Ireland) Order 1996;

Trade Union and Labour Relations (Northern Ireland) Order 1995;

Transfer of Undertakings Regulations; and

Working Time Regulations (Northern Ireland) 1998.

Further information and advice on the legislation is available from the Labour Relations Agency - see Appendix 2 - which has a general duty to promote the improvement of employment relations and is independent of Government.

Enquiries about redundancy payments should be made to The Redundancy Payments Service - see Appendix 2.

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QUALIFYING CONDITIONS, CONTRACTS AND WRITTEN STATEMENTS

The Contract

The legal relationship between employer and employee is one of contract based on common law principles. Statutes have established a number of further rights for employees.

A contract of employment exists when an employer and employee agree the terms and conditions of employment. This is often shown by the employees starting work on the terms offered by the employer. Both are bound by the agreed terms. A contract of employment need not be in writing although contracts of apprenticeship must be. Employees are entitled to a written statement of the main particulars of their employment. This statement is not in itself a contract but provides information on the contract's main terms.

Many statutory employment rights are minimum terms. The employer and employee are free to agree better terms between themselves in a contract of employment or collective agreement.

When the terms of a contract of employment are not adhered to either the employee or the employer may have grounds to make a complaint of breach of contract. Brief details of this are set out in the 'COMPLAINTS AND REMEDIES' section of this booklet. There is more information in the booklet: **'Contracts of employment: changes, breach of contract and deductions from wages' ER21.**

Written Statement of Employment Particulars

Generally employers must give employees a written statement of the main particulars of employment within two months of the beginning of the employment. It should include amongst other things, details of pay, hours, holidays, notice period and an additional note on disciplinary and grievance procedures.

Employees who are not given a written statement of employment particulars by their employer or notification of a change in those particulars or who contest the accuracy of the written statement may refer the matter to an Industrial Tribunal. Employers also may refer a dispute about the accuracy of a written statement to an Industrial Tribunal. If the employment has come to an end the reference must be made within three months of the end of the employment. The Industrial Tribunal will decide what particulars the employee should have been given. For further details see the booklet: **'Written statement of employment particulars' ER2.**

Continuity and Calculation of Payments

Some of the individual employment rights described in this booklet depend on an employee having worked a qualifying period of continuous employment.

Normally only employment with the present employer counts towards continuous employment but there are certain circumstances in which a change of employer does not break continuity.

Whether those on Government-assisted courses of training in the workplace are employees or workers will depend on the nature of the relationship they have with the employer. If it is an employment relationship, then their period of training may count towards the period of continuous employment necessary for certain employment rights.

The rules for reckoning continuous employment and also for calculating a week's pay and tribunal awards arising from employment rights are summarised in the booklet: **'Continuous employment and a week's pay' ER8.**

Entitlement and Time Limits

Normally various qualifying conditions must be fulfilled before a right may be claimed. Some rights apply to all employees as soon as they start work; others depend on factors such as length of service and continuity of employment. For certain rights, various groups of people are excluded.

If an employment right is denied or infringed, an employee can normally claim a remedy by making a complaint to an Industrial Tribunal. This must be done within the time limit specified for the particular right. In most cases, the time limit for a complaint is three months after the date of the infringement of the right.

You should always check the rules on who qualifies for the right and its time limit by referring to the relevant employment legislation booklet – see Appendix 1. You must also consider whether the statutory grievance procedures apply to your case and ensure that you have taken the necessary steps prior to making an Industrial Tribunal claim. See the section COMPLAINTS AND REMEDIES, which explains a little more about these procedures and provides links to more detailed information.

PAY

National Minimum Wage (NMW)

Workers are entitled to be paid at least the level of the statutory NMW for every hour they work for an employer.

NMW	From 1 October 2010	From 1 October 2011
Main Rate for Workers aged ***Aged 21 and over from 1 October 2010***	***£5-93** **subject to annual revision*) *Aged 21 and over from 1 October 2010	***£6.08** **subject to annual revision*)
Development Rate for *Aged 18-20 year olds **from 1 October 2010**	***£4-92** **subject to annual revision*)	***£4.98** **subject to annual revision*)
Youth Rate for under 18 year olds and who are above school leaving age*	***£3.64** **subject to annual revision*)	***£3.68** **subject to annual revision*)
Apprentices Apprentices under 19 Apprentices aged 19 and over but in the first year of their apprenticeship.	***£2.50** **subject to annual revision*)	***£2.60** **subject to annual revision*)

* - In Northern Ireland: a person is no longer of compulsory school age after 30 June of the school year in which his 16th birthday occurs.

Please note the Agricultural Wages Board set rates of pay, as well as hours, holidays and overtime rates in the agricultural sector, any queries regarding this area should be made to the - **Agricultural Wages Helpline: 028 9052 0813.** The rates of **National Minimum Wage (NMW)** are **subject to annual revision.* This means that the rate quoted above can become out of date. The internet guidance will be updated as and when the rates are changed. Alternatively for the current rates or other recent information contact the **NMW Helpline on: 0845 6500 207.**

The following do not qualify for the NMW:

- the genuinely self-employed;
- genuine volunteers;
- workers on certain training schemes;
- residents of certain religious communities;
- prisoners;
- the armed forces; and
- share-fishermen.

Students undertaking a work placement as part of a further or higher education course do not qualify for the NMW in respect of that work as long as this does not cumulatively add up to more than one year. However there are no exemptions according to size of business or by sector, job or region. All workers including home workers, agency workers, commission workers, part-time workers, migrant workers and casual workers must receive at least the NMW.

Other than money the only benefit that counts towards the NMW is accommodation provided by the employer. The amount that can be 'offset' is a maximum of £31.22 per week (£4.46 per day). If a worker believes that he is not getting the minimum wage he is entitled to see the records relating to his rate of pay which his employer must hold. If he wants to complain that his employer has not paid the minimum wage or has not allowed him to see his records he can make a complaint to: The National Minimum Wage Helpline on**: 0845 6500 207** or take his case to an Industrial Tribunal or high court independently.

Employees may complain to an Industrial Tribunal of unfair dismissal regardless of length of service if they are dismissed because they qualify for the NMW or because they seek to enforce their right to it. Workers who are not employees may complain that they have suffered a detriment if their contracts are terminated for any of these reasons. Both employees and other workers are also protected from other detrimental action or deliberate inaction by their employer. For further information contact the **NMW Helpline on: 0845 6500 207.**

Itemised Pay Statement

All employees are entitled to an individual written pay statement at or before the time they are paid. The statement must show gross pay and take-home pay with amounts and reasons for all variable deductions. Fixed deductions must also be shown with detailed amounts and reasons. Alternatively fixed deductions can be shown as a total sum provided a written statement of these items is given to each employee in advance - or at the time - of issue of the first pay statement showing the total sum and after that at least once a year.

A dispute relating to the itemised pay statement provisions may be referred to an Industrial Tribunal by either an employer or an employee. If the employment has come to an end the reference must be made within three months of the end of the employment. Further details can be found in the booklet: **'Pay statements: what they must itemise' ER12.**

The law protects individuals from having unauthorised deductions made from their wages including complete non-payment. This protection applies both to employees and to some other workers.

One of three conditions has to be met for an employer lawfully to make deductions from wages or receive payments from a worker.

The deduction or payment must be:

- *required or authorised by legislation (for example - Income Tax or National Insurance deductions); or*
- *authorised by the worker's contract - provided the worker has been given a written copy of the relevant terms or a written explanation of them before it is made; or*
- *consented to by the worker* ***in writing*** *before it is made.*

Contributions to trade union Political fund – unlike members in Great Britain it is a statutory requirement that in order for political fund deductions to be legal, trade union members in Northern Ireland must 'contract–in' to a political fund in their union. Any political fund deductions made without such authorisation from the worker are illegal.

Where a Northern Ireland trade union member does not 'contract-in' or having 'contracted-in' subsequently decides to 'contract-out' he is exempt from contributing to the political fund.

Protections for individuals in retail work make it illegal for an employer to deduct more than ten per cent from the gross amount of any payment of wages (except the final payment on termination of employment) if the deduction is made because of cash shortages or stock deficiencies. Workers who believe they have suffered an unlawful deduction from wages can make a complaint to an Industrial Tribunal.

Further details can be found in the booklet: **'Contracts of employment: changes, breach of contract and deductions from wages' ER21.**

Guarantee Payments

Certain employees are entitled to a guarantee payment for up to five days in any three-month period. This is payable for days on which they would normally be expected to work under their contract of employment but throughout which their employer has not provided them with any work (because of for example, reduced demand or lack of raw materials).

Payment does not have to be made if:

- the employee has not completed one month's continuous employment with the employer;
- the employee unreasonably refuses suitable alternative work;
- the employee does not comply with the employer's reasonable requirement to be available to work; or
- the short-time or lay-off results from a strike, lock-out or other industrial action involving any employee of the employer or of an associated employer.

If the employer makes a payment in respect of the workless day under the employee's contract of employment it is offset against the liability to make a guarantee payment for that day. Further details can be found in the booklet: **'Guarantee payments' ER14.** The current level of guarantee payment is given in the booklet: **'Limits on payments and awards' ER19.**

Redundancy Pay

Employers have to make a lump-sum 'redundancy payment' to employees dismissed because of redundancy. The amount is related to the employee's age, length of continuous service with the employer and weekly pay up to a maximum - the current maximum is shown in the booklet: **'Limits on payments and awards' ER19.** The employer must also provide a written statement showing how the payment has been calculated at or before the time it is paid.

Employees who have not completed two years' continuous employment are not entitled to a redundancy payment. The maximum number of complete years' service used in calculating redundancy payments is 20.

Redundant employees may not be entitled to a payment if they are offered a new job with the same employer, an associated employer, or a successor employer who takes over the business - provided the new job is offered before the old employment contract expires and starts within four weeks. If the new job differs, wholly or partly, in capacity, place, terms or conditions, an employee can put off the decision to accept it for a four-week trial period. Where re-training is necessary this period may be extended by written agreement.

At the end of the trial period if the employee is still in the job he is regarded as having accepted it. Employees who reject the new job before the end of a trial period because it turns out not to be a suitable alternative to the old job, or for good personal reasons, are considered to be redundant from the date the original employment ended. If a redundant employee unreasonably refuses a suitable offer of alternative employment no redundancy payments will be due.

Any dispute about whether a redundancy payment is due, or about its size, can be determined by an Industrial Tribunal.

There are special provisions for employees whose remuneration under their contract of employment depends on their being provided with work and who are laid off or kept on short-time.

If the employer makes a satisfactory redundancy payment at, or soon after, the date of dismissal, there is no need for the employee to submit a formal claim. In any other case, if the employee does not make a written claim for a redundancy payment to the employer, or make a claim to an Industrial Tribunal within six months from the date the employment ended, then in most cases the employer is no longer obliged to make a payment. Further details can be found in the booklet: **'Redundancy Entitlement – Statutory Rights' ER3.**

Insolvency of the Employer

Employees who have been dismissed can receive payments of certain debts (within limits) owed to them by an employer who is **formally** insolvent (as defined in the legislation) from the National Insurance Fund.

These debts include arrears of pay for a period of at least one week but not exceeding eight weeks in all; holiday pay for up to six weeks; compensation for the employer's failure to give them proper statutory entitlement to notice and any basic award of compensation for unfair dismissal. 'Pay' includes commission, overtime and bonus payments if these are contractual payments; guarantee payments; statutory payments for time off work; or suspension on medical or maternity grounds; and any protective award made by an Industrial Tribunal because the employer failed to inform or consult the employee's representative about a collective redundancy. All these debts are subject to a maximum weekly limit which is revised each year - details are given in the booklet: **'Limits on payments and awards' ER19.**

The employee should normally first apply for payment to the insolvent employer's representative (for example - the liquidator, receiver or trustee) who will provide the necessary forms and will then pass the completed claim to the Redundancy Payments Service - see Appendix 2. Payment is normally made directly to the employee.

There are also some safeguards for occupational pension rights, trustees of occupational pension schemes may apply to the employer's representative for payment from the National Insurance Fund, within certain limits, in respect of relevant contributions which remain unpaid at the date of the employer's insolvency.

Further details can be found in the booklet: **'Your Rights if Your Employer is Insolvent' ER5.**

DISMISSAL AND NOTICE PERIODS

Written Reasons for Dismissal

Employees who are dismissed and have completed at least one year's continuous employment are entitled to receive, on request (orally or in writing), a written statement of reasons for dismissal within 14 days.

An employee dismissed during:

- her pregnancy or her ordinary or additional maternity leave; or
- his or her ordinary or additional adoption leave

is entitled to a written statement of the reasons regardless of their length of service and regardless of whether or not they have requested it.

There are further details about the written reasons for dismissal provisions in the booklet: **'Rights to notice and reasons for dismissal' ER15.**

Notice of Termination

Both the employer and employee are normally entitled to a minimum period of notice of termination of employment. After one month's employment, an employee must give at least one week's notice. This minimum is unaffected by longer service. An employer must give an employee at least one week's notice after one month's employment, two weeks after two years, three weeks after three years and so on up to twelve weeks after twelve years or more. However the employer or the employee will be entitled to a longer period of notice than the statutory minimum if this is provided for in the contract of employment. Most employees, subject to certain conditions, are entitled to certain payments during the statutory notice period.

Employees can waive their right to notice, or to payment in lieu of notice. Employers can also waive their right to notice. Either party can terminate the contract of employment without notice if the conduct of the other justifies it.

Further details about notice provisions can be found in the booklet: **'Rights to notice and reasons for dismissal' ER15.**

Unfair Dismissal

Employees have the right not to be unfairly dismissed. In most circumstances they must have at least one year's continuous service before they have this right. However there is no length of service requirement in relation to a number of **'automatically unfair grounds'.** Also, the requirement is reduced to one month for employees claiming to have been dismissed on medical grounds as a consequence of certain health and safety requirements that should have led to suspension with pay rather than to dismissal.

A complaint of unfair dismissal must be received by an Industrial Tribunal **within three months** of the effective date of termination of the employment (usually the date of leaving the job) unless the tribunal considers this was not

reasonably practicable. However the time limit for submitting some tribunal claims can be extended in certain circumstances to allow statutory minimum dismissal, disciplinary and grievance procedures to be followed. See - 'Resolving Disputes in the Workplace'. If both the employer and employee agree, instead of going to an Industrial Tribunal, the case may be heard by a conciliation officer under the Labour Relations Agency (LRA) arbitration scheme. For further details please contact the LRA - see Appendix 2.

When hearing the complaint an Industrial Tribunal will first need to establish that a dismissal has taken place. Once dismissal is established it is normally for the employer to show that it was for a legitimate reason - see 'Fair Dismissal'. Having established the reason for dismissal the Industrial Tribunal must then in most cases decide whether in the circumstances the employer acted reasonably in treating that reason as a sufficient one for dismissal. **The circumstances taken into account include the size and administrative resources of the undertaking but these considerations do not apply if the Industrial Tribunal finds that the dismissal was on one of the grounds classed as 'automatically unfair' because it was for one of the following reasons:**

- pregnancy, or any reason connected with maternity;
- taking, or seeking to take, parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants;
- failure to return from maternity or adoption leave because the employer did not give or gave inadequate notice of when the leave period should end;
- grounds related to making a statutory request for flexible working;
- taking certain specified types of health and safety action;
- refusing or proposing to refuse to do shop or betting work on a Sunday;
- grounds related to rights under the Working Time Regulations (Northern Ireland) 1998;
- performing or proposing to perform any duties relevant to an employee's role as an employee occupational pension scheme trustee or as a director of a trustee company;
- grounds related to acting as a representative for consultation about redundancy or business transfer or as a candidate to be a representative of this kind or taking part in the election of such a representative;

- making a protected disclosure within the meaning of the Public Interest Disclosure (Northern Ireland) Order 1998;
- asserting a statutory employment right;
- grounds related to the National Minimum Wage (NMW);
- qualifying for Working Tax Credit or seeking to enforce a right to it (or because the employer was prosecuted or fined as a result of such action);
- trade union membership or activities or non-membership of a trade union;
- failure to accept an unlawful inducement to give up trade union rights or to dis-apply collective agreements or an offer to induce the employee to become a trade union member;
- refusal to make (or to have deducted from wages) a payment in lieu of trade union membership;
- taking lawfully organised official industrial action lasting twelve weeks or less (or more than twelve weeks in certain circumstances);
- performing or proposing to perform any duties relating to an employee's role as a workforce representative or as a candidate to be such a representative for the purposes of the Transnational Information and Consultation of Employees Regulations 1999, or for taking, proposing to take, or failing to take, certain actions in connection with these Regulations;
- grounds related to trade union recognition procedures;
- exercising or seeking to exercise the right to be accompanied at a disciplinary or grievance hearing or to accompany a fellow worker;
- grounds related to the Part-time Workers (Prevention of Less Favourable Treatment) (Amendment) Regulations (Northern Ireland) 2001;
- grounds related to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002;
- a failure to follow the statutory dismissal procedure where it applies and is not treated as having been complied with;

- grounds related to the European Public Limited-Liability Company Regulations (Northern Ireland) 2004;
- grounds related to the European Co-operative Society (Involvement of Employees) Regulations 2006;
- grounds related to the Information and Consultation of Employees Regulations (Northern Ireland) 2005 for undertakings with at least 150 employees. From 6 April 2007 for undertakings with at least 100 employees and from 6 April 2008 for undertakings with at least 50 employees;
- grounds related to jury service (except where the absence will cause substantial injury to the business, the employer tells the employee that and the employee unreasonably refuses to apply to be excused or defer the service);
- grounds related to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 for undertakings with 150 employees. From 6 April 2007 for undertakings with at least 100 employees and from 6 April 2008 for undertakings with at least 50 employees;
- dismissal on grounds of retirement without the employer having complied with the duty to consider a request by him not to retire;
- exercising or seeking to exercise the right to be accompanied at a meeting to consider a request not to retire or exercising or seeking to exercise the right to accompany a fellow employee at such a meeting.

If the Industrial Tribunal finds the dismissal was unfair it will order one of three possible remedies: re-instatement, re-engagement or compensation. Orders for re-instatement or re-engagement normally include an award of compensation for the loss of earnings.

Further details of the law on unfair dismissal and the remedies available including how awards are calculated can be found in the booklets: **'Unfairly dismissed?' ER13** and '**Dismissal: fair and unfair - a guide for employers' ER18.**

Fair Dismissal

Dismissal is normally fair only if the employer can show that it is for one of the following reasons:

- a reason related to the employee's conduct;

- the retirement of the employee;
- a reason related to the employee's capability or qualifications for the job;
- because the employee was redundant;
- because a statutory duty or restriction prohibited the employment being continued; or
- some other substantial reason of a kind which justifies the dismissal.

Where the employer shows that the reason was one of these the Industrial Tribunal has to consider whether the employer acted reasonably in the circumstances by treating this reason as sufficient to dismiss the employee (except in the case of retirement where the fairness of the dismissal will depend on whether the employer complied with the duty to consider working beyond retirement). Among the circumstances it takes into account are the size and administrative resources of the employer's undertaking.

It will also take account of whether the employer followed appropriate disciplinary procedures. When statutory dismissal and disciplinary procedures came into operation in 2005 (whereby those procedures apply and are not treated as having been complied with) a dismissal became unfair if an employee was dismissed without the appropriate procedures being followed.

However if an employer fails to follow a disciplinary procedure which goes beyond the statutory procedure that failure will not by itself make the dismissal an unfair one - provided that properly following the procedure would have made no difference to the decision to dismiss, and that the dismissal was fair in all other respects.

Dismissal on the grounds of redundancy is unfair if the employee is selected for redundancy (when others in similar circumstances are not selected) for any of the reasons listed in the Unfair Dismissal section as 'automatically' unfair (except dismissals in connection with the right to be accompanied). It may also be unfair for some other reason such as the employer failing to give adequate warning of the redundancy or to consider the employee for alternative employment.

Dismissal on the Grounds of Religion or Politics

In Northern Ireland dismissal on the grounds of religious belief or political opinion is automatically unfair. Complaints of unfair dismissal on these grounds are adjudicated by the Fair Employment Tribunal. For the address of its office see Appendix 2. Further details may also be found in the booklet: **'Unfairly dismissed?' ER13.**

Dismissal Relating to Jury Service

Employees are protected from dismissal if the reason is that they have been summoned for jury service or have been absent from work on jury service. There is no qualifying period of service or upper age limit for dismissal for these reasons. This protection will not apply if the employer shows that the employee's absence will cause substantial injury to his business and makes this known to the employee who nevertheless unreasonably refuses, or fails, to apply to be excused from jury service or to have his jury service deferred. Certain protections against detriment also apply.

PARENTAL LEGISLATION

Maternity Protection

All women are protected from unfair treatment including dismissal for reasons relating to pregnancy and maternity leave. '**Maternity rights: a guide for employers and employees' ER16** centralises information on protection against unfair treatment, time off for ante-natal care, maternity leave, return to work, maternity pay and the health and safety at work of new and expectant mothers.

The Department for Employment and Learning has responsibility for employment legislation, while the Department for Social Development has responsibility for Statutory Maternity Pay and Maternity Allowance. Her Majesty's Revenue and Customs (HMRC) has responsibility for employers' administration of Statutory Maternity Pay and the Office of the First Minister and Deputy First Minister (OFMDFM) has responsibility for Sex Discrimination legislation - see - **'Maternity rights: a guide for employers and employees' ER16.**

Time Off for Ante-Natal Care

All pregnant employees are entitled to time off **with pay** to keep appointments for ante-natal care made on the advice of a registered medical practitioner, midwife or health visitor. Ante-natal care may include relaxation classes and parentcraft classes. Except for the first appointment the employee must show the employer, if requested, a certificate from a registered medical practitioner, midwife or health visitor, confirming the pregnancy and an appointment card or some other document showing that an appointment has been made.

Maternity Leave

Women are entitled to 52 weeks' maternity leave – made up of 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave – regardless of how long they have worked for their employer.

Ordinary Maternity Leave

A woman must tell her employer no later than the end of the 15th week before the expected week of childbirth:

- that she is pregnant;
- the expected week of childbirth by means of a medical certificate if requested; and/or
- the date she intends to start maternity leave. This can normally be any date which is no earlier than the beginning of the 11th week before the expected week of childbirth up to the birth.

Her employer should in turn notify her of the date on which her leave will end within 28 days of receiving her notification. If the employer fails to do this the employee may have protection against detriment or dismissal if she does not return to work on time.

An employee can change the date she wants her leave to start as long as she notifies her employer 28 days before the date she originally chose or if it is earlier 28 days before the new date she wants her leave to start.

During the 26 weeks ordinary maternity leave she is entitled to benefit from all her normal terms and conditions of employment except for remuneration.

Additional Maternity Leave

The 26 weeks' additional maternity leave period begins at the end of ordinary maternity leave. This means a woman is entitled to be away from her job for 52 weeks in total. She does not have to notify her employer before the start of her ordinary maternity leave that she also intends to take additional maternity leave. However when her employer notifies her of the end date of her leave they will have based their calculation on the assumption that if she is entitled to additional maternity leave, she will be taking it and if she wishes to return before she has taken her full 52 weeks' maternity leave she must give the correct notice - see section: Return to Work After Maternity Leave. The contract of employment continues but with limited terms and conditions. The contract of employment continues as it did during ordinary maternity leave with the woman being entitled to benefit from any non-pay contractual terms and conditions that she normally has.

Return to Work After Maternity Leave

A woman wishing to return before the end of her full maternity leave entitlement or wishing to change a previously notified return date must give notice to her employer. If insufficient notice is given an employer is entitled to postpone the woman's return until the end of the correct notice period. She must give her employer eight weeks' notice of any change in her date of return to work. A woman returning during or immediately after ordinary maternity leave is entitled to return to her original job on terms and conditions as if she had not been away.

A woman returning during or after additional maternity leave is also entitled to return to the original job on terms and conditions as if she had not been away

unless it is not reasonably practicable for her to return to the same job in which case she is entitled to be offered a suitable alternative job on terms and conditions which are no less favourable. If the employer cannot offer suitable alternative work she may be entitled to redundancy pay but if she unreasonably refuses a suitable offer she could forfeit her right to redundancy pay. If a redundancy situation arises during maternity leave she must be offered a suitable alternative vacancy if one is available. If the employer cannot offer suitable alternative work she may be entitled to redundancy pay but if she unreasonably refuses a suitable offer she could forfeit her right to redundancy pay.

Statutory Maternity Pay

The rates of Statutory Maternity Pay (SMP) and Maternity Allowance (MA) are *****_subject to annual revision_ by the Department for Social Development each April.

N. B. This means that the rate quoted in official guidance can become out of date. The internet guidance will be updated as and when the rates change; alternatively your local Jobs and Benefits office or Social Security office can advise you of the current rates.

A woman is entitled to Statutory Maternity Pay if she has been:

- employed by her employer for at least one day in the 15th week before the expected week of childbirth (the qualifying week);
- employed by her employer for a continuous period of at least 26 weeks ending with the 15th week before the expected week of childbirth;

and has average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SMP can be paid for up to 39 weeks. SMP is paid by the employer but is partly (or for small firms wholly) reimbursed by the state.

More information for **employees** on SMP can be obtained in the booklet: **'Maternity rights: a guide for employers and employees' ER16**. H.M. Revenue and Customs provide more information for **employers** in their help booklets: E15 and E15 supplement, ***'Pay and time off work for parents'*** available from its employer telephone order line on: **0845 7646 646**. Employers may call the H.M. Revenue and Customs employer Helpline on **08457 143 143.**

Maternity Allowance

Women who do not qualify for SMP may be entitled to Maternity Allowance (MA). MA may also be paid to the self-employed and women who have recently left their jobs. MA can be paid for up to 39 weeks. MA is paid by the local Social Security Agency. To qualify they must have been employed or

self-employed for 26 weeks out of the 66 weeks before the expected week of childbirth and have average weekly earnings of at least £30. For more information - see details under Statutory Maternity Pay. Further information is available in the booklet: **'Maternity rights: a guide for employers and employees' ER16**.

Dismissal or Detriment in Connection with Pregnancy

An employer may not treat a woman less favourably, dismiss her or select her for redundancy on grounds related to her pregnancy or maternity leave. Such treatment is sex discrimination under the Sex Discrimination (Northern Ireland) Order. A woman dismissed in these circumstances may make a complaint of Unfair Dismissal or Sex Discrimination, regardless of her length of service. More information about Unfair Dismissal procedures can be found in the booklet: **'Dismissal: fair and unfair – a guide for employers' ER18.** There is further guidance on termination of employment during or following maternity leave in the ordinary maternity leave and additional maternity leave sections of this booklet. Employees also have the right not to suffer detrimental/unfair treatment on grounds of pregnancy, childbirth or maternity leave.

Protection against Detriment or Dismissal and Sex Discrimination

Key facts:

- It is **Sex Discrimination** to treat a female worker or job applicant less favourably for a reason related to her pregnancy or maternity leave.
- It is **Sex Discrimination** to dismiss a female worker for a reason connected with her pregnancy or maternity leave.
- Such **Sex Discrimination cannot be justified** whether on grounds of cost, disruption to the business, or for any other reason.
- It is also **Unlawful** under the Employment Rights (Northern Ireland) Order 1996 to treat a woman unfairly, dismiss her or select her for redundancy for reasons relating to her pregnancy or maternity leave.
- This protection applies **Regardless** of the employee's length of service and **applies as soon as the employer knows that the employee is pregnant.**

Further detailed guidance on sex discrimination and how it applies to pregnant women and women on maternity leave and their employers is available from the Office of the First Minister and deputy First Minister at:

www.ofmdfmni.gov.uk/index/equality/sex-discrimination-and-equal-pay.htm

Protecting the Health and Safety of Pregnant Women and New Mothers at Work

Employers must take account of health and safety risks to new and expectant mothers when assessing risks in work activity. If the risk cannot be avoided the employer must take steps to remove the risk or to offer suitable alternative work (with no less favourable terms and conditions). If no suitable alternative work is available the employer must suspend the mother on full pay for as long as necessary to protect her health and safety or that of her baby. More information about maternity suspension provisions can be found in the booklets: **'Maternity rights: a guide for employers and employees' ER16** and **'Suspension from work on medical or maternity grounds' ER10.** A **'Guide to Workplace Health and Safety'** is available from HSENI - see Appendix 2.

Parental Leave

Employees who have completed one year's service with their employer are entitled to 13 weeks' unpaid parental leave for each child born or adopted. The leave can start once the child is born or placed for adoption with the employee or as soon as the employee has completed a year's service, whichever is later. It may be taken at any time up to the child's 5th birthday (or until five years after placement in the case of adoption). Parents of disabled children can take 18 weeks up to the child's 18th birthday.

Employees remain employed while on parental leave and some terms of their contract such as contractual notice and redundancy terms still apply. At the end of parental leave where leave is taken for a period of four weeks or less the employee is entitled to go back to the same job. Where more than four weeks' parental leave is taken they have the right to return to the same job as before or if that is not practicable a similar job which has the same or better status, terms and conditions as the old job. Employees should give 21 days' notice of their intention to take parental leave. The employer is entitled to postpone the leave for up to six months if it would seriously affect their business. Parental leave may not be postponed where it is to be taken immediately after a birth or the placement of a child for adoption. Wherever possible employers and employees should make their own agreement about how parental leave will work in a particular workplace. Such agreements can improve upon the key elements set out earlier but they may not offer less.

After having followed internal grievance procedures, employees can complain to an Industrial Tribunal if their employer prevents or attempts to prevent them from taking parental leave. They are also protected from dismissal or detrimental treatment for taking or seeking to take it. Further details can be found in the booklet: **'Parental leave: a guide for employers and employees' ER25.**

Paternity Leave

Employees who have worked continuously for their employer for 26 weeks leading into the 15th week before the baby is due and also up to the birth of

the child are entitled to take one or two consecutive weeks' paternity leave. To qualify an employee must be the biological father of the child or the mother's husband, partner or civil partner and must have, or expect to have, responsibility for the child's upbringing. Leave must normally be completed within 56 days from the birth of the child and must be taken to care for the child or support the mother. Where the child is born early leave can be taken up to 56 days after the Sunday at the start of the week in which the baby is due.

The partner or civil partner of an individual who adopts or the member of a couple adopting jointly who is not taking adoption leave may be entitled to paternity leave. The qualifying conditions are similar to those given above except that he must have worked for his employer for 26 weeks leading into the week in which the adopter is notified of being matched with a child and must continue to be employed up to the date of placement of the child for adoption. Leave must be completed within 56 days of the child's placement.

During paternity leave employees are entitled to benefit from all their normal terms and conditions of employment except for remuneration and are entitled to return to the same job at the end of their leave. After having followed internal grievance procedures, employees can complain to an Industrial Tribunal if their employer prevents or attempts to prevent them from taking paternity leave. They are also protected from dismissal or detrimental treatment for taking or seeking to take it.

Statutory Paternity Pay (birth and adoption)

During their paternity leave employees may be entitled to one or two weeks' Statutory Paternity Pay (SPP). The qualifying conditions for SPP are the same as those for paternity leave but in addition employees must have average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SPP is payable by the employer but partly (or for small firms wholly) reimbursed by the State. There are special rules to allow fathers who do not qualify for SPP to claim Income Support. For further information on paternity leave and pay - see the booklets: **'Rights to paternity leave and pay' ER34** or for adoptive parents - **'Adoptive parents: a guide for employers and employees' ER35.** H.M. Revenue and Customs provide more information for employers in the help books: E15 and E15 supplement - **'Pay and time off work for parents'** or for adoptive parents the E16 and E16 supplement - **'Pay and time off work for adoptive parents'**, available from its employer telephone order line on: 08457 646 646. Employers may call the H.M. Revenue and Customs employer Helpline on: 08457 143 143.

Adoption Leave

Employees who have worked continuously for their employer for 26 weeks ending with the week in which they are notified of being matched with a child for adoption will be eligible for up to 26 weeks' ordinary adoption leave followed immediately by up to 26 weeks' additional adoption leave. The right is available to individuals who adopt or one member of a couple adopting

jointly. Employees are required to inform their employer of their intention to take adoption leave within seven days of being notified by their adoption agency that they have been matched with a child for adoption unless this is not reasonably practicable.

They must tell their employer when:

- the child is expected to be placed with them; and
- they want their adoption leave to start.

Employers must respond to the notice within 28 days notifying the employee of the date on which they expect them to return to work if the full entitlement to adoption leave is taken. The employee can choose to start leave from the date of the child's placement or from a fixed date which can be up to 14 days before the expected date of placement. During ordinary adoption leave employees are entitled to benefit from all their normal terms and conditions of employment except for remuneration and are entitled to return to the same job at the end of their leave.

During additional adoption leave the employment contract continues and some contractual benefits and obligations remain (for example compensation in the event of redundancy and notice periods). The Government has amended the law so that adopters whose child was expected to be placed for adoption on or after April 2008 will continue to benefit from all the terms and conditions of their contract as they did during ordinary adoption leave.

Employees who intend to return to work at the end of their full adoption leave entitlement do not have to give any further notification to their employers. Employees who want to return to work before the end of their adoption leave period must give their employers notice of the date they intend to return – see **Return to Work after Adoption Leave.**

After having followed internal grievance procedures employees can complain to an Industrial Tribunal if their employer prevents or attempts to prevent them from taking adoption leave. They are also protected from dismissal or detrimental treatment for taking, or seeking to take it, or if their employer believed they were likely to take it.

Return to Work After Adoption Leave

An employee wishing to return before the end of his full adoption leave entitlement or wishing to change a previously notified return date must give notice to his employer. If insufficient notice is given an employer is entitled to postpone the employee's return until the end of the correct notice period. Employees must give their employer eight weeks' notice of any change in their date of return to work.

An employee returning during or immediately after ordinary adoption leave is entitled to return to his original job on terms and conditions as if he had not been away. An employee returning during or after additional adoption leave is

also entitled to return to the original job on terms and conditions as if he had not been away unless it is not reasonably practicable for him to return to the same job in which case he is entitled to be offered a suitable alternative job on terms and conditions which are no less favourable. If the employer cannot offer suitable alternative work the employee may be entitled to redundancy pay but if he unreasonably refuses a suitable offer he could forfeit his right to redundancy pay.

If a redundancy situation arises during adoption leave he must be offered a suitable alternative vacancy if one is available. If the employer cannot offer suitable alternative work the employee may be entitled to redundancy pay but if he unreasonably refuses a suitable offer he could forfeit his right to redundancy pay.

Statutory Adoption Pay

A person who is adopting a child is entitled to Statutory Adoption Pay (SAP) if he has been employed by his employer for a continuous period of at least 26 weeks ending with the week in which he is notified by the adoption agency that he has been matched with a child for adoption and he has average weekly earnings at least equal to the lower earnings limit for National Insurance contributions.

Employees whose child was expected to be placed for adoption on or after 1 April 2007 were entitled to 39 weeks' SAP. Employees whose child was expected to be placed on or before March 2007 were entitled to 26 weeks' SAP. For further information on adoption leave and pay, see the booklet: **'Adoptive parents: a guide for employers and employees' ER35**. H.M. Revenue and Customs provide more information for employers in the help book E16 and the E16 supplement - **'Pay and time off work for adoptive parents**' available from its employer telephone order line on: 08457 646 646.

Right to Apply to Work Flexibly and the Duty on Employers to Consider Requests Seriously

Parents of children under seventeen or disabled children under eighteen and carers of adults (see the section on Other Statutory Employment Rights) have the legal right to request flexible working patterns and their employers have a duty to consider their requests seriously.

In order to qualify for this right an individual must:

- be an employee;
- have a child under 17 or 18 where the child is disabled;
- be responsible for the child as its parent;
- be making the application to enable them to care for the child;

- be a carer who cares, or expects to be caring, for a spouse, partner, civil partner or relative or who lives at the same address as the person being cared for;
- have worked for their employer continuously for 26 weeks at the date the application is made;
- not be an agency worker or a member of the armed forces; or
- not have made another application to work flexibly under the right during the past 12 months.

Applications must be in writing. Information that must be provided includes an explanation of what effect if any the employee thinks the proposed change would have on the employer and how in their opinion any such effect might be dealt with. The employer must follow a defined procedure to consider the request. In the first instance they must ensure that they arrange to meet with the employee to discuss the request within 28 days of receiving the application. If the request is agreed the new working pattern forms a permanent change to the employee's terms and conditions. Employers can reject an application where they have a clear business reason to do so. Acceptable business grounds are specified in law and an employer must provide a written explanation setting out why the grounds apply in the circumstances. Employees whose applications are turned down can appeal against their employer's decision and in specific circumstances can take their case to LRA Arbitration, or to an Industrial Tribunal. Further details can be found in the booklet: **'Flexible working: a guide for employers and employees' ER36.**

OTHER TIME OFF

Time Off for Dependants

All employees are entitled to reasonable time off work **without pay** to deal with an emergency involving a dependant - for example, if a dependant falls ill or is injured, if care arrangements break down or to arrange or attend a dependant's funeral.

Further details on circumstances when leave can be taken and the definition of a dependant can be found in the booklet: **'Time off for dependants' ER24.**

Time Off Work for Public Duties

Under certain circumstances employers must give employees who hold certain public positions reasonable time off to perform the duties associated with them. This provision covers such offices among others as justice of the peace, prison visitor, members of a local authority, members of district policing partnerships, a statutory tribunal and certain health and education authorities. Employers do not have to pay employees for the time taken off for

public duties. Further details can be found in the booklet: **'Time off for public duties' ER7.**

Time Off Work for Trade Union Duties and Activities

An employee who is an official of an independent trade union which is recognised by the employer must be allowed reasonable time off with pay during working hours to:

- carry out those duties as an official which relate to matters for which the employer has recognised the union or any other functions which the employer has agreed the union may perform;
- consult with the employer or receive information from the employer about mass redundancies or business transfers; or
- undergo training relevant to those duties and which is approved by the Trades Union Congress, or the Irish Congress of Trade Unions or the independent union of which he is a member.

An employee who is a **member** of an independent trade union which is recognised by the employer is entitled to reasonable time off for certain trade union activities. The employer is not obliged to pay the employee for time off for these activities. The LRA Code of Practice - **Time Off for Trade Union Duties and Activities** - provides guidance on the time off to be permitted by an employer. It is available from the LRA – see Appendix 2.

Time Off for Union Learning Representatives

An employee who is a member of an independent trade union which is recognised by the employer and who is a Union Learning Representative must be allowed reasonable time off with pay during working hours to:

- carry out those duties that relate to Union Learning Representatives; or
- undergo training relevant to the duties of a Union Learning Representative.

The LRA can provide guidance on the time off to be permitted by an employer for Union Learning Representatives. For the address of its office - see Appendix 2.

Time Off for Safety Representatives

Employees who are:

- safety representatives appointed under the Safety Representatives and Safety Committee Regulations (Northern Ireland) 1979 by a trade union recognised by their employer;
- representatives of employee safety elected under the Health and Safety (Consultation with Employees) Regulations 1996 to represent employees not covered by the 1977 Regulations; or
- safety representatives elected under the Offshore Installations (Safety Representatives and Safety Committee) Regulations 1989;

are entitled to time off with pay to carry out their functions and to undergo training. Further details of these provisions may be found in the Health and Safety Executive for Northern Ireland's (HSENI) booklet: **'Safety Representatives and Safety Committees'** containing the Regulations and the Code of Practice on this subject - for the address of its office see Appendix 2.

Time Off for Occupational Pension Scheme Trustees and Directors of Trustee Companies

Employees who are trustees of an occupational pension scheme (as defined in Section 1 of the Pension Schemes (Northern Ireland) Act 1993) or directors of trustee companies are entitled to reasonable time off with pay to carry out any of their trustee's duties or to receive training relevant to those duties.

Time Off for Employee Representatives under The Occupational and Personal Pensions Scheme (Consultation by Employers) Regulations (Northern Ireland) 2006

Employees who act as employee representatives for consultation about significant changes to their work-based pension schemes under the above Regulations are entitled to reasonable time off with pay during working hours to perform these functions. Initially the Regulations applied to undertakings with 100 or more employees. They now apply to undertakings with 50 or more employees.

Time Off for Employee Representatives

Employees who act as representatives for consultation about redundancies or business transfers, or are candidates to be representatives of this kind, are entitled to reasonable time off with pay during working hours to perform these functions and to receive appropriate training. Further details can be found in the booklet: **'Redundancy consultation and notification' ER4.**

Time Off for Activities Relating to the Transnational Information and Consultation of Employees Regulations 1999

The Transnational Information and Consultation of Employees Regulations 1999 implemented the European Works Council Directive in the United

Kingdom. They set out requirements for informing and consulting employees in undertakings or groups with at least 1,000 employees in European Union (EU) countries and at least 150 employees in each of two or more of the EU's member states. These regulations allow employees reasonable time off with pay to perform their functions as a member of a special negotiating body or a European Works Council, as an information and consultation representative or as a candidate in an election to be such a member or representative.

Time Off for Activities Relating to the Information and Consultation of Employees Regulations

The above Regulations implement the EU Directive establishing a general framework for informing and consulting employees. The 2005 Regulations set out the requirements for informing and consulting employees in undertakings with at least 50 employees. Employees are entitled to reasonable time off with pay to perform their functions as negotiating representatives or information and consultation representatives. For further information see the 'Information and Consultation of Employees Guidance'.

Time Off for Study or Training

Employees aged 16 or 17 who have not achieved a certain standard in their education or training have the right to reasonable time off **with pay** to study or train for a relevant qualification which will help them towards that standard. Certain employees aged 18 have the right to complete study or training already begun. The study or training can be in the workplace, at college, with another employer or a training provider or elsewhere. There is no qualifying period of employment for the employee. Details can be found in the booklet: **'Time off for study or training' ER26.**

Time Off for Job Hunting or to Arrange Training when Facing Redundancy

An employee who is being made redundant and who has been continuously employed by the same employer for at least two years is entitled whilst under notice to take reasonable time off **with pay** within working hours to look for another job or to make arrangements for training for future employment.

Further details about time off for job hunting or to arrange training when facing redundancy can be found in the booklet: **'Redundancy Entitlement – Statutory Rights' ER3.**

ANTI-DISCRIMINATION

Employers wanting confidential advice on equality issues can contact either the LRA or the Equality Commission - see Appendix 2. The Equality Commission has also produced an 'Equal Opportunities Statement' poster based on the Commission's Model Equal Opportunity policy which summarises the rights and responsibilities of employers and employees, this is available at:

http://www.equalityni.org/archive/pdf/5165_commissions%20_poster.pdf

Sex and Race

Under the Sex Discrimination (Northern Ireland) Order 1976 (as amended) it is unlawful for employers to discriminate on grounds of sex, marriage, civil partnership, pregnancy or maternity leave or because someone intends to undergo, is undergoing or has undergone, gender re-assignment. From 2005 there have been a small number of changes to the Sex Discrimination (Northern Ireland) Order 1976 to help clarify the law. These include making explicit the fact that discrimination on the grounds of pregnancy or maternity leave and sexual harassment and harassment on the grounds of sex are unlawful. The Race Relations (Northern Ireland) Order 1997 generally makes discrimination or harassment by employers on racial grounds unlawful - that is discrimination on grounds of race, colour, nationality (including citizenship) or ethnic or national origins.

There are two kinds of unlawful discrimination: direct and indirect. Direct sex discrimination is where a person is, or would be, treated less favourably than another, on the grounds of his sex. Indirect sex discrimination arises where an apparently neutral provision, criterion or practice puts, or would put, people of one sex at a particular disadvantage compared with people of the other sex and which cannot be shown to be a proportionate means of achieving a legitimate aim.

It is unlawful to victimise someone who has made a complaint under these Orders or under the Equal Pay Act (Northern Ireland) 1970 - see section Equal Pay Act (Northern Ireland) 1970 - or the Pensions Act 1995. Under this legislation it is unlawful for an employer to harass an employee. Harassment on the grounds of race or related to the sex of a person means unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person for example, display of nude calendars or racist literature.

There are limited exceptions which allow direct sex and race discrimination, for instance, where there is a genuine and determining occupational requirement that a job has to be done by a person from a particular racial group or where sex is a genuine occupational qualification as specified in the Sex Discrimination (Northern Ireland) Order 1976. Both the Sex Discrimination (Northern Ireland) Order 1976 and the Race Relations (Northern Ireland) Order 1997 permit employers under certain conditions to train employees of one sex or of a particular racial group in order to fit them for particular work in which their sex or racial group has recently been under-represented. They may also encourage the under-represented sex or racial group to take up opportunities to do that work. There are no exceptions which allow harassment. Individuals who wish to bring a claim under the employment provisions of this legislation will need to apply to an Industrial Tribunal. The Equality Commission (EC) has statutory responsibilities in the employment field: the EC can conduct formal investigations and issue codes of practice to help eliminate discrimination and promote equality of

opportunity. A Code of Practice gives practical guidance for employers and others on implementing policies to secure good race relations in employment. It does not extend the law but it may be used in evidence in Race Relations Order cases heard by an Industrial Tribunal and if the Industrial Tribunal considers the Code could be relevant to a question arising in the proceedings it must take it into account. Copies are available from the Equality Commission – see Appendix 2. Further information about these provisions can be found in the guides: '**Sex Discrimination**' and '**Racial Discrimination**' available from **The Equality Unit of the Office of the First Minister and the Deputy First Minister (OFMDFM)** Tel: 028 9052 3193 or alternatively visit their website: www.ofmdfmni.gov.uk

Equal Pay Act (Northern Ireland) 1970

In general terms the Equal Pay Act (Northern Ireland) 1970 (EPA) makes it unlawful for employers to discriminate between men and women in the same employment where they are doing like work or work rated as equivalent or work which is of equal value. The legislation covers both salary or wages and other terms and conditions in a contract of employment – such as overtime rates and allowances, holiday and sick pay.

The Act does not give anyone the right to claim equal pay with a person of the same sex. In other words, any comparison must be with a person of the opposite sex. Individuals who consider that they have been discriminated against under the EPA can in standard cases make a claim to an Industrial Tribunal at any time whilst they remain in the relevant employment or within six months of leaving the relevant job with the employer.

A woman is employed on 'like work' with a man if her work is of the same or a broadly similar nature and any difference between the things they do is not of practical importance in relation to their terms and conditions of employment. It is for the employer to show that any difference is of practical importance.

A woman is regarded as performing work rated as equivalent to a man where their jobs have been rated as having equal value in a job evaluation study which contains a proper analysis of the demands made on them in their jobs under various headings such as effort, skill and decision making and which is impartial in its application to men and women.

A woman is employed on work of equal value to that of a man if the work they are doing is not the same or similar, but nevertheless of equal value in terms of the demands made on them, under such headings as effort, skill and decision making. In equal value claims, the Industrial Tribunal or independent expert appointed by the Industrial Tribunal will determine whether the jobs in question are of equal value often on the basis of a report provided by an independent expert.

If it is established that the work is like work, work rated as equivalent or work of equal value, an employer can defend a difference between the man and woman's contracts by demonstrating that any such differences are due to a genuine material factor which is not attributable to direct or indirect sex

discrimination such as a difference in the level of their qualifications. If the factor causing the difference in the contractual terms is tainted by sex discrimination an employer may, in some circumstances, be able to defend the claim by showing that the difference is objectively justified.

Further details can be found in: '**A Code of Practice on Equal Pay**' available from **The Equality Unit of the Office of the First Minister and the Deputy First Minister (OFMDFM)** Tel: 028 9052 3193 or alternatively visit their website: www.ofmdfmni.gov.uk

Disability

In order to qualify for protection against discrimination an individual would need to meet the definition of a disabled person under the Disability Discrimination Act 1995 (DDA) as amended. Under the Act someone is considered disabled if they have a 'physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day to day activities'. The Disability Discrimination Act 2005 has widened the definitions providing new protections for people with cancer, HIV and multiple sclerosis, effectively from the point of diagnosis. The restriction that mental illness must be 'clinically well-recognised' before it is judged to be a mental impairment has also been removed.

Under the employment provisions (Part 2) of the Act an employer is required not to discriminate against a disabled person for a reason related to their disability. Discrimination occurs when for a reason related to the person's disability an employer treats someone less favourably than he would treat other people and cannot justify this treatment. Harassment on the grounds of disability is explicitly outlawed.

An employer also needs to consider reasonable adjustments to premises, practices or procedures, if these would otherwise put a disabled person at a substantial disadvantage. Examples of reasonable adjustments could include allocating some of the disabled person's duties to another employee, providing a piece of specialist equipment or allowing the disabled person to be absent during working hours for rehabilitation, assessment or treatment. The duty to make reasonable adjustments applies to any aspect of employment including the recruitment process, access to training and promotion, access to work benefits or facilities and selection for redundancy. It is worth noting that the employment provisions are not anticipatory and therefore the employer is only required to consider the needs of an actual disabled employee or in the case of making adjustments to a recruitment process a disabled job applicant. Since 2004, Part 2 has covered all employers regardless of their size, with the exception of service in the Armed Forces. From this date the employment duties have also included provisions outlawing job advertisements which imply that any candidate's success depends on him not having a disability or any specific disability or which indicates reluctance on the part of the employer to make reasonable adjustments. Since 2005 third-party publishers e.g. newspapers have been liable for publishing discriminatory advertisements.

The Equality Commission for Northern Ireland is empowered to take legal action in respect of discriminatory job advertisements.

However the DDA is based on the concept of 'reasonableness' and recognises the need to maintain a balance between the rights of disabled people and the interests of employers. In deciding what is reasonable factors such as the cost of the adjustment, the employer's resources and the effect of the adjustment, would all be taken into account.

People who have or have had disabilities and believe that is why they have been discriminated against in employment matters may make a complaint to an Industrial Tribunal (usually within three months of the alleged act having taken place). However before doing so they should normally follow the statutory procedures for dispute resolution – see the Complaints and remedies section. Free material on the Act's provisions can be obtained from: **The Equality Commission for Northern Ireland – Tel: 028 90 500 600.**

More detailed information and examples are available in the 'Code of Practice for the Elimination of Discrimination in the Field of Employment against Disabled Person or Persons who have had a Disability'. This is a priced publication which can be obtained from: **The Stationery Office Bookshop at 16 Arthur Street Belfast – Tel: 028 90 238 451.**

Sexual Orientation and Religion or Belief

The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 and The Fair Employment and Treatment (Northern Ireland) Order 1998 make it unlawful to discriminate against someone or harass someone on grounds of sexual orientation or religion or belief in employment and vocational training. The Regulations apply in all workplaces large or small throughout Northern Ireland both in the private and public sectors. They cover all aspects of the employment relationship, including recruitment, pay, working conditions, training, promotion, dismissals and references.

'Discrimination' means treating someone less favourably than others because of their sexual orientation or their religion or belief and covers instructing someone to discriminate against another person. It includes applying provisions, criteria or practices which disadvantage people because of a particular sexual orientation or religion or belief unless they can be objectively justified. Discrimination also includes victimising someone who has made a complaint under these Regulations – for example, if someone made a formal complaint of discrimination or had given evidence in a tribunal case.

'Harassment' means unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. The legislation covers perception of sexual orientation or perception of religion or belief. Therefore it protects people who are assumed – correctly or incorrectly – to be of a particular sexual orientation or to have a particular religion or belief. The legislation also protects people who are

discriminated against because of the sexual orientation or the religion or belief of the people with whom they associate for example their family and friends.

Similarly to sex and race legislation there are certain exceptions where a job has to be done by a person of a particular sexual orientation or religion or belief but these apply in a very limited set of circumstances. In most cases a complaint must be made to the Industrial Tribunal though in cases involving Institutes of Further and Higher Education proceedings must be brought in the High Court.

Further information on these regulations can be obtained from **The Equality Commission for Northern Ireland – Tel: 028 90 500 600** – see Appendix 2.

Age Discrimination

The Employment Equality (Age) (Northern Ireland) Regulations 2006 outlaw unjustified age discrimination in employment and vocational training. They gave individuals important new rights, extended existing rights and sped up the removal of traditional barriers. They apply to all employers in the private and public sector, vocational training providers, trade organisations, qualifications bodies and employment agencies and were extended to cover trustees and managers of occupational pension schemes. They cover employees of any age – whether younger or older – and other workers, office holders and partners of firms.

The Regulations outlaw:

- direct discrimination on grounds of age unless this is objectively justified;
- indirect discrimination (e.g. applying generally a criterion, provision or practice which disadvantages people of a particular age or age group) unless it can be objectively justified;
- victimisation (e.g. for making a complaint about age discrimination);
- instructions to discriminate; and
- harassment on grounds of age.

Employers cannot discriminate on grounds of age in recruitment, promotion, transfer or training or in the terms and conditions of employment. Discrimination may be lawful if there is a genuine occupational requirement for the job to be filled by a person having a characteristic related to age. An organisation advising and promoting rights for older people for example may be able to show that it is essential that its Chief Executive – who will be the public face of the organisation – is of a certain age. Providers of vocational training cannot discriminate on age grounds in relation to that training or access to it nor can the provider harass a person seeking or undergoing training.

In relation to retirement employees have the right to request to work beyond retirement age and the employer has a duty to consider such requests. The upper age limits on unfair dismissal and redundancy have been removed as well as the lower age limit for redundancy pay. This means older employees get the same rights to claim unfair dismissal – or to receive a redundancy payment – as younger employees. Employees can generally bring a claim before the Industrial Tribunals in line with other workplace anti-discrimination legislation.

For further information contact: **The Equality Unit of the Office of the First Minister and the Deputy First Minister (OFMDFM) Tel: 028 9052 3193** or alternatively visit their website: www.ofmdfmni.gov.uk

OTHER STATUTORY EMPLOYMENT RIGHTS

Asserting a Statutory Employment Right

Employees may complain to an Industrial Tribunal if they are dismissed (including selection for redundancy when others in similar circumstances are not selected) for bringing proceedings against their employer to enforce certain rights or for alleging the employer has infringed those rights. This protection applies to all employees regardless of their length of service. To benefit the employee need not necessarily have specified the right so long as it was reasonably clear to the employer what the right was. Provided they act in good faith employees are protected regardless of whether they qualified for the right they sought to assert and regardless of whether that right had in fact been infringed.

Employees can claim protection if they are dismissed after asserting rights relating to:

- written statement of employment particulars;
- itemised pay statement;
- trade union duties and activities or training;
- unlawful deductions from pay;
- not having to make unauthorised payments to employer;
- guarantee payments;
- opting out of shop or on-course betting work on Sunday;
- detriment in cases about health and safety, Sunday working, working time, trusteeship of employee pension schemes, employee representatives, time off for study and training, protected disclosures, maternity, parental, paternity, adoption or domestic leave, or grounds related to trade union membership or activities;

- matters connected to making a request under the flexible working provisions of the Employment (Northern Ireland) Order 2002;

- remuneration during suspension on medical grounds;

- time off:

  (i) for public duties;

  (i) to look for work or make arrangements for training prior to redundancy;

  (iii) for ante-natal care;

  (iv) for dependants;

  (v) for employee pension scheme trustee or director's duties or training;

  (vi) for study or training for young people; and

  (vii) for employee representatives;

- minimum notice terminating employment;

- deduction of unauthorised or excessive union subscriptions;

- employer paying contribution to a union's political fund;

- consultation about redundancy or business transfer; or

- working time, rest periods, breaks and annual leave.

Similar protection is provided for employees who are dismissed for certain actions under the Transnational Information and Consultation of Employees Regulations 1999 or the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000, The European Public Limited-Liability Company (Northern Ireland) Regulations 2004, Information and Consultation of Employees Regulations (Northern Ireland) 2005, The European Cooperative Society (Involvement of Employees) Regulations 2006 or because they qualify for:

- the National Minimum Wage (NMW);

- Working Families Tax Credit;

- or because any action is taken (or even proposed to be taken) to enforce any of these rights.

Trade Union Membership and Activities and Non-Membership of a Union

Employees have the right to join, or not join, a trade union of their choice. Their employer may not dismiss them, select them for redundancy, or make them suffer detriment for being, or proposing to become a union member, nor for taking part in the union's activities, at an appropriate time. They are similarly protected if they choose not to belong to a union, or refuse to join one. Dismissals which infringe these rights may be taken to an Industrial Tribunal regardless of the employee's length of service. Employees who claim to have been unfairly dismissed in this way (except those complaining of unfair selection for redundancy) can also apply to the Industrial Tribunal for an order of interim relief (which requires the employer to continue their contract of employment or to re-employ them pending the final outcome of the case).

For further information on these rights see the booklets: **'Union membership: rights of members and non-members' ER31** and **'Unfairly dismissed?' ER13.**

Taking Action on Health and Safety Grounds

An employee may not be dismissed, selected for redundancy (when others in similar circumstances are not selected) or subjected to any detrimental action for taking certain types of action on health and safety grounds.

These rights apply to all employees, regardless of their length of service, who:

- carry out or propose to carry out activities which their employer has designated them to carry out in connection with preventing or reducing risks to health and safety at work;

- perform or propose to perform functions they have as official or employer-acknowledged health and safety representatives or committee members;

- bring to their employer's attention by reasonable means - and in the absence of a representative or committee with whom it would be reasonably practicable for them to raise the matter - a concern about circumstances at work which they reasonably believe are harmful to health and safety;

- in the event of danger which they reasonably believe to be serious and imminent and which they could not reasonably be expected to avert, leave, or propose to leave, the workplace or any dangerous part of it or (while the danger continues) refuse to return; or

- in circumstances of danger which they reasonably believe to be serious and imminent take, or propose to take, appropriate steps to protect themselves or others.

All employees have the right to complain to an Industrial Tribunal if any of these rights are infringed. Where health and safety representatives or committee members or those designated to carry out workplace health and safety activities (which could include for example first-aiders) are dismissed or selected for redundancy they are entitled to compensation without a statutory limit. In other cases of dismissal or selection for redundancy on health and safety grounds the remedies will be subject to the same limits as under the ordinary unfair dismissal provisions. For further details see either the booklet **'Dismissal: fair and unfair - a guide for employers' ER18** or **'Unfairly Dismissed?' ER13.**

Where the employee has been subjected to some other detriment relating to taking action on health and safety grounds the Industrial Tribunal will award the compensation it considers just and equitable in all the circumstances taking into account the particular infringement and any loss incurred.

Suspension from Work on Medical Grounds

Certain health and safety regulations require employees to be suspended from their normal work on medical grounds when their health would be endangered if they continued to be exposed to a substance specified in the regulations. These provisions cover exposure to ionising radiation lead and some other hazards. Further details can be found in the booklet: **'Suspension from work on medical or maternity grounds' ER10.**

Transfer of a Business or Undertaking

The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to the transfer of an undertaking or part of an undertaking to a new employer (for example as the result of a sale) in respect of Northern Ireland. The Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 make provision to cover cases where services are out-sourced, in-sourced or assigned by a client to a new contractor (described as 'service provision changes'). These Regulations replace the previous 1981 Transfer of Undertakings (Protection of Employment) Regulations. The employees automatically become employees of the new employer as if their contracts of employment were originally made with the new employer and the new employer takes over all employment liabilities of the old employer (except criminal liabilities and certain occupational pension rights)**.**

Employees are entitled to object to their contract being transferred to the new employer but in doing so they normally lose the right to claim there was a dismissal unless they can show that the transfer would have involved a substantial and detrimental change in working conditions. If either the new or the old employer dismisses an employee solely or mainly because of the transfer the dismissal is considered unfair. However if the main reason for dismissal by either employer is an economic, technical or organisational one

that is connected to the transfer and entails changes in the workforce, an Industrial Tribunal may consider it to be fair provided that the Industrial Tribunal also finds that the employer acted reasonably in treating this reason as sufficient to justify dismissal.

Sunday Shop and On-course Betting Work

Shop workers have the right not to be dismissed, selected for redundancy (when others in similar circumstances are not selected) or subjected to other detrimental action for refusing or proposing to refuse to work on Sundays.

There are similar rights for on-course betting workers - that is broadly all employees at horse race courses or licensed tracks whose work involves dealing with betting transactions. For further information see the STI leaflet: **'New Employment Rights for Shop Workers'** available free from **The Department for Employment and Learning** - see Appendix 2.

Working Time

The Working Time Regulations (Northern Ireland) Order 1998 give workers the right to:

- work no more than an average 48 hours a week although individuals may choose to work longer;
- 4.8 weeks' (24 days if you work a 5 day week) paid leave a year (increasing to 5.6 weeks in 2009);
- 11 consecutive hours' rest in any 24-hour period;
- an in-work rest break of 20 minutes if the working day is longer than six hours;
- one day off each week; and
- a limit on the normal working hours of night workers to an average 8 hours in any 24-hour period and an entitlement for night workers to receive regular health assessments.

The night work limits and the rights to rest periods and breaks may be modified in certain special circumstances. The Regulations apply not only to employees but also to workers which includes the majority of agency workers and freelancers. The Regulations were amended on 1 August 2003 to extend working time measures in full to all non-mobile workers in road, sea, inland waterways and lake transport, to all workers in the railway and offshore sectors and to all workers in aviation who are not covered by the Sectoral Aviation Directive. The Regulations were extended to junior doctors from 1 August 2004. Mobile workers in road transport have different protections. Those subject to European drivers' hours rules 3820/85 are entitled to four weeks' paid annual leave and (if they are night workers) health assessments from 1 August 2003.

Young workers (those over the minimum school leaving age but under 18) are entitled to:

- 12 consecutive hours rest between each working day;
- 2 days' weekly rest and a 30 minute in-work rest break when working longer than four and a half hours;
- 4.8 weeks' paid annual leave (then 5.6 weeks in 2009).

The following changes for young workers took effect in 2003:

- working time to be limited to eight hours a day and 40 hours a week;
- prohibition of night-work between 10-00pm and 6-00am or between 11-00pm and 7-00am; and
- derogations from the working time limit and night-work prohibition permitted in specific circumstances and in the case of the night-work prohibition, specific sectors.

Workers may complain to an Industrial Tribunal if they are being denied rest periods, breaks or the paid annual leave entitlements. The limits and health assessments (if a night worker) are enforced by the Health and Safety Executive for Northern Ireland, District Council Environmental Health Departments, the Civil Aviation Authority and the Driver and Vehicle Testing Agency. Employees may complain to an Industrial Tribunal of unfair dismissal (regardless of their length of service) if they are dismissed for exercising rights under these Regulations and workers who are not employees may complain that they have suffered detriment if their contracts are terminated for this reason. Both employees and workers who are not employees are also protected from other detrimental action or deliberate inaction by their employer in respect of their working time rights.

Protected Disclosures

Workers who 'blow the whistle' on wrongdoing in the workplace can complain to an Industrial Tribunal if they are dismissed or victimised for doing so. An employee's dismissal (or selection for redundancy) will be unfair if it is wholly or mainly for making a protected disclosure within the meaning of Part VA of the Employment Rights (Northern Ireland) Order 1996 (inserted by the Public Interest Disclosure (Northern Ireland) Order 1998). Workers who are not employees can complain that they have suffered a detriment if their contracts are terminated for making such a disclosure, with compensation awarded on the same basis as for unfair dismissal. Both employees and other workers are also protected from other detriment by their employer. For further information see: **'Guide to the Public Interest Disclosure (Northern Ireland) Order 1998'**.

Disciplinary and Grievance Hearings

Workers are entitled to be accompanied at certain disciplinary and grievance hearings by a fellow worker or a trade union official of their choice provided they make a reasonable request to be accompanied. They also have the right to a reasonable postponement of the hearing within specified limits if their chosen companion is unavailable at the time the employer proposes. Workers have the right to take paid time off during working hours to accompany fellow workers employed by the same employer.

These rights apply to workers including agency workers and home workers though not to those who are in business solely on their own account. For further information see the: **'Code of Practice on Disciplinary and Grievance Procedures'** available from the LRA - at Appendix 2.
An Industrial Tribunal will consider a worker has been unfairly dismissed, regardless of his age or length of service if the dismissal was for exercising, or seeking to exercise, the right to be accompanied or for accompanying or seeking to accompany another worker nor may an employer subject workers to any other detrimental treatment on these grounds.

The Right to Apply to Work Flexibly for Carers of Adults and the Duty on Employers to Consider Requests Seriously

The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations (Northern Ireland) 2007 extended the scope of the right to request flexible working to include carers of adults. Carers who are eligible to make requests are defined in the above subordinate legislation. The procedure is identical to that which applies to the current right to request flexible working for parents of young children - see section on Parental Legislation.

Part-time Workers (Prevention of Less Favourable Treatment) (Northern Ireland) Regulations 2000

The Regulations aim to ensure that part-time workers are not treated less favourably than comparable full-timers unless the less favourable treatment can be justified on objective grounds.

Principally this means they should:

- receive the same rates of pay (including overtime pay once they have worked normal full-time hours);
- not be treated less favourably for contractual sick pay or maternity pay purposes or discriminated against over access to pension schemes or pension scheme benefits;
- not be excluded from training simply because they work part-time;
- receive holiday entitlement pro rata to comparable full-timers;

- have any career break schemes, contractual maternity leave and parental leave made available to them in the same way as for full-time workers; and

- not be treated less favourably in the criteria for selecting workers for redundancy.

Part-time workers who believe their treatment infringes these regulations have the right to make a request in writing for a written statement within 21 days giving the employer's reasons for the treatment. Employees will be held to be unfairly dismissed (or selected for redundancy) regardless of age or length of service if the main reason for the dismissal is that:

- they exercised or sought to enforce rights under the Regulations, refused to forgo them or alleged that the employer had infringed them;

- they gave evidence or information in connection with proceedings brought by an employee under the Regulations; or

- the employer believed the employee intended to do any of these things.

Though only employees may complain of unfair dismissal, workers who are not employees may complain to an Industrial Tribunal that they have suffered a detriment if their contracts are terminated for any of these reasons - compensation being awarded on the same basis as for unfair dismissal. Both employees and other workers are also protected from other detrimental treatment for these reasons.

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 provide that fixed-term employees should not be treated less favourably than comparable permanent employees on the grounds they are fixed-term employees unless this is objectively justified. Any such less favourable treatment must be actually necessary to achieve a legitimate objective and must also be an appropriate way to achieve it. Employees who believe their rights are infringed under these Regulations may present their case to an Industrial Tribunal.

They apply to employees on contracts that last for a specified period of time or will end when a specified task has been completed or a specified event does or does not happen. Examples include employees covering for maternity leave and peaks in demand and employees on task contracts such as setting up a database. An example of where less favourable treatment may be justified could be the disproportionate cost of giving a company car to an

employee on a short fixed-term contract just because the comparator has one.

Less favourable treatment may be assessed in one or two ways, either each of the fixed-term employees' terms and conditions of employment should not be less favourable than the equivalent treatment given to their comparator or the fixed-term employee's overall package of conditions should not be less favourable. Fixed-term employees have a right to ask for a written statement setting out the reasons for less favourable treatment if they believe that this may have occurred. The employer must provide this statement within 21 days.

Use of successive fixed-term contracts is limited to four years unless further fixed-term contracts are justified on objective grounds. However it will be possible for employers and employees to increase or decrease this period or agree a different way to limit the use of successive fixed-term contracts via collective, or workforce agreements. Service accumulated from 10 July 2002 counts towards this four-year limit. If a fixed-term contract is renewed after the four-year period it is treated as a contract for an indefinite period (unless the use of a fixed-term contract is objectively justified). Fixed-term employees have a right to ask their employer for a written statement confirming that their contract is permanent or setting out objective reasons for the use of a fixed-term contract beyond the four-year period. The employer must provide this statement within 21 days. Fixed-term employees should receive information on permanent vacancies in their organisation. The end of a task contract that expires when a specific task has been completed or a specific event does or does not happen counts as a dismissal in law as does non-renewal of a fixed-term contract concluded for a specified period of time.

Rehabilitation of Offenders

Broadly speaking anyone who has been convicted of a criminal offence and who is not convicted of a further offence during a specified period (the 'rehabilitation period') becomes a 'rehabilitated person' and the conviction becomes spent. This means it does not have to be declared for most purposes such as applying for a job. The 'rehabilitation period' depends on the sentence and runs from the date of conviction. A conviction resulting in a prison sentence of more than thirty months can never become spent.

Under the Rehabilitation of Offenders (Northern Ireland) Order 1978 a spent conviction - or failure to disclose a spent conviction or any circumstances connected with it - is not a proper ground for dismissing or excluding a person from any office, profession, occupation, or employment or for prejudicing a person in any way in any occupation or employment. However there are some exceptions to the Order (which relate broadly to work with children, the sick, disabled people and the administration of justice). Where an exception applies an individual must if asked disclose all convictions including spent ones. For further information see: **'Criminal records and employment' ER22.**

COMPLAINTS AND REMEDIES

Resolving Disputes in the Workplace

Where there is a dispute about a workplace issue involving rights and responsibilities those involved should try to sort out the matter between themselves. Whether the employee is complaining (raising a grievance) about something the employer has done or the employer has concerns about the employee's work or behaviour (a disciplinary matter) it is generally a good idea to talk the matter over informally and try to get it resolved as soon as possible.

If this approach fails it is normal to involve line management and a trade union representative (where there is one) to explore potential solutions. If the dispute goes beyond this point without being resolved, employers and employees should engage in a formal process to ensure that the workplace dispute is properly discussed. Even at this stage it can be useful to seek outside assistance or advice from the Labour Relations Agency (LRA). The LRA may be able to help resolve the dispute.

If the dispute continues and the employee or the employer fails to follow the process this could influence the outcome of a subsequent claim to an Industrial Tribunal or a Fair Employment Tribunal. However, where a dispute is likely to result in a claim being made to an Industrial Tribunal, parties to a dispute should note that the LRA offers a free and impartial Pre-claim Conciliation Service that is independent of the Tribunal process.

Advice about employment rights and what to do in the event of a dispute can be obtained from the LRA by contacting their helpline: **028 9032 1442.**

The Labour Relations Agency (LRA) Arbitration Scheme

The LRA Arbitration Scheme provides an entirely voluntary alternative to an Industrial Tribunal hearing in cases of unfair dismissal or flexible working. Arbitration is an effective method of resolving a dispute in which an independent arbitrator's decision is binding as a matter of law and has the same effect as a court judgement. The scheme is confidential, relatively fast, cost efficient, non-legalistic and informal. Detailed guidance on using LRA Arbitration for Unfair Dismissal or Flexible Working applications can be obtained on the LRA website or by ringing the LRA Arbitration Scheme section on: 028 9032 1442 - see Appendix 2.

Making a Claim to an Industrial Tribunal or the Fair Employment Tribunal

Before a claim to an Industrial Tribunal or a Fair Employment Tribunal is accepted it must meet certain conditions. It must be on an approved form provided by the Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET) - see Appendix 2 - and certain information must be provided. Once a claim is accepted the tribunal office will send a copy to the employer together with a response form which the employer must return

within 28 days. If the employer needs more time to complete the form they must write to the Industrial Tribunal office within this 28 day time limit and ask for an extension of time giving full reasons of why the extension is needed. A chairman will then decide whether to grant an extension. The Industrial Tribunal office will generally send a copy of the form to a conciliator at the LRA who will try to help the two sides settle the case if they wish to avoid the need for an Industrial Tribunal hearing.

A booklet: **'How to apply to an Industrial Tribunal'** explaining the procedures and containing a claim form is available from: **The Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET)** - see Appendix 2.

Pre-Hearing Review

A chairman may conduct a pre-hearing review of a case as a result of a request by either party or on the chairman's own initiative.

Pre-hearing reviews are held to decide:

- whether the claim or response should be struck out;
- questions of entitlement to bring or defend a claim; and/or
- if either side's case appears weak, whether a deposit needs to be paid, and if so, how much, before that side can go ahead.

Industrial Tribunal Hearing

An Industrial Tribunal normally consists of a legally qualified chairman and two lay members but in certain circumstances the chairman may sit alone. Most hearings are heard at permanent tribunal offices although additional centres are hired where necessary. Both parties should attend. They may claim travelling and other expenses within certain limits but not the cost of any legal representation. Industrial Tribunals try to keep their proceedings as simple and informal as possible. Many applicants and respondents put their own cases to the Industrial Tribunal although some may choose to have a representative who may be a lawyer, trade union official, representative of an employers' organisation or simply a friend or colleague.

Time Limits

Claims to an Industrial Tribunal must normally be made **within 3 months** of the date of the infringement of the right. Exceptions to this general rule are detailed in the booklets about the particular individual rights. In certain cases where the statutory disciplinary and dismissal or grievance procedure applies the three months may be extended to six months to allow the dispute to be resolved without involving the Industrial Tribunal - see 'Resolving Disputes in the Workplace'.

Remedies

In cases where particulars of the written statement of employment are disputed the Industrial Tribunal will decide what the correct particulars should be. In other cases where an employer is found not to have complied with one or more statutory provisions the Industrial Tribunal may award compensation to be paid by the employer to the employee. If the Industrial Tribunal decides that the employee has been unfairly dismissed the remedy can be one of re-instatement, re-engagement or monetary compensation depending on the circumstances. A compensatory award will be reduced however if the Industrial Tribunal finds the employee partly to blame for the dismissal or because the employee did not mitigate his loss - for example by making reasonable efforts to obtain another job. The use or non-use of an internal appeals procedure where available may also be taken into account in calculating the award up to a maximum of two weeks' pay. If either an employer or the employee has failed to follow a statutory disciplinary or grievance procedure where appropriate, the award may be reduced or increased by up to 50 per cent - see 'Resolving Disputes in the Workplace'.

If the Industrial Tribunal finds someone has been discriminated against on grounds of race, sex or disability it may make one or more of the following:

- a declaration of the rights of those involved;
- if the claimant is still employed by the respondent a recommendation that the employer take action to remedy the discrimination;
- an award of compensation.

There is no statutory maximum on awards for sex, race, or disability discrimination and such awards may also include an amount for injury to feelings.

Costs Preparation Time and Wasted Costs Orders

An Industrial Tribunal or chairman has the power to award up to £10,000 costs against a legally represented party where it finds that the case was misconceived and had no reasonable prospect of success, or where a party, or party's representative, has behaved vexatiously, abusively, disruptively or otherwise unreasonably, in conducting the proceedings. If a party is not legally represented a tribunal or chairman may order one party to make a payment for the preparation time of another party. If a representative acts improperly, unreasonably or is negligent, a wasted costs order can be made against him.

Breach of Contract Claim

Employees who suffer a measurable financial loss because their employer has departed from the agreed terms of their contract of employment (or of any

other contract connected with employment) can seek damages by making a breach of contract claim. Normally this must be made to a High Court but if the employment has ended and if the amount of compensation they are claiming is less than £25,000 it may be made to an Industrial Tribunal. If employees wish to claim more they cannot first seek £25,000 from an Industrial Tribunal and then go on to seek the balance from a High Court.

Further details are given in the booklet: **'Contracts of employment: changes, breach of contract and deductions from wages' ER21.**

Employer's Counter-Claim

Employers who suffer a measurable financial loss because an employee has departed from the agreed terms of the contract of employment (or of any other contract connected with employment) can seek damages by making a breach of contract claim - or if the employee has already claimed breach of contract to the Industrial Tribunal, a counter-claim. Again such a claim must normally be made to a High Court but, where the employment has ended and if it is in response to an existing breach of contract claim that an employee has already made to an Industrial Tribunal, it may be made to an Industrial Tribunal.

Further details are given in the booklet: **'Contracts of employment: changes, breach of contract and deductions from wages' ER21.**

Further Information

Further information on the Industrial Tribunals and the Fair Employment Tribunal can be found on the Office of Industrial Tribunals and Fair Employment Tribunal website: www.employmenttribunalsni.org

The Office of the Industrial Tribunals and the Fair Employment Tribunal cannot provide legal advice. Advice is available from the LRA - see Appendix 2 for their contact details.

Labour Relations Agency (LRA)

For unfair dismissal cases the employer and employee may agree to have their case heard by an independent conciliation officer of the LRA instead of being heard by an Industrial Tribunal. Because it is a voluntary alternative both parties must agree to it. The conciliation officer's decision has the same effect as a court judgement. The arbitration process is confidential, relatively fast, non-legalistic and informal. Hearings are held somewhere convenient to both employer and employee and do not normally take longer than half a day. The conciliation officer asks questions rather than witnesses being cross-examined by the other party or a representative and there is no swearing of oaths. Instead of applying strict law or legal precedent the conciliation officer takes into account general principles of fairness and good practice in the workplace including **The LRA Code of Practice on Disciplinary and Grievance Procedures.**

After the hearing the conciliation office issues a binding ‘award’ summarising each party’s case, the conciliation officer’s main considerations, the decision and if the dismissal is unfair, the remedy. The same remedies are available as in Industrial Tribunal cases: re-instatement, re-engagement or monetary compensation. This ‘award’ is confidential to the LRA and the two parties.

There is further information about the scheme in the LRA booklet: **‘The LRA arbitration scheme for the resolution of unfair dismissal’**. The LRA has a general duty of promoting the improvement of industrial relations. It can supply information on legislation and advise on a wide range of employment matters. Employers and employees can request assistance from LRA conciliation officers to help settle disputes. In most cases where employees or trade unions have a complaint against an employer that they could take or have taken to an Industrial Tribunal an LRA conciliation officer can help the parties try to settle the case without the need for a Tribunal hearing. Employees similarly can obtain assistance from the LRA. For contact details for the LRA see Appendix 2.

LRA conciliation in cases which are, or could be, the subject of complaints to Industrial Tribunals, is explained in the LRA leaflet: **‘Individual Employment Rights: Conciliation Explained’** which can be obtained from the LRA - see Appendix 2.

The **LRA Code of Practice on Disciplinary and Grievance Procedures** aims to help employers, workers and their representatives by giving practical guidance on how to deal with disciplinary and grievance issues. It also has guidance on a worker’s right to be accompanied at a disciplinary or grievance hearing. Failure to observe any part of the Code does not in itself make employers liable to proceedings but it may be used in evidence at an Industrial Tribunal. If the Tribunal considers it relevant to any question arising in the proceedings it must take the Code into account in determining that question. Similarly the Code must be taken into account by the arbitrators appointed to determine unfair dismissal cases under the LRA arbitration service.

Appendix 1: Booklets in this series

Booklets in this series are available online from www.delni.gov.uk/erbooklets or can be obtained by contacting the Department.

ER 1	Individual rights and responsibilities of employees
ER 2	Written statement of employment particulars
ER 3	Redundancy entitlement statutory rights
ER 4	Redundancy consultation and notification
ER 5	Your rights if your employer is insolvent
ER 6	Unjustifiable discipline by a trade union
ER 7	Time off for public duties
ER 8	Continuous employment and a week's pay
ER 10	Suspension from work on medical or maternity grounds
ER 12	Pay statements: what they must itemise
ER 13	Unfairly dismissed?
ER 14	Guarantee payments
ER 15	Rights to notice and reasons for dismissal
ER 16	Maternity rights: a guide for employers and employees
ER 17	Help with meeting redundancy costs for employers in financial difficulty
ER 18	Dismissal: fair and unfair - a guide for employers
ER 19	Limits on payments and awards
ER 21	Contracts of employment: changes, breach of contract and deductions from wages
ER 22	Criminal records and employment
ER 23	Payment of union subscriptions through "check off"
ER 24	Time off for dependants
ER 25	Parental leave: a guide for employers and employees
ER 26	Time off for study or training

ER 27	Industrial action and the law: a guide for employees
ER 28	Trade union executive elections
ER 29	Industrial action and the law: a guide for employers
ER 30	Industrial action and the law: a guide for individuals whose supply of goods or services is affected by unlawful industrial action
ER 31	Union membership: rights of members and non-members
ER 33	Trade union political funds
ER 34	Rights to paternity leave and pay
ER 35	Adoptive parents: a guide for employers and employees
ER 36	Flexible working: a guide for employers and employees

Additional employment rights publications, covering a range of other issues, can be found online at www.delni.gov.uk/erpublications or can be obtained from the Department.

Appendix 2: Useful addresses

Certification Officer for Northern Ireland
10-12 Gordon Street
Belfast
BT1 2LG

Tel: 028 9023 7773
Fax: 028 9023 2271
Textphone: 028 9023 8411
Web: www.nicertoffice.com
E-mail: info@nicertoffice.com

Department for Employment and Learning
Employment Relations Policy and Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7580
Web: www.delni.gov.uk/er
E-mail: erbooklets@delni.gov.uk

Department for Employment and Learning
Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7956
Freephone: 080 0585 811
Fax: 028 9025 7555
Web: www.redundancyni.gov.uk
E-mail: rpsquery@delni.gov.uk

The Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Tel: 028 9050 0600
Fax: 028 9033 1544
Textphone: 028 9050 0589
Web: www.equalityni.org
E-mail: information@equalityni.org

The Health and Safety Executive for Northern Ireland
83 Ladas Drive
Belfast
BT6 9FR

Tel: 028 9024 3249
Fax: 028 9023 5383
Textphone: 028 9054 6896
Freephone Helpline: 080 0032 0121
Web: www.hseni.gov.uk

Industrial Court
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599
Fax: 028 9025 7555
Web: www.industrialcourt.gov.uk
E-mail: enquiries@industrialcourt.gov.uk

Labour Relations Agency
Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: 028 9032 1442
Fax: 028 9033 0827
Textphone: 028 9023 8411
Web: www.lra.org.uk
E-mail: info@lra.org.uk

Labour Relations Agency
Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Tel: 028 7126 9639
Fax: 028 7126 7729
Textphone: 028 9023 8411
Web: www.lra.org.uk
E-mail: info@lra.org.uk

NIBusiness Info
(website giving information on a wide range of issues for employers)

Web: www.nibusinessinfo.co.uk

Office of the Industrial Tribunals and the Fair Employment Tribunal
Killymeal House
2 Cromac Quay
Ormeau Road
Belfast
BT7 2JD

Tel: 028 9032 7666
Fax: 028 90250100
Web: www.employmenttribunalsni.org

people:skills:jobs:

Department for
Employment
and Learning
www.delni.gov.uk

THE DEPARTMENT:
Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

Further information:
Telephone: 028 9025 7580
E-mail: employment.rights@delni.gov.uk
Website: www.delni.gov.uk