

DISCIPLINARY ISSUES
PAY & BENEFITS
MANAGING PERFORMANCE
REDUNDANCY
TRAINING & DEVELOPMENT
ANNUAL LEAVE
PART-TIME EMPLOYEES
RECRUITMENT
MATERNITY RIGHTS
**EMPLOYERS'
HANDBOOK**

Guide to Employment Law
& Good Practice

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INTRODUCTION

The purpose of this publication is to provide support to businesses on the legalities of employing people in Northern Ireland and also to provide advice and guidance on effective management practices to enable employees to make the maximum contribution to business success.

There is a wealth of information available on employment law compliance in Northern Ireland, particularly on the NI Business Info website (www.nibusinessinfo.co.uk) and the websites of the NI statutory agencies such as the Labour Relations Agency (www.lra.org.uk), the Equality Commission (www.equalityni.org) and the Health and Safety Executive for Northern Ireland (www.hseni.gov.uk). The main aim of this guide is to compliment these resources by providing succinct, step by step procedures and guidance on the main employment matters which will be of concern to small employers in particular. When appropriate, template forms and guidance are also provided. These resources can be downloaded in editable format at www.nibusinessinfo.co.uk. The bibliography contains details of other resources where more detail may be obtained on any of these issues.

This guide therefore provides advice on getting the basics right i.e. ensuring that employees' legal rights are protected; that they work in a safe and healthy physical environment; and that standards and expectations are clear. Understanding employee rights and your responsibilities as an employer provides an important basis for developing an effective workplace.

Building on a good foundation will allow you to consider and effectively manage all aspects of the employees lifecycle to support business success. (See The Employee Lifecycle diagram.)

However, successful people management also involves creating the right environment to enable employees to thrive and to perform to the best of their ability. This starts with attracting and selecting the right people to work in the business, people who have the right skills and the right attitude. The right people are self motivated to produce the best results and to contribute to the company's success. They don't need to be tightly managed but should manage themselves. To do this, they need to have a clear understanding of the organisation's priorities and how their role contributes to these. People should have a clear idea of what is expected of them but should be allowed to contribute their thinking and experience as to how to achieve this. Clearly stated goals and regular communication of relevant company information are necessary if people are to go the extra mile and work together effectively on the things that matter to the organisation.

Leaders have an important role to play in assisting and enabling employees to focus on the things that will strengthen the business and ensure its future. Their actions should reinforce the values and behaviours they want to see in their teams. They can provide frameworks to guide decisions and to make sure that people work well together. They can ensure that employees know what they can do to make a difference to the business such as keeping expenses down and maintaining good customer service. Ultimately, the service and quality customers experience depends on the employees. Any company that prides itself on quality and customer service must invest time and effort in building employee competence and loyalty to the company.

Regular communication with employees helps prevent a vacuum which can be filled with rumour and speculation. Regular, well-structured meetings can ensure that employees stay connected to the organisation's objectives and can also provide an opportunity to review the company's performance.

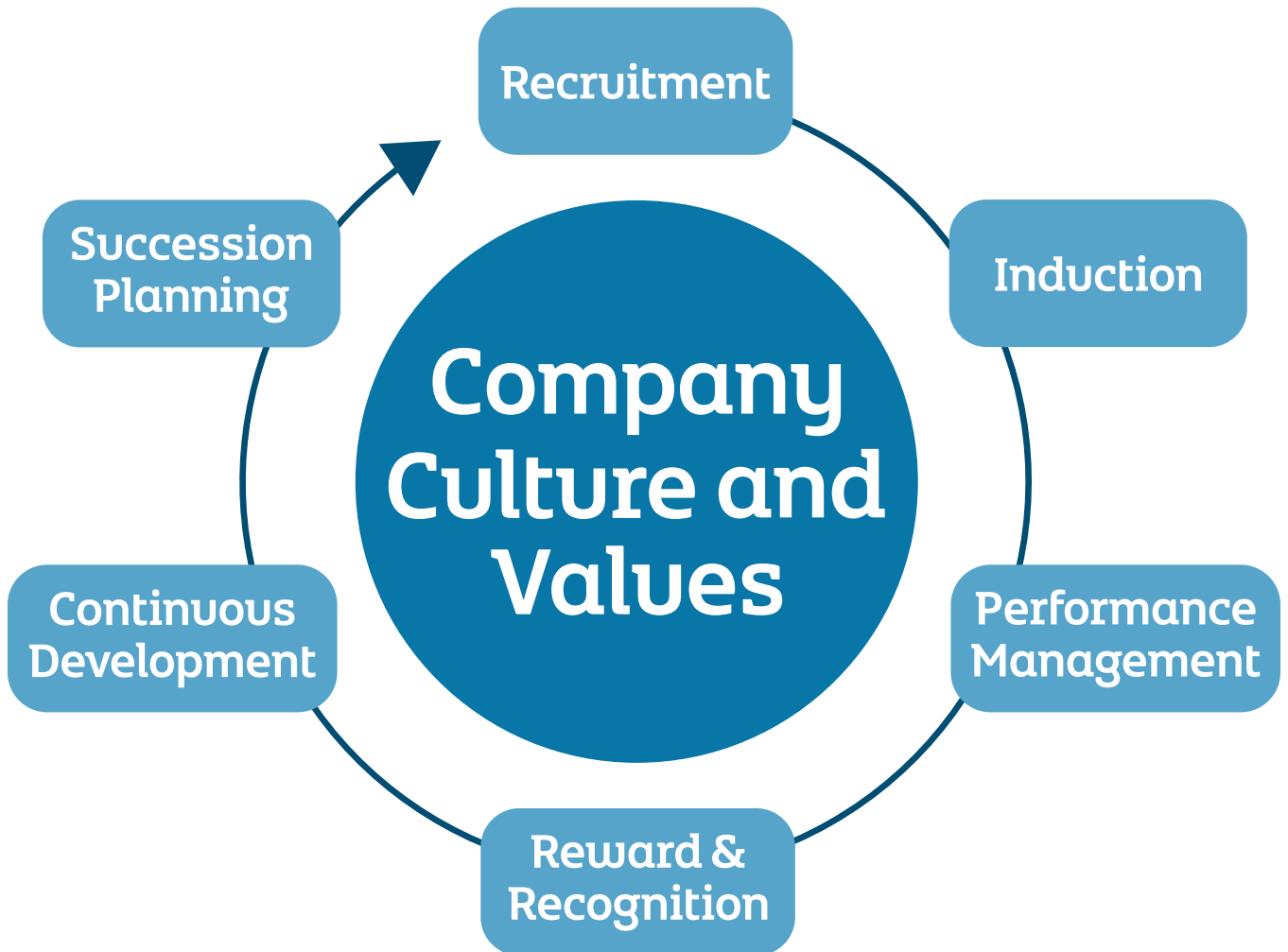
Further information and guidance on all these issues is contained in the following sections.

It is important to bear in mind that employment law changes and therefore it is recommended that the online version of this publication is checked regularly for updates at www.nibusinessinfo.co.uk

This guide provides general guidance only and should not be regarded or relied upon as a complete or authoritative statement of the law. Indeed, in view of the complexities of this area of the law it is recommended in appropriate situations that legal advice is obtained.

2017

THE EMPLOYEE LIFECYCLE



SECTION 1

SUMMARY OF STATUTORY EMPLOYEE RIGHTS

Employees have a range of legal rights derived from national or European legislation and these are summarised below.

Employers must give their employees a **written statement of their main terms and conditions of employment** within two months of commencing employment. Employers may wish to include these terms within a contract of employment. For further details see section 3 of this guide.

Employees are entitled to rates of pay which comply with the current rate of the **National Minimum Wage** and the **National Living Wage**. Separate rates exist for those aged 25 and over, for those aged 21 to 24, 18 to 20 and for 16 and 17 year olds. There is also a rate for apprentices aged under 19 or aged 19 or over and in their first year of apprenticeship. Current rates are available on the NI Business Info Website (www.nibusinessinfo.co.uk). See section 5 for further information.

Employees are entitled to an **itemised pay statement** each time they are paid. The statement must specify the gross amount of wages or salary, the amount of any fixed or variable deductions, the reasons for any such deductions and the net amount of wages or salary payable. Employees are entitled to receive the itemised pay statement at, or before, the time at which salary or wages are paid.

Workers have the right not to have unlawful deductions made from their wages. This right applies to employees and also those engaged under a contract of service or apprenticeship or any other contract under which the person is engaged to do or perform personally work or services for another party. For deductions to be lawful, they must either be required or authorised by law and allowed by the worker's contract of employment.

In this case, a copy of the relevant term or a written explanation of the term must be issued to the worker before the deduction is made and agreed to by the worker in writing before the deduction is made. Further information can be obtained from the Labour Relations Agency (www.lra.org.uk) which has published an information note on the relevant legislation (No. 7 Deductions from wages by employers).

Employees qualify for **Statutory Sick Pay (SSP)** if they are sick for four calendar days in a row, have earnings of at least the national insurance lower earnings limit and have given the required notice. Employers do not pay SSP until the fourth qualifying day (contractual or normal working day). Employees may self-certify themselves for up to 7 days of illness but thereafter a doctor's note must be provided as evidence of illness. SSP is paid for up to 28 weeks in any period of incapacity for work. Further details can be accessed from the HMRC website (www.hmrc.gov.uk). See section 19.

Workers are entitled to **paid annual leave** and entitlement starts to accrue from the first day of employment. During the first year of employment, the amount of leave a worker may take at any time is limited to the amount they have "accrued" at that time. Accrual is at the rate of one-twelfth of the annual entitlement at the beginning of each month. The amount of **statutory paid annual leave** that a worker is entitled to can be worked out by multiplying their normal working week by 5.6 (e.g. if you work five days per week = $5 \times 5.6 = 28$ days paid annual leave per year). There is no statutory right to have bank or public holidays, with or without pay. Bank or public holidays which the worker has off will count towards the worker's statutory holiday, unless their contract provides for bank or public holidays in addition to statutory holidays. See section 4.

A worker's **average working time**, including overtime, averaged over a 17 week reference period must not exceed 48 hours, unless the worker agrees to work more than this and signs an opt out agreement confirming this.

A worker who works more than six hours at a stretch is entitled to a **rest break** of 20 minutes. A worker under 18 years of age who works for more than four and a half hours at a stretch is entitled to a rest break of 30 minutes. Whether employees are paid for rest breaks depends on the terms of the employment contract. See section 4 for further information.

Employees have the right to time off work for a number of reasons, including:

- for public duties (including jury duty);
- to look for work if declared redundant; and
- for trade union duties, activities and training.

SECTION 1

A female employee is entitled to 52 weeks' **Statutory Maternity Leave** (made up of 26 weeks' ordinary maternity leave followed by 26 weeks' additional maternity leave) regardless of her length of service. A female employee is entitled to 39 weeks' **Statutory Maternity Pay** if she has been continuously employed for 26 weeks by the 15th week before the expected week of child birth and has average weekly earnings of at least the national insurance lower earnings limit. Other maternity rights include: time off for antenatal care and protection against unfair dismissal on maternity-related grounds. See section 8.

Employees may be entitled to 52 weeks' **Statutory Adoption Leave** (made up of 26 weeks' ordinary adoption leave followed by 26 weeks' additional adoption leave) if they have a child matched or placed with them for adoption. **Statutory Adoption Pay** is paid for 39 weeks. See section 10.

Employees who have worked for their employer continuously for 26 weeks by the end of the 15th week before the expected week of childbirth may be entitled to paid **paternity leave** of up to two continuous weeks for the birth or adoption of a child. See section 9. Employees may be entitled to more leave or pay if their partner returns from maternity or adoption leave before the end of the 52 week period and they qualify for Shared Parental Leave and Pay. See section 11.

Employees who have completed one year's service are entitled to 18 weeks unpaid **parental leave** for each child under the age of 18. This right applies to both parents. See section 12.

Employees who have worked for their employer continuously for 26 weeks, have the right to request **flexible working**. See section 7.

All employees are entitled to reasonable **time off work** without pay to deal with an emergency involving a dependant. See section 12.

All **part-time** workers are entitled to the same contractual rights (pro-rata) as comparable full-time workers. See section 7.

Employees with at least two years' service are entitled to **statutory redundancy pay**. See section 22.

All employees have the right to a **guarantee payment when laid off work** (so long as the contract allows the employee to be laid off, otherwise full pay is due). See section 23.

An employee who has been in continuous employment for one month or more is entitled to receive at least one week's **notice of termination of employment** if the employment has been for less than two years. Thereafter the employee is entitled to receive one week's notice for each year of completed service subject to a maximum of twelve weeks. However, an employee dismissed because of gross misconduct forfeits all notice rights.

Employees have the right to a **safe system of work**.

Employees and job seekers have the right **not to be discriminated against or subject to harassment** on the grounds of;

- sex;
- pregnancy or maternity leave;
- married or civil partnership status;
- gender reassignment;
- religious or similar philosophical belief;
- political opinion;
- race, colour, nationality, ethnic or national origins;
- sexual orientation;
- disability; or
- age.

Employers owe a special duty towards disabled job seekers and employees, **the duty to make reasonable adjustments**. Discrimination can arise where an employer fails to comply with this duty.

Anti-discrimination laws ban discrimination and harassment in relation to the recruitment of new staff; in relation to employees' terms and conditions of employment, including pay, and in the opportunities that are provided for their career development; in relation to the termination of their employment; and, in how employees behave towards one another. In addition to being held responsible for any discriminatory action on their part, an employer is likely to be held responsible for any discriminatory actions that their employee may commit in the course of carrying out their work. An employee can also be held personally liable for their actions.

SECTION 1

Employees have the right to belong or not to belong to an independent **trade union** and to not be discriminated against for their choice. Those who do so benefit from certain bargaining rights if their union is recognised by their employer. Where an employer with at least 21 employees does not recognise a union voluntarily, the union can follow a statutory procedure to obtain recognition. The issue will be referred to the Industrial Court who will determine whether or not the trade union should be recognised. Once a union has been recognised, it will have a right to be informed and consulted on a number of issues, including redundancies, health and safety and business transfers. An employer can withdraw voluntary recognition from a trade union at any time, but will need to follow a specific de-recognition procedure if recognition was originally granted under the statutory procedure. While there is no legal right to strike in the UK and employees who participate in industrial action are usually in breach of their contracts of employment, where an employee takes part in official industrial action it will be automatically unfair to dismiss an employee for taking industrial action within certain protected periods.

Employees have the right to be **transferred automatically on the same terms and conditions without loss of service related employment rights** from one employer to another when a business is transferred.

Employees have the right **not to be unfairly dismissed**. Subject to certain exceptions, employees must have 12 months' continuous service before the right not to be unfairly dismissed arises. For further information please see the LRA website (www.lra.org.uk). See also section 18.

Employees with 12 months' continuous service have the right to **written reasons for dismissal**. For further information see section 18. The request can be made either in writing or verbally but the employer must respond within 14 days of the date of the request. Failure to respond properly may result in an industrial tribunal ordering the employer to pay an award of 2 weeks pay (uncapped) and/or make a declaration as to what it finds the employer's reasons for dismissing the employee were.

An employee **dismissed** at any stage during **pregnancy, statutory maternity or adoption leave** is entitled to receive a written statement of the reasons for her dismissal even where she has not requested one and regardless of her length of service.

Employees have the right not to be dismissed, selected for redundancy or subjected to any other detriment for **health and safety reasons**.

Employees have the right not to be dismissed for asserting a **statutory employment right**.

There is no fixed retirement age for workers in Northern Ireland. Retirement age is generally when an employee chooses to retire. Compulsory retirement at any age must be objectively justified or will otherwise be an act of unlawful age discrimination.

Employees have the right to protection from dismissal or other negative consequences for **'whistleblowing'** (reporting wrongdoing in the workplace) when certain criteria are met.

See www.nibusinessinfo.co.uk for further details and guidance.

Agency workers are classed as "workers" rather than as employees. All workers, including agency workers, are entitled to certain rights which include:

- The statutory minimum paid holiday leave
- Rest breaks and limits on working time
- The National Minimum Wage or National Living Wage
- No unlawful deductions from wages
- The right not to be discriminated against on grounds of race, religious belief or political opinion, sex, sexual orientation, age or because of a disability
- Health and safety at work
- Protection for 'whistleblowing'
- Not to be treated less favourably if they work part-time.

The Agency Worker Regulations (Northern Ireland) 2011 give agency workers the entitlement to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, if and when they complete a qualifying period of 12 weeks in a particular job.

The regulations cover agency workers supplied by a temporary work agency to a hirer. This includes most agency workers that people refer to as 'temps'. The regulations also cover agency workers supplied via intermediaries.

To establish the rights in these regulations, the agency worker needs to be able to identify a comparator. The regulations do not cover the genuinely self-employed, individuals working through their own limited liability company, or individuals working on managed service contracts.

SECTION 1

Rights of agency workers

From Day 1 of their employment, an agency worker is entitled to:

- the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the hirer;
- be informed about job vacancies and have the same opportunity as any comparable worker to find permanent employment with the hirer.

After a 12-week qualifying period, an agency worker will be entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment, specifically:

- pay - including any fee, bonus, commission, or holiday pay relating to the assignment. It does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay;
- working time rights - for example, including any annual leave above that required by law; and
- automatic pension enrolment.

Agency workers (regardless of their employment status) will also be entitled to paid time off to attend antenatal appointments during their working hours.

The 12-week qualifying period does not have to be continuous

Most breaks between or during an assignment to the same job that are less than six weeks in length will simply pause the accrual of the 12 week qualifying period. Most breaks between or during an assignment to the same job that are six weeks or more will reset to zero the 12 week qualifying period.

The accrual of 12 weeks qualifying period can be paused by:

- absences for sickness and jury service (for up to 28 weeks);
- annual leave, shut downs (e.g. factory closures and school holidays); and
- industrial action (for the duration of the absence).

Pregnancy and maternity related absences, maternity leave, paternity leave and adoption leave will not pause the 12 week accrual at all. In these cases the 12 week accrual period will continue throughout the duration of the absence and include these weeks as counting towards the 12 week total.

Employer responsibilities and actions

Employers should make available all relevant information regarding the services that are available to the agency worker on day one of the assignment. For example, how to access internal vacancy information. They should also:

- provide time off for pregnant workers for antenatal appointments;
- carry out induction with agency workers;
- depending on the circumstances of the assignment, consider providing appraisals.

Further information is available at www.nibusinessinfo.co.uk

RECRUITING NEW EMPLOYEES

Introduction

Before investing in new plant and equipment, companies usually take time to carefully specify their needs to ensure that any purchases meet those needs and provide a good return on investment. Employing people represents a potentially much greater level of investment and therefore a similarly rigorous approach should be taken.

The aim is to ensure that the people employed are capable of ensuring that the business meets its objectives. It is important that managers are able to delegate with confidence rather than wasting time micro-managing or dealing with performance or disciplinary issues. The first step to effective people management is therefore getting the right people in place, people who have the ability and the motivation to get on with the job. Remember that the people who join the organisation will be ambassadors for the company if they have any dealings with customers or suppliers. They will be the ones who will keep things going when you cannot be around. There are also costs involved in recruiting new employees in terms of advertising fees and management time.

Depending on the nature of the business, people may be employed on a temporary or permanent basis and on either a full or part-time basis. Non-standard working patterns may be of mutual benefit to both the individual and the company.

Employers are legally obliged to ensure that there is no unlawful discrimination in the recruitment process, when making the decision as to whether or not to make an offer of employment to a particular applicant, and in relation to the terms of employment offered to the successful applicant. This can include a wide range of matters from setting the selection criteria to how the interviewers behave towards candidates. It is illegal to discriminate against an individual on grounds of sex, pregnancy or maternity leave, married or civil partnership status, gender reassignment, religious or similar philosophical belief, political opinion, race, disability, sexual orientation or age. It is also unlawful to treat staff less favourably on the grounds of fixed-term or part-time status. It is recommended that all staff involved in the recruitment process receive equal opportunities training and that they continue to receive it at regular intervals throughout their employment. The best strategy that employers can adopt is to try to ensure that their recruitment procedures are fair and founded on the principle of selecting the best person for the job. The Equality Commission have developed Codes of Practice and various guides to assist employers.

Taking these factors into consideration, it is well worth taking the time to make effective recruitment decisions. These decisions will be much more robust and a good result more likely if a structured process is followed. This means defining what the person will be required to do, what knowledge, skills and experience are needed to do the job effectively, determining how to attract applicants with those attributes and assessing applicants against those attributes.

To help you achieve the goal of appointing the 'best' person for the job, begin by committing to making it your policy and practice to recruit fairly. The Equality Commission have developed a model 'Recruitment and Selection Policy and Procedure' to assist you (see www.equalityni.org).

A full summary of the recruitment and selection process is attached at Appendix 2S. The key steps in the process are detailed below.

1. Define the job – prepare a Job Description

The first step in an effective recruitment process is to define the job that needs to be done. The job description should show clearly the purpose of the job and objectives, the place of the job holder in the organisational structure, the main tasks and responsibilities of the job holder and any associated tasks so that people can judge whether it is really what they want to do. If someone is already doing the job, information on what the job involves can be gathered by observing them or asking them to complete a work diary. It is important to consider carefully the 'Job Title' and also ensure that it is gender-neutral as it conveys the role to potential applicants.

See template for a job description at Appendix 2A.

2. Determine what attributes are needed to do the job – prepare a Person Specification

Following on from the job description, the person specification determines the knowledge, skills, experience, competencies and qualifications needed or required in order to perform all the duties in the job description satisfactorily. When defining the qualities needed for the job, remember that potential to develop is important and that certain skills can be taught. Skill requirements are also likely to change and employees will need to continually update their skills. Innate capabilities such as the ability and willingness to learn new skills and knowledge, and qualities such as a positive approach, enthusiasm for work, self-discipline, integrity and initiative are more difficult for an employer to develop therefore it is important to take such qualities into account during the selection process. Avoid using clichés or meaningless or ambiguous terms in the person specification. Think how you will assess every requirement included.

SECTION 2

In some workplaces, it may sometimes be lawful to designate some jobs as being open to women only, or men only, or only to people with certain religious beliefs or other equality characteristics. This is a complex topic and advice should be sought from the Equality Commission.

The person specification will produce criteria which will form the basis for selection. Equal Opportunities guidelines recommend that **objective and strictly job related criteria** are established at the beginning of the recruitment process and adhered to throughout. Each element of the person specification should **relate to an element of the job description**. This avoids a person specification turning into a “wish list” and also helps avoid discrimination claims.

Care should be taken to ensure that the person specification contains criteria which are genuinely required in order to do the job and that these criteria are justifiable and do not, even inadvertently, exclude particular groups of candidates. Try to keep an open mind and avoid making stereotypical assumptions about different groups of people and their ability to do the job.

There may be some requirements which are essential to do the job and others which would be an advantage but which are not essential. The requirements should therefore be classed as either **Essential or Desirable**. Think carefully about those requirements classed as essential. If you state that a particular criterion is essential, and this can be assessed at short-listing stage (i.e. on paper) you will not be able to interview a person who does not meet this criterion. Ensure that you are not ruling people out for unnecessary reasons. Making a criterion desirable means that you have more flexibility at the short-listing and interview stages.

The person specification helps those making the selection decision to know what they are looking for. It also shows applicants what is required - they know what aspects of their experience to highlight. The criteria developed at this stage will form the basis of the advert, the short-listing process and the interview so it is important to get them right and make sure that they do not change during the process.

See template for a person specification at Appendix 2B.

3. Attracting candidates - prepare a Job Advertisement

The Equality Commission strongly recommends that employers advertise their job vacancies widely so as to invite applicants from as many eligible candidates as possible. One of the easiest ways to meet this recommendation is to advertise in a medium proven to be accessed by all sections of the community. Options will include the press, including specialist and professional publications, recruitment websites, job centres and the Government’s online service (www.employersonlineni.com) which is free of charge.

Some media will have a local focus while others may have a national or international reach. The right one will depend on the nature of the job and the availability of the relevant skills. In addition to other media, the company website may also be used. Check with the providers on the number and profile of people accessing their services.

It is important to ensure that a sufficiently wide range of potential candidates are reached, for example recruiting only via the internet may not reach older, disabled or mobile workers and particular publications may have a wider gender or ethnic coverage.

Depending on the nature of the role, you may also wish to encourage applications from internal candidates. It is also worth considering the timing of the advert since coming up to a major holiday is generally not a good time to place an advert.

Include all of the criteria in the advert if possible and if this doesn’t make the advert too long and expensive. If not, include those which will be used in short-listing (i.e. those such as experience and qualifications which can be judged on paper).

Some criteria may be ‘Desirable’ i.e. they are not critical in order to do the job effectively, others will be ‘Essential’. It should be stated at this stage which is which.

Care should be taken over the wording of job advertisements as inappropriate wording could give rise to the risk of unlawful discrimination claims or be used as evidence of a discriminatory culture. For example, terms such as “mature” or “energetic” should be avoided as they may imply that the employer is seeking candidates only from a particular age profile. The adverts should refer to the real (as opposed to the perceived) requirements of the role. Employers should avoid presenting men, women, disabled people or those from particular ethnic backgrounds in stereotypical ways. The **Equality Commission** website (www.equalityni.org) and helpline (028 90500600) can provide further advice and guidance on advertising and avoiding the legal pitfalls.

Finally, the advert should reflect the culture of the company. Advertising is an opportunity to market the position and the company so that you attract applicants. Remember to “sell” the company and the opportunity in the advert emphasising the benefits of the position and the positive aspects of working for the company, while still presenting a realistic picture. Consider your target audience. Be honest, imaginative and avoid clichés and standard formulaic phrases. Ensure the advert is clearly set out, with good use of space and bold highlighting to catch attention. A strong and compelling company vision can also help attract applicants.

SECTION 2

When advertising online, use the kind of language job seekers will relate to. Think what words to use that will show up in internet searches. Conduct a search of similar jobs online to identify patterns of which jobs get listed first in the search results. Consider how the advert will be viewed on mobiles, tablets etc.

Adverts which include the salary tend to get a higher level of response than those which don't.

It is helpful to include a contact number or email address for interested candidates to get in touch for more information. This can save time later in the process.

If the company is using application forms and wants to ensure consistency of information received, the advert may state that CVs will not be accepted in place of application forms. All adverts should specify a closing date for receipt of completed applications.

See template for a Job Advertisement at Appendix 2C.

Some positions may be difficult to fill or may attract a low rate of response to adverts. In this case (and together with the wider recruitment decisions referred to above) it may be helpful to specifically target people through the use of personal contacts, employee referral schemes, social media sites or professional search organisations. It is perfectly acceptable to use existing personal or online contacts to inform people that an opportunity exists. It can be useful to search online professional networking sites or job sites for the skills you are looking for.

Collect feedback on any advertising media. Online sites should give information on the numbers of people viewing the job which can then be compared with the number of applicants. If the results are not effective, review the strategy. It can be helpful to invest in training to ensure that you are maximising your use of social media to attract the right quality of candidate.

4. Prepare a structured application form

Application forms make the process of short-listing and interviewing easier for the company. They should include only questions which are necessary to process the application or to determine whether the person meets the selection criteria. It is helpful to produce a **job specific application form** or appendix to the application form. This form will contain a section asking the candidates to demonstrate how they meet the criteria for this job and so **will need to be amended for each specific job role**. Because a structured application form contains questions related to the specific criteria some self-assessment is required from the candidates at this stage before an application is submitted.

The questions should relate only to those criteria which can be objectively assessed on paper. These tend to relate to qualifications (including driving licence if required for the job) and specific experience.

Using tailored application forms ensures the information is in a structured format so that you do not have to search through a CV or make assumptions about whether or not applicants really have the attributes you are seeking. It also means that you are not presented with irrelevant information and therefore makes short-listing easier.

It is not recommended that you accept CVs or speculative or casual applications for employment.

Employers may wish to ask applicants to declare if they have a criminal conviction in order to ensure that any declared convictions are not incompatible with the job. The Rehabilitation of Offenders (Northern Ireland) Order 1978 sets out a period of time from a date of conviction which will allow certain convictions to become spent.

Once a conviction is deemed spent the individual does not have to declare this on an application form. Convictions which lead to a prison sentence of more than 30 months can never become spent. Some occupations are also "excepted" - for example, those which involve working with children or vulnerable adults. In these circumstances convictions never become spent and will always be disclosable. The Northern Ireland Association for the Care and Resettlement of Offenders can provide further advice (www.niacro.co.uk).

You should provide the option of completing application forms either electronically or manually and be prepared to provide application forms in different formats (e.g. Braille) to meet the needs of disabled candidates.

If you have 11 or more employees (counting only those who work for more than 16 hours per week) you are obliged to register with the Equality Commission. Failure to do so is a criminal offence. Advice is available on their website (www.equalityni.org).

When registered you will have to **monitor** the community background (i.e. Protestant or Roman Catholic) and sex of your job applicants and your workforce. To do this you should send all job applicants a monitoring questionnaire along with the application form. Applicants should be advised to return the questionnaire to a person (your monitoring officer) who is not involved in the selection process. You should also provide a separate envelope to assist applicants to return the questionnaire to your monitoring officer. Members of the selection panel should not have access to the information contained in the applicants' monitoring questionnaires.

SECTION 2

See template for a structured application form including a monitoring form at Appendix 2D.

Employers are not legally obliged to monitor any other equality characteristics but the Equality Commission recommends doing so as it helps to promote equality of opportunity. Further advice and template monitoring forms are available from the Equality Commission. (www.equalityni.org).

Application forms should be provided in response to requests from candidates or made available through the company's or other recruitment website. Applicants should also be provided with a copy of the job description and person specification. The date each application form is received should be recorded either by using a date stamp or recording the date on a separate form. Applications received after the specified closing date should not be considered.

5. Carry out short-listing

Where the short-listing criteria require some measure of judgement, rather than a simple yes or no, it is useful to have a short-listing panel of at least two people, preferably of mixed gender and community background, to help mitigate the risk of discrimination claims/bias arising in the process. If possible, the same people should sit on the short-listing and interview panels to ensure consistency of approach. It also permits debate amongst the panel on borderline candidates. Before short-listing begins the short-listing panel should review the criteria to be sure that they are clear on exactly what is required in order for a candidate to be short-listed. The Qualifications Comparison Service, available through the Jobs and Benefits Offices, can assist you when checking overseas qualifications to ensure that they are equivalent to what you are seeking. To avoid claims for discrimination or bias in the short-listing process it is good practice to ensure that the panel does not have any personal information about the applicants.

See template for short-listing form at Appendix 2E.

The short-listing form should be tailored to the criteria from the person specification which is assessable on paper (normally experience and qualifications).

See the short-listing guidance at Appendix 2F.

Each member of the short-listing panel should be provided with a copy of each of these documents.

Following short-listing, prepare a timetable for interviews, ensuring enough time is allotted to each candidate. Send letters to all short-listed candidates informing them of date, time and venue. The letter should provide contact details for candidates requiring special assistance or reasonable adjustments related to a disability (see paragraph below).

See sample letter at Appendix 2G.

It is important for the company's reputation to respond to all applicants so send letters to candidates who have not been short-listed at this time also.

See sample letter at Appendix 2H.

6. Arrange and hold interviews - prepare in advance:

- Ensure that there are two or more panel members (preferably mixed gender and community background) since this helps reduce bias. It may be useful to ask someone from outside the organisation to assist with interviews if they have a particular area of expertise which is relevant to the role. In an attempt to reduce the possibility of unlawful discrimination taking place ensure the staff involved in the interview and selection process, and the outside person where appropriate, have had equality training and training about interviews.
- The panel should determine in advance whether to create a reserve list of candidates who are suitable for appointment and how long the reserve list will last for. It is not recommended that a reserve list should last for any longer than 12 months.
- Prepare questions based on the criteria and agree your approach with the other panel members including who is going to ask which questions. When determining questions, remember that the best predictor of future performance is past performance even if this past performance is in a different context. Behavioural interview questions ask for details of how candidates have dealt with relevant situations in the past rather than asking what they would do in a hypothetical situation since no-one really knows what they would do in a hypothetical situation. For example, if an interviewer wants to recruit someone who will "go the extra mile", a useful question might be: "Tell me about a time when you stretched the rules or went above and beyond the call of duty to meet a customer's need?" If the post requires a lot of customer facing work then a suitable question would be: "Give me an example of a difficult customer you had to deal with. How did you handle the situation?" Adaptability can be assessed by asking for examples when candidates have changed their approach in response to feedback or change. It can also be useful to ask candidates for examples of setbacks and obstacles and what they have learned from their mistakes. Focusing on specific examples from the past like these helps get past the practised answers from a well-rehearsed interviewee.
- In order to avoid staff turnover among new starts, questions should also establish whether the job will meet the applicant's requirements. It can be useful to ask applicants to describe their ideal job.
- It is likely that some criteria are more important than others. It will help you to select the best person for the job if you determine in advance which criteria are the most important and weight them accordingly.

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- Prepare an interview record form and an interview summary form. See samples at Appendix 2I and 2J. These should be tailored to the criteria on the person specification which are assessable at interview (usually experience, which can be explored further, and personal skills) and should include an appropriate weighting for each of the criteria, since some will be more important than others. Criteria can be weighted by marking some out of a higher number (e.g. some criteria may be allocated 10 marks, others 15, others 20 etc) or by multiplying the score by two or three. However, the method of multiplying scores can produce quite wide variations in the importance of different criteria.
- Prepare answers to questions candidates are likely to ask. In particular, think about the terms and conditions of the role such as pay and benefits, working hours, holidays, frequency of travel if this is part of the role, etc.

See document on planning and preparing for interview at Appendix 2K.

Each member of the interview panel should receive a copy of each of these documents (Appendices 2I to 2M) along with copies of the application forms for each of the candidates. These guidance documents help ensure consistency in the recruitment process and help those involved in selection decisions to avoid the temptation to rely on gut instinct.

Making adjustments for disabled candidates

In advance of the interview date, where practicable, the employer should consult with any disabled applicants who have indicated that they may need adjustments to facilitate their participation in the interview process. The purpose of the consultation is to obtain information to inform and assist the employer to make appropriate reasonable adjustments. If the employer cannot consult with the disabled applicants, he or she should nevertheless take into account any information that the applicants have provided in or with their application forms that may assist in determining what reasonable adjustments would be appropriate.

The kinds of adjustments that need to be made will depend on the particular facts of each case, including the nature of the disabled person's disability, the resources of the employer and the particular disadvantages that need to be overcome, but examples might include:

- Allowing a disabled applicant additional time to deliver a presentation or to answer questions; or
- Conducting the interview in a different location, such as in a room on a different floor which may be more accessible; or
- Conducting the interview in a different way, such as over a telephone or video link; or
- Conducting the interview through a sign language interpreter.

On the day:

- Arrange appropriate venue and practicalities.
- Avoid interruptions and make sure the panel members can give the interviewee their full attention.

See checklist on interview practicalities at Appendix 2L.

- Ensure the interview follows a planned structure which will be defined by the core criteria. To get the information you need, each area should receive adequate attention. It is too late to do anything about gaps once the interview is over. The structure should also cover introductions and closing which will include an explanation of the process during the interview and afterwards.
- Some of the criteria will be more important than others. Ensure that the relative weighting for each of the criteria has been agreed in advance.
- Make every attempt to conduct the interview in as non-stressful a manner as possible (introduce panel members, comfortable setting, explain process). The emphasis should be on giving candidates the opportunity to demonstrate their skills, rather than trying to catch them out.
- Ask similar questions covering the same areas to all candidates. Comparing candidates who have not had the same opportunity to demonstrate the competencies is like comparing an apple and an orange.
- Allow the conversation to flow. While answering one question, candidates may provide answers to another and allowing this can make the process seem more natural. However, ensure that the candidate is providing the information needed and that all criteria are covered.
- Use the interview to gather information. Do not try to reach a decision while the candidate is talking or you will not be able to listen properly.
- Take notes of what the candidate says, the examples they give etc, rather than evaluations of what they say. Avoid making any written comments which could be perceived as discriminatory.
- Evaluate the findings afterwards using a scoring system with a defined marking scheme helps consistency.
- Arrange for copying of any relevant documentation, if appropriate.

Purpose of questions

Remember that the purpose of the questions is to gather evidence to enable the interviewer to assess the candidate against the requirements of the post. For each question, ask yourself "Which of the criteria am I trying to assess with this question?"

The Chairperson of the interview panel should ensure that the panel do not ask any potentially discriminatory questions, for example, questions asked of a female candidate that would not be asked of a man, such as plans to have children.

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The only other questions should be to check out gaps in the candidate's history or to test whether the candidate fully appreciates any special requirements such as travel, long hours etc. and is prepared to meet them.

Do not be too rigid. The questions are a guide and not a verbal test with one set of right answers.

See checklist on Interview Do's and Don'ts at Appendix 2M.

7. Carry out Assessment tests

It may be useful to ask candidates to carry out a practical task as part of the interview in order to demonstrate typing, computer skills or other technical skills relevant to the role. For example, you could ask a sales person to make a presentation, an accounts clerk to set up a spreadsheet, or a joiner, welder or electrician to carry out a practical task relevant to their role. These tests should only be used if they are essential to the post being considered, as an unnecessary test may lead to discrimination. If you do include such a task, make sure that the task and the conditions are the same for each applicant. Tests should correspond with the job in question and measure as closely as possible the appropriate skills and abilities used in the person specification. Language skills may need to be tested where proficiency in a language is an objectively justified requirement for a role. Care should be taken over assumptions made that applicants from outside the UK or of particular nationalities will or will not be proficient in English.

Employers are increasingly using psychometric testing which tests aspects of personality and intelligence. Thought needs to be given as to whether tests such as these; are necessary and proportionate; will involve any invasion of privacy; how feedback may be given; and how the data generated is to be stored. Only reliable and properly validated tests should be used.

Employers should only use tests which have been assessed as having no discriminatory impact on any of the statutory equality grounds.

These tests should not be the sole method of assessment and all candidates will need to be informed in advance if these are to be used as testing methods. Reasonable adjustments may be needed for disabled candidates.

8. Ensure a positive experience for applicants

Remember that candidates are assessing the company during the interview process in order to decide if this is the sort of place they would like to work. They may also be potential customers and so creating a good impression throughout the selection process is important.

9. Selecting candidates

Selection decisions should be based strictly on the criteria for the job as assessed through the various selection methods e.g. short-listing, interviews, tests etc. Information gathered during interview should be evaluated objectively following the interview. Once again, stereotypical assumptions should be avoided and decisions should be based on evidence rather than prejudices of individual panel members. The method used to decide on the successful candidate should be agreed in advance of the interview process and documented, and must be fairly and equally applied to all candidates.

If in doubt about any candidate's ability to do the job, do not appoint them. Keep looking. Do not compromise on the essential criteria to do the job effectively. Remember the negative effect the wrong person can have on the rest of the team and the amount of time that can be taken up managing a poor performer. There is also a responsibility to the individual. Appointing a person who does not have the capability of carrying out the role will do them, or the team, no favours in the long run.

However, when considering a candidate's ability to do the job, it will be especially important in the case of disabled persons never to forget that you may be under a duty to make reasonable adjustments. So you need to consider this if you have doubts as to whether a disabled candidate has the ability to do the job for a reason related to their disability, i.e. start by asking yourself 'if I make reasonable adjustments for this person, would they then have the ability to do the job?' not 'would this person have the ability to do the job?'

Once decisions have been made, all candidates should be informed promptly. Requests for feedback should also be answered tactfully and without delay either verbally or in writing. The feedback should relate specifically to the extent to which the candidate met or did not meet the requirements of the person specification. The employer should write to the successful candidate, if any, to make an offer of employment or, where they have initially spoken to them, to confirm the offer. Also inform the successful candidate whether the offer is subject to completion of a satisfactory medical and/or references.

Records must be kept of all stages of the recruitment process. Bear in mind that these documents will be disclosable in any tribunal proceedings. Documents to be retained include Job Description, Person Specification, selection criteria, any written test, notes of short-listing process, interview questions, notes of interview and minutes of any interview panel discussions or decisions following interviews. All handwritten notes must be retained even if there is a typed version. It is recommended that these records are kept for 12 months. Equal opportunities monitoring information should be kept for 3 years.

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10. Conduct Pre-employment Checks

Firstly confirm the identity of the candidate is genuine by requesting original copies of documents such as a driving licence or birth certificate etc.

You must ensure that any checks are not discriminatory. You should make any job offer conditional on the outcome of pre-employment checks. Some checks will be optional e.g. references, and others are a legal requirement e.g. their right to work in the UK.

Reference checks

References can be taken up during the selection process and can inform that process. However, references from a current employer should only be taken up with the employee's consent, usually once a conditional job offer has been made.

References can provide useful additional information about applicants, including confirmation of employment history, job title, experience, overall performance and reason for leaving. Telephone references can be useful as a reply can be obtained more quickly. Make sure that you are speaking to the right person and accept that the amount of information they are prepared to give may be limited. Questions should be based on the criteria for the job and referees asked to comment on how closely the applicant meets those criteria.

It is recommended that comments of a personal nature should not be asked about candidates. References for internal candidates should be obtained from their immediate supervisor or manager.

Except for certain employers in the financial sectors, employers are not obliged to give references. Also you should not assume that references given in confidence will remain confidential.

It should be borne in mind that not every employer or person giving a reference will always give a totally accurate picture, especially if the reference is given to the applicant directly.

Also, give fair consideration in respect of any referee of the long-term unemployed e.g. an employee who has been made redundant may not have a recent employer reference, neither will a parent who has taken a few years out for family reasons, yet they may become excellent employees.

Only factual or verifiable information should be relied upon when deciding whether or not to make an offer and this information should be considered along with all other relevant information.

Offers of employment should always be made conditional on receipt of references, which are satisfactory to the employer, so that no employment contract exists until the satisfactory reference is received.

See reference check sample at Appendix 2N.

Checking online profiles on social media sites

Many employers now state that they check applicants' profiles before making final selection decisions. However, employers should consider how this practice fits with a systematic, fair and objective recruitment process. Firstly, information from such a source may be available for some applicants but not others.

Secondly, there is no way of verifying the accuracy of this information. Furthermore, information about a candidate's religious belief or political opinion, family status, or sexual orientation may be available on such a site. If the employer has had access to this information, it may be more difficult to defend a claim of discrimination from an unsuccessful candidate. Finally, data protection legislation requires that individuals should be informed of the means by which information is collected about them and the information obtained must be relevant, adequate and not excessive for the purpose.

Qualifications checks

As well as checking out references, an employer may also wish to verify other factual data provided by the employee such as academic qualifications if this has not already been done. The employer may wish to ask to see original certificates, for example, either before an offer is made or as a condition of the offer.

The UK National Academic Recognition Information Centre (www.naric.org.uk) can help you compare international qualifications and skills.

Restrictive Covenants checks

The employer may also wish to seek confirmation that there are no restrictive covenants that could prevent the employee taking up the job.

Restrictive Covenants are designed to prevent employees from disclosing or using confidential information, trade secrets, etc, and/or soliciting or dealing with customers during a specified period after leaving the business.

Health checks

It is reasonable to request completion of a health questionnaire where good health is relevant to the job or where there are any specific medical requirements of the job. Any particular medical requirements should be made clear at the application stage. For certain jobs where there are genuine physical requirements, a pre-employment medical check may be appropriate. Questions about a job applicant's health or medical history should not be included in the application form. Medical checks should only be carried out after a conditional offer of employment. All candidates should be treated equally so medical checks should not be required solely for one gender, age group, or ethnic minority. Care should also be taken when considering any previous absence related to pregnancy or disability.

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Employers also have a duty to consider making reasonable adjustments to the role or to the workplace to ensure that anyone with a disability is not placed at a disadvantage when compared to non-disabled people. It is suggested that you give applicants the opportunity, on an application form or a monitoring form, to indicate any relevant effects of a disability and to suggest any reasonable adjustments. Reasonable adjustments may include:

- doing things another way;
- making physical changes such as installing a ramp for a wheelchair user or an audio-visual fire alarm for a deaf person;
- letting a disabled person work somewhere else for example, allowing a wheelchair user to work on the ground floor; or
- changing equipment for example, providing a special keyboard for someone with arthritis.

Employers should also ensure that storage and use of medical information conforms to Data Protection regulations.

Criminal Convictions

For certain jobs you may need to check previous criminal convictions. In Northern Ireland the agency which deals with criminal record checks is Access NI (www.accessni.gov.uk). Confidentiality when handling details of any criminal convictions is extremely important. Full details in relation to the rehabilitation of offenders and obtaining criminal records checks are available on the NI Business Info website (www.nibusinessinfo.co.uk).

If a candidate has declared a criminal conviction, it is important to remember that a conviction does not automatically make an individual unsuitable for employment. The Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) can provide guidance for employers in working with applicants with convictions (www.niacro.co.uk). NIACRO recommend that disclosure of convictions is sought after the short-listing process and for the preferred applicant only. An objective risk assessment can then be carried out at this stage considering the following factors:

- when the offence occurred;
- seriousness of offence;
- frequency of offending;
- the individual's circumstances at the time of the offence;
- duties of the job;
- level of supervision of the job; and
- access of applicant to customers and clients, etc.

Objective assessments will focus on a person's skills, abilities, experience and qualifications while considering the nature of the offence and its relevance to the job in question.

Right to work in the UK

You must check the eligibility of applicants to work in the UK since employers who fail to do so may be liable for a fine currently up to £20,000.

The online tool (<https://www.gov.uk/legal-right-work-uk>) provides guidance. It is recommended that you do these checks at the end of the selection process and only on those applicants who have been offered conditional offers of employment.

British citizens and nationals of the European Economic Area (EEA) or Switzerland do not need permission to work in the UK. For workers outside the EEA/Switzerland the Points Based System applies. Further information about the employment of migrant workers is available at www.bia.homeoffice.gov.uk. Whether a person can work in the UK, the type of work they are able to do and for how long will depend on their immigration status.

Employers should be careful when applying these document checks not to discriminate against any applicants on racial grounds and should therefore ask the same questions of all applicants regarding permission to work in the UK at the relevant stage of the recruitment process and not just of those who appear to be of non-British descent. It must not be assumed that someone from an ethnic minority is an immigrant, or that someone born abroad is not entitled to work in the UK. The best way to make sure that you do not discriminate in your recruitment practices is to **treat all job applicants in the same way**.

Full details are available on the NI Business Info website (www.nibusinessinfo.co.uk) and from the UK Visa and Immigrants Office (www.gov.uk/government/organisations/uk-visas-and-immigration).

11. Make the offer and agree the contract

Send out a conditional offer letter, subject to satisfactory references and any other relevant checks.

See sample letter at Appendix 20.

After any relevant checks have been made, advise the successful candidate of the date and time of starting and the person to whom he or she should report. It is good practice to inform any unsuccessful interviewees promptly in writing after an offer of employment has been accepted.

See sample letter at Appendix 2P.

Consider the use of a reserve list. If, for example, the first choice leaves soon after taking up the post, you would be in a position to efficiently make an immediate cover offer. If you do choose to use a reserve list, it would be appropriate to inform those on it of such and their ranking position. You should time limit any reserve list stating the duration of the list e.g. six months.

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Upon acceptance by the successful candidate, you can send out a contract of employment which should contain details of the job title and the job that is being offered and the main terms of employment, such as pay, hours, holidays and notice requirements. Certain information must be provided in writing to the employee and more can be found on this in section 3. You may also wish to include terms relating to temporary lay-off, short-time working, confidentiality and non-compete clauses.

12. Register as an employer, if necessary, and set up a payroll record for the employee

All employers need to be registered for tax purposes and deduct income tax (PAYE) and national insurance contributions (NICs help pay for sickness benefits and the state retirement pension) from employees whose earnings meet certain thresholds. Employers must use approved payroll software to report to Her Majesty's Revenue and Customs (HMRC) on or before an employee's payday and every time an employee is paid. See www.gov.uk for details.

Employers must also pay Employer's Class 1 NICs for employees who earn above a certain threshold. These amounts are payable to HMRC monthly or quarterly.

The amount of National Insurance to be paid is fixed by the government and changes every April. In order to pay National Insurance Contributions all employees need a National Insurance number, although they can start work without one. Further information on obtaining National Insurance numbers and making contributions is available on the HMRC website (www.hmrc.gov.uk).

Employers must keep records showing; employee's pay and deductions; reports and payments to HMRC; employee leave and sickness; tax code notices; taxable expenses or benefits; and payroll giving schemes for 3 years from the end of the tax year they relate to.

The employee's tax code and National Insurance category letter can be used to work out how much Income Tax and National Insurance contributions (NICs) to deduct from their pay and how much Employer's Class 1 NICs is owed on their earnings.

Each employee must receive a pay statement, or payslip, at or before the time they are paid. This can be in either paper or electronic format but it must show certain items, including each employee's gross pay (before any deductions are made), all deductions and the purposes for which they are made, and the net amount payable after the deductions have been made (also known as take home pay).

Employee forms

Form P45. New employees who have had a previous job, or have had a period on state benefits, will give a P45 to their new employer when they start. When they leave they should receive a completed P45 for their new employer.

Starter Checklist. The employer and employee will usually need to complete a 'Starter Checklist' (formally a P46) if they don't have a P45. This covers the employee's personal details, including their National Insurance number, current or recent work history and any student loan details. It also records details about the employer's PAYE scheme and the tax code being used for them.

Form P60. Each employee who was working for the company at 5 April whose earnings reached the National Insurance Lower Earnings Limit (LEL) during the tax year must receive a P60. The P60 shows the employee's pay and tax for the whole year. The P60 must be given to the employee by 31st May following the end of the tax year.

Further information on income tax and national insurance payments and obligations is available on the HMRC website. www.hmrc.gov.uk or www.gov.uk/running-payroll

13. Register with the Equality Commission – when you have 11 or more employees

All companies with 11 or more full-time employees (working more than 16 hours a week) in Northern Ireland are required to register with the Equality Commission. All registered employers are required by law to monitor their workforce in terms of community background and to submit a return each year to the Equality Commission. All registered employers must also conduct a three yearly review (an **Article 55 Review**) of the composition of their workforce.

You can register with the Commission by sending them the following details:

- Name, address and contact details of business;
- Nature of business;
- Number of full time employees;
- Name and position of the person in the company who will be dealing with monitoring.

Employers must take into consideration the **Fair Employment Code of Practice** and consider taking affirmative action as required.

Further details on monitoring and support for employers can be obtained from the Equality Commission website: www.equalityni.org

14. Plan induction

Once you have recruited people with the right skills and attitude, people who are self-motivated, you want to ensure that their experiences with the organisation do not de-motivate them. A properly structured induction plan will help to:

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- give the right impression from the outset;
- make the new employee feel welcome;
- help the new employee to understand exactly what they have to do;
- ensure that they are aware of the employer's rules, standards expected, etc; and
- assist them to integrate as fully and quickly as possible.

It is well known that new employees account for a high proportion of labour turnover and hence it is important that new recruits receive adequate induction and, if needed, training to help minimise the likelihood of their leaving within a short period of time. The cost of a proper and effective induction procedure is small when weighed against recruitment and training costs. The main purpose of an induction is to help the new employee settle in and become effective as quickly as possible, while helping to minimise any stress or frustration that comes from starting a new job and not knowing the people or the systems.

Failure to implement a successful induction process will leave the new employee unclear about the 'way things are done' and disillusioned with the professionalism of the company.

It is useful then to use an induction check-list and to assign a "buddy" to help the new employee to settle in and to answer any minor queries they may have.

A sample induction plan is available at Appendix 2Q with a plan for the new employee at Appendix 2R.

15. Managing performance of new employees

During induction it is vital that clear expectations are set and communicated to the new employee. It is also vital that performance against objectives is monitored closely so that any failure to meet objectives can be addressed promptly.

Therefore while it is advisable to have a structured set of formal meetings to discuss progress etc, managers should not put off dealing with any issues as they arise.

It is recommended that contracts of employment allow for a probationary period (e.g. 6 months) so the employer can assess the suitability, capabilities and the reliability of the new employee. The length of the probationary period should be clearly communicated to the employee from the outset.

If performance has fallen short of expectations, in the first few weeks, discuss the necessary action to improve and any support that may be provided. Set a timescale for improvement and follow up. The employer should document any meetings.

If at two months there has been no improvement or if performance has recently dropped below the required standard, consideration should be given to issuing a warning.

Set timescales for improvement, and monitor closely with the objective of resolving the matter within a total of two months. If performance remains unsatisfactory, dismissal should be considered at this time. However, this should only be considered as a last resort.

Ensure that the employee is informed of the reason for each meeting and, if appropriate, advising that termination is being considered in advance and in writing. If it is possible that a warning will be issued or their employment terminated as a result, ensure that the employee is aware of their right to be accompanied by a colleague or trade union representative (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion).

At the meeting give the employee the opportunity to respond. After the meeting make a decision and notify the employee of the outcome in writing. If the decision is to terminate the contract, ensure you offer the employee the right to appeal within 5 working days.

So while the contract of employment may allow for dismissal during a probationary period without having to follow the company's full disciplinary procedure, it is advisable to follow the above process to avoid a claim for wrongful dismissal which has no length of service requirement.

It is important that you communicate, monitor, act early, and be consistent in your approach. The initial months of employment form an important basis for the future working relationship and ensuring that an appointee meets your expectations and their full potential.

16. Student Work Experience Placements

As competition for staff increases, more companies are actively seeking to provide this opportunity as a means of engaging with the next generation of employees and promoting the company as a 'good' employer for future recruitment needs.

Student work placements can bring many positive benefits for the student, employees, the team and the company as a whole. In many cases it gives employees the opportunity to review, clarify and articulate how they contribute to the success of the company. As well as a renewed focus on the individual or team achievements, there can be a sense of 'giving' which has many positive effects.

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Similar to the previous advice on determining new employees' roles, work placements will be successful when they are planned and structured, with the specific expectations and outcomes for both parties highlighted. The benefits must be clear to all and it should not be seen as an additional 'burden' on staff. Clear communication and management is required.

The government initiative 'Connect to Success NI' can help employers advertise, through an online platform, their work experience opportunities to a wide audience of young people. See <https://www.nibusinessinfo.co.uk/connecttosuccess> for more details.

APPENDIX 2A

JOB DESCRIPTION

Job Title: _____
(Employer guidance - consider carefully; what words will attract potential applicants; what the title will infer to applicants about the post, level of responsibility etc; and what words applicants may use to search online for the position. Job Titles should be gender neutral.)

Reporting to: _____
(Employer Guidance - list the position that this position reports to e.g. MD)

Responsibility for: _____
(Employer Guidance - what other positions will the role be responsible for?)

Location: _____

Overall purpose of the job: _____

(Employers Guidance - Why does the job exist? What will the role achieve? What is the key output? What will it contribute to achieving the company's objectives?)

Key activities:
(Employer Guidance - Start each sentence with a verb. These are the key tasks of the role. This is an action list focused on what will be delivered weekly, monthly and yearly. It should form the basis of objective setting for the appointee. You might also wish to prioritise and/or group the tasks so that an emphasis is placed on activities critical to success.)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

(Employer Guidance: The Equality Commission recommend that employers include the following specific duty: To perform the job in accordance with the company's policies and procedures, especially the Equal Opportunities and Harassment Policy. It is also recommended that you include the following: To perform any other duties as may be reasonably be required from time-to-time)

Any special requirements: *(Employer Guidance - e.g. unusual hours of work, travel requirements, driving licence etc)*

APPENDIX 2B

PERSON SPECIFICATION

Job Title: _____

Criteria	Essential	Desirable
Qualifications/Attainments		
Relevant Experience		
Skills and competencies <i>e.g.</i> <i>Communication Skills</i> <i>Problem solving Skills</i> <i>IT experience</i> <i>Ability to work on own initiative etc.</i>		
Circumstances* <i>Indicate if any special circumstances are attached to this post. (e.g. shifts, unusual hours, travel).</i>		

Employer Guidance

**Should only be included if a justifiable requirement for the job.*

NB: *Drawn up by employer based on essential versus desirable requirements of the position as a result of a Job Description.*

APPENDIX 2C

EXAMPLE FORMAT FOR RECRUITMENT ADVERTISEMENT

(Employer Guidance - Consider any advertisement as an opportunity to 'market' the position and the company to potential applicants. Therefore use language and phrases that reflect your company culture, work environment and the desired individual/team behaviours.)

Job Title: _____

Salary: _____

(Employer Guidance - including a salary is optional but advisable as it will either encourage or dissuade potential applicants and therefore increase the likelihood of the successful applicant being willing to join the company for the salary on offer.)

Length of contract: _____

Location of job: _____

Company background: _____

Summary of role

As a result of... we are now seeking a...

Essential and desirable criteria

Applicants must ... *(essential criteria)*. Preference may be given to applicants who ... *(desirable criteria)*.

A full job description, person specification and application form are available from: *(insert contact details name, address, telephone number, email address etc)*

The closing date for completed application forms is ... *(typically 2 weeks but suggest allowing until the following Tuesday which will give an additional weekend to allow applicants time to complete and send form)*

An equal opportunities statement is recommended, potentially together with a specific welcome statement, for example, highlighting your desire for applications from individuals who are under-represented in the business.

Consider this an opportunity to 'market' the position and the company to potential applicants. Use language and phrases that reflect your company's culture and work environment. Check how and where your competitors advertise. Try to be creative and to 'stand out' for the right reasons. Use every opportunity and format possible to promote the post. Consider what will attract applicants to the post from their perspective.

Employer Guidance on some good practice tips for avoiding discrimination:

- *Job Titles should be gender neutral.*
- *Do not use words like 'young', 'youthful', 'mature', 'dynamic', 'energetic', 'enthusiastic' to describe the workplace or person you are seeking.*
- *If the job requires the job-holder to have a particular characteristic eg woman or man, or having a particular religion or race etc, this should be stated in the advert. You should contact the Equality Commission for further advice.*
- *Be careful when using photographs and if possible show both men and women and people of different races.*

APPENDIX 2D

(Employer Guidance - Amend this sample Application Form to suit the vacant position's specific criteria and remove any comments in red before issuing)

APPLICATION FORM

Ref No:

Please complete this form legibly and return it on or before the closing date specified in the advertisement. Late applications will not be considered. ONLY INFORMATION PROVIDED ON THIS APPLICATION FORM WILL BE CONSIDERED BY THE PANEL. Curriculum vitae will not be accepted. Candidates must outline clearly how their qualifications and experience meet both the essential and desirable requirements. All information given will be treated with the strictest confidence. Continuation sheets may be added if necessary.

For Office Use: POSITION APPLIED FOR:

Closing date:

Date Received:

1. PERSONAL DETAILS

Surname:	Telephone number (Home):
Forenames:	Telephone number (Mobile):
Postal Address:	Email Address:
Postcode:	

2. FURTHER/ HIGHER EDUCATION

Level (e.g. Degree/GCSE)	Subject/ name of course	Grade attained

3. MEMBERSHIP OF PROFESSIONAL BODIES

Name of professional body	Grade Of Membership (Where appropriate)

4. EMPLOYMENT HISTORY (Please list chronologically, starting with current or last employer)

Name and Address of Employer and Nature of Business:	Dates of employment: From: To:	Job Title: Job Function/ Responsibilities:	Final Salary and Reason for Leaving

5. TRAINING

Details of training courses attended and awards achieved, if appropriate:

6. SUITABILITY FOR THIS POSITION

Please detail your suitability for this position under the relevant headings below stating when and where skills and experience were gained.

Criteria 1 - <i>Insert criteria from Person Specification</i>
Criteria 2 - <i>Insert criteria from Person Specification</i>
Criteria 3 - <i>Insert criteria from Person Specification</i>
Criteria 4 - <i>Insert criteria from Person Specification</i>
Criteria 5 - <i>Insert criteria from Person Specification</i>
Criteria 6 - <i>Insert criteria from Person Specification</i>

7. REFEREES

Please list the details of two persons who are willing to provide references for you. They should be persons who know you (but who are not members of your family) and who are qualified to give an opinion about how you are suitable for the post. Please note that we will not contact your current employer for a reference unless and until we are prepared to offer the post to you.

Name:	Name:
Address:	Address:
E-mail:	E-mail:
Telephone No.:	Telephone No.:
Relationship to you:	Relationship to you:

8. SPECIAL REQUIREMENTS

Please list below any special requirements or reasonable adjustments if you are disabled that you may need made if you are called to interview.

9. VERIFICATION OF INFORMATION

I declare that all information which I have provided is correct. I understand that any false information given may result in a job offer being withdrawn or my employment terminated.

Signature: _____ Date: _____

Please complete the separate monitoring form enclosed.

Employee / Applicant Monitoring Questionnaire

Please complete and return in separate envelope marked Monitoring Questionnaire.

MONITORING QUESTIONNAIRE

Private & Confidential

Ref No:

We are an Equal Opportunities Employer. We do not discriminate against our job applicants or employees and we aim to select the best person for the job. We monitor the community background and sex of our job applicants and employees in order to demonstrate our commitment to promoting equality of opportunity in employment and to comply with our duties under the Fair Employment & Treatment (NI) Order 1998.

You are not obliged to answer the questions on this form and you will not suffer any penalty if you choose not to do so. Nevertheless, we encourage you to answer these questions. Your answers will be used by us to prepare and submit a monitoring return to the Equality Commission, but your identity will be kept anonymous. In all other regards your answers will be treated with the strictest confidence. We assure you that your answers will not be used by us to make any decisions affecting you, whether in a recruitment exercise or during the course of any employment with us.

1. Community Background

Regardless of whether they actually practice religion, most people in Northern Ireland are perceived to be members of either the Protestant or Roman Catholic communities.

Please indicate the community to which you belong by ticking the appropriate box below:

I am a member of the Protestant community

I am a member of the Roman Catholic community

I am a member of neither the Protestant nor Roman Catholic community

If you do not answer the above question, or if you tick the “not a member of either” box, we are encouraged to use the residuary method of making a determination, which means that we can make a determination as to your community background on the basis of the personal information supplied by you in your application form/personnel file.

2. Sex

Please indicate whether you are: Female Male

Note: If you answer this questionnaire you are obliged to do so truthfully as it is a criminal offence under the Fair Employment (Monitoring) Regulations (NI) 1999 to knowingly give false answers to these questions.

SHORT - LISTING RECORD

NOTE: THE ESSENTIAL CRITERIA WHICH ARE ASSESSABLE ON PAPER SHOULD BE TRANSFERRED TO THIS FORM FROM THE PERSON SPECIFICATION. PERSONAL SKILLS SHOULD BE ASSESSED AT INTERVIEW.

Position Title: _____

Closing Date: _____

Number of Application Forms Sent Out: _____

Returned Application Forms	Application Form Number	Meets Essential Criteria (✓ or x)			Meets Desirable Criteria (✓ or x)			Notes	Interview (Yes/No)
		Criterion 1	Criterion 2	Criterion 3	Criterion 1	Criterion 2	Criterion 3		
Candidate 1									
Candidate 2									
Candidate 3									
Candidate 4									
Candidate 5									
Candidate 6									
Candidate 7									
Candidate 8									
Candidate 9									
Candidate 10									

SHORT-LISTING GUIDANCE

During short-listing:

- Focus only on the criteria section on the application form.
- Use those criteria from the person specification which can be assessed from applications in short-listing. Do not introduce new criteria.
- Do not reject an applicant's qualifications merely because they were gained overseas, or the certificates are presented in a foreign language. Advice on equivalent qualifications can be obtained from the Qualifications Comparison Service that is available through the Jobs and Benefits Office network.
- Assess the candidates against the stated criteria. Those who meet the criteria can progress to interview, those who do not meet the criteria cannot.
- Remember that if a candidate does not meet all the stated essential criteria, they cannot be selected to move on to the next stage of the process.
- Be consistent when making decisions. In cases which are not clear cut, what is acceptable for one candidate must be acceptable for all.
- Decide whether or not any stated desirable criteria are to be used. This may be useful if a large number of applications have been received. Desirable criteria should be used in order of their priority. Again, candidates must be treated consistently and if some candidates are rejected on the basis that they do not meet a particular criterion, all candidates who do not meet that criterion must be rejected.

APPENDIX 2G

SAMPLE LETTER – INVITATION TO FIRST INTERVIEW

Name

Address

Post code

Date

Dear

Interview for the position of **(Job title)**.

Following consideration of your application, I am pleased to inform you that you have been short-listed for interview. The interview will be held on **(date)** at **(time)**.

(Optional) Please also bring proof of your XXXX (qualification) by bringing original certificate(s).

In accordance with our equal opportunities policy, we would like to ensure that all candidates, regardless of disability, can participate fully in the selection process. Therefore, I would be grateful if you would advise us of any additional assistance that we may be able to provide.

Please confirm your attendance no later than 12.00 pm on **(date)** by emailing **(email address)** or telephoning **(name and telephone number)**.

Yours sincerely

Name

Position

APPENDIX 2H

SAMPLE LETTER – NOT SHORT-LISTED FOR INTERVIEW

Name

Address

Post code

Date

Dear

Application for the position of **(job title)**.

I refer to your recent application for the above post. I regret to advise you that on this occasion you have not been short-listed for interview.

I would like to thank you for your interest in the company and wish you every success for the future.

Yours sincerely

Name

Position

APPENDIX 2I

RECORD OF INTERVIEW (POSITION TITLE) _____

DATE _____

Time In _____ Time Out _____

Rating scale (*Employer Guidance - where marks are out of 10*)
1-2 Not acceptable 3-4 Poor 5-6 Fair 7-8 Good 9-10 Excellent

CRITERION 1 – *Insert Criterion*

Score

CRITERION 2 – *Insert Criterion*

Score

CRITERION 3 – *Insert Criterion*

Score

CRITERION 4 – *Insert Criterion*

Score

CRITERION 5 – *Insert Criterion*

Score

CRITERION 6 – *Insert Criterion*

Score

Panel member's name _____ Date _____

Panel member's signature _____

APPENDIX 2J

FIRST INTERVIEW REPORT FORM SUMMARY FOR THE POSITION OF _____

CANDIDATE: _____ DATE OF INTERVIEW: _____

INTERVIEWERS: _____

CHAIRPERSON TO COMPLETE _____

TIME INTERVIEW STARTED: _____ TIME INTERVIEW FINISHED: _____

Criteria / Area of competence	Evidence	Marks available	Marks awarded	Agreed mark
<i>Employer Guidance Note: criteria assessable at interview should be transferred from the person specification for this particular role</i>				
Total marks				
Recommendation				
Availability:				
Summary of interview:				

Signed: _____ Print name: _____

Rating scale (*Employer Guidance - where marks are out of 10*)

- 1-2 Not acceptable
- 3-4 Poor
- 5-6 Fair

- 7-8 Good
- 9-10 Excellent

PLANNING AND PREPARING FOR INTERVIEW

Objective: To make the most effective use of time spent in the interview itself by:

- Developing a team interview plan and strategy in advance;
- Assigning responsibility for specific skill area(s) to be explored by each interviewer during the interview;
- Preparing structured, behavioural interview questions in advance.

Maximising the Interview Team's Contributions

The Problem: "I thought you covered that question."

- Does this sound familiar? If so, you and your interview team are suffering from an information gap syndrome. After investing hours of time and energy interviewing candidates, the interview team meets to make a recruitment decision and discovers that they are missing critical pieces of information. Typically each interview team member has focused on asking questions pertaining to key technical skill areas that they have individually decided to be the most critical. Lack of team planning results in having incomplete data on all of the critical areas necessary to make an informed recruitment decision.
- It is common that in an unplanned interview process, interviewers will unknowingly collect redundant data and miss collecting essential data. This is not only inefficient but also frustrating for everyone involved. It can also result in poor and costly recruitment decisions.

The Solution: If your goal is to hire the people who can be most successful in meeting the job requirements, a planned approach to interviewing is the best investment you and your interview team can make.

The interview team member's role in planning and preparing for the interview

Step 1: Review the job description and person specification.

Step 2: Agree who will cover which areas and then develop behavioural interview questions in advance, focusing on the skill area(s) you are responsible for evaluating.

Step 3: Review the CV or application form.

Step 4: Consider how the position will appear through the candidate's eyes.

Step 5: Highlight the benefits and the challenges of working for the company, ensuring that you are being realistic.

Step 6: Prepare FAQs and answers relevant to the company and the specific job in question e.g. starting salary and salary progression, leave and other benefits, hours, company culture, need for travel, reporting structure etc.

In summary:

Ultimately, the success of the overall interview process is only as good as the planning process itself. The experience the candidate has during the interview process will leave a lasting impression and will be a strong factor influencing the decision as to whether or not to join the company. Therefore, the entire interview process should be used as a sales tool. Remember, actions speak louder than words.

INTERVIEW PRACTICALITIES AND STRUCTURE

Preparation on the day

- Ensure that you are on time and that you have agreed the format of the interview in advance with the other panel member(s).
- Check that the room is tidy and that it is not too hot or too cold.
- Have a glass of water for the candidate (and the panel).
- Have a pen and paper for the candidate.
- Prevent interruptions e.g. have a notice on the door saying “Interview in progress”, divert phone, turn off mobiles, etc.

The interview itself

- Welcome the candidate with courtesy and genuine interest. Body language and eye contact are indicators of interest.
- Introduce yourself, your position and its relationship to the position you are interviewing for. Introduce the rest of the panel.
- Outline the structure of the interview e.g. X will start by going through the application form and career history, covering more technical areas, followed by Y who will focus on more general skills. Explain that there will be time at the end of the interview for any questions the candidate may have.
- Explain that the interviewers may take notes.
- Ask questions related to competencies as agreed. Do not interrupt the other panel members and try not to contradict each other.
- Stick to questions related to the criteria. You have a limited amount of time so do not get distracted by topics of personal interest.
- Ask if the candidate has any questions. Refer to prepared FAQs (relating to benefits, culture, products etc) with consistent answers.
- Check availability and notice required.
- Explain next steps. Refer to FAQs.
- Thank the candidate and show the candidate to reception.

Note: Remember that you are selling the company. Give the impression that the interview is the day’s top priority.

INTERVIEWING DO'S AND DON'TS

People often ask for lists of acceptable or unacceptable questions. As a rule of thumb, ask only questions which are strictly related to the job and treat candidates consistently, asking similar questions which cover the criteria areas.

Applicants should be given a fair opportunity to answer the set questions e.g. applicants should not be unfairly interrupted. Nor should applicants be made to feel out of place by comments such as “We don’t get many women working here” or “We don’t get many older people working here”.

The interviewers should be very careful about asking unplanned questions i.e. not the pre-set questions, but extra ones that arise in the course of discussion and which might be asked to clarify points raised by the applicant. Such questions should always be job-related.

It is important to note that marks awarded should be fair and consistent and based on evidence that is presented by the applicant in his or her interview answers or application form e.g. a candidate with a degree in a relevant subject would not normally be expected to receive a lower mark than a candidate without one or a candidate who gives monosyllabic answers would normally receive a lower mark than a candidate who answers fluently and without prompting. Inconsistent marking like this will need to be explained with good reasons if the decision is ever challenged as being discriminatory. More guidance on interviewing is provided below.

Acceptable

- Do evaluate applicants on job-related criteria necessary for successful performance on the job.
- Do ask job-related questions necessary for determining an applicant’s suitability for the position.
- Do question applicants for a position in a consistent and uniform manner.
- Do keep objective notes of why an applicant is or is not hired. Unsupported subjective characterisations such as “bad attitude” could lead to trouble.
- Do make reasonable accommodations to the needs of disabled individuals during interviews, e.g. by providing interpreters for the hearing impaired or scheduling interviews in rooms accessible to individuals in wheelchairs.
- Do return all applicable documentation for each interview conducted (including rough notes and information on the candidates not hired).

Unacceptable

- Do not ask questions regarding the general physical or mental condition of an applicant. An employer may ask if an applicant is able to perform the functions of the job. If an applicant voluntarily discloses a disability, the employer may then ask whether he or she can perform the functions of the job notwithstanding the disability or with reasonable accommodation, and what type of accommodation would be required.
- Do not ask questions of a female applicant that would not be asked of male applicants, including such matters as marital status, birth control methods, child care arrangements, or hindrances to work hours or to travel.
- Do not ask questions concerning colour of eyes or hair, height or weight, age, marital status or maiden name, or number of children, since such questions are not viewed as job-related. Be careful when making conversation at the beginning or end of the interview not to stray into any of these areas.
- Do not assume that because a candidate introduces a topic, that it is ok to probe further.
- Do not inform an applicant that the position must be filled by a female or minority group applicant due to equal opportunities or affirmative action obligations or regulations.
- Do not ask questions of one religious or racial or ethnic group or age group that would not be asked of another, such as whether an applicant could work in a facility with members of another religious, or racial or ethnic group or age group.

When in doubt, don't ask!

APPENDIX 2N

REFERENCE CHECK FORM

Reference for _____ *(Name of candidate)* _____

Position applied for: _____

REFEREE DETAILS:

Name _____

Organisation _____

Position _____

Date _____

Confirm dates of employment from _____ to _____ Yes/No

Confirm previous salary (if known) _____

Were attendance and timekeeping satisfactory? _____

If "no", please specify whether the problem was with attendance or with timekeeping or with both

If "no", why were you not satisfied and what was the extent of the problem? _____

Did you establish the cause of the problem? Give details _____

Did you try to help the employee to improve and what was the outcome? _____

What was the reason for leaving? _____

Please comment on the applicants suitability/ ability to meet the following criteria:

Criteria (from person specification)	Referee Comments

Signed: _____ Date: _____

APPENDIX 20

SAMPLE LETTER – OFFER OF EMPLOYMENT

(Employer Guidance - Text highlighted in blue needs to be amended for position)

Name

Address

Post code

Date

Dear xxxxxxxxxxxxxxxxx

Following your recent interview for the position of xxxxxxxxxxxxxxxxx I am pleased to inform you that the company would like to make you an offer of employment. Your job title will be xxxxxxxxxxxxxxxxx. A copy of the job description is enclosed for ease of reference.

This appointment is **(permanent/fixed term/temporary/from month to month)**.

The salary for this position is xxxxxxxxxxxxxxxxx. You will be entitled to X days annual leave and X days public holidays. Standard working hours are X per week exclusive of lunch breaks. The standard hours of work are from X to X daily.

Your employment with the company would be on the terms set out in the enclosed Contract of Employment and Company Handbook.

This offer is conditional on satisfactory references (and a medical check if applicable).

This offer is also subject to:

Receipt of original certificates as proof of relevant qualifications *(if applicable and if not already received, checked and copied)*.

Receipt of original documents as proof of your right to work in the UK, as specified by the UK Borders Agency *(if not already received and copied)*.

Please contact me at the number below as soon as possible to confirm your acceptance of this offer.

Yours sincerely

_____ (Name)

_____ (Position)

_____ (Contact Number)

APPENDIX 2P

SAMPLE LETTER – UNSUCCESSFUL AT INTERVIEW

Name

Address

Post code

Date

Dear **xxxxxxxxxxxxxxxx**

Application for the position of **xxxxxxxxxxxxxxxx (job title)**

I refer to your recent application and interview for the above post. I regret to advise you that on this occasion your application has not been successful.

I would like to thank you for your interest in the company and wish you every success for the future.

Yours sincerely

_____ (Name)

_____ (Position)

APPENDIX 2Q

SAMPLE – NOTE THE FOLLOWING PLAN IS INTENDED AS A GUIDE ONLY AND SHOULD BE TAILORED TO INDIVIDUAL CIRCUMSTANCES

Mistakes to avoid

During the induction period try to avoid the following:

- providing too much, too soon; the new employee should not be overwhelmed by a mass of information on the first day - keep it simple and relevant;
- pitching presentations at an inappropriate level - they should be suitable for everyone in the audience and for their roles within the organisation;
- the office manager or HR providing all the information - it should be a shared process involving the team; and
- creating an induction programme which generates unreasonable expectations by overselling the job.

INDUCTION PLAN

1 week in advance of start date

Action	Responsible
Allocate work area	Line manager
Confirm desk is ready	Line manager
Confirm that equipment is available	Line manager
Contact new employee and agree time to attend on first day – who to ask for etc	Line manager
Inform all staff of imminent arrival of new employee/new role	Line manager
Set induction meeting dates in advance, including regular review	Line manager
Agree dates for input with other employees and give induction record sheet to relevant parties	Line manager

Day 1

Action	Responsible
Meet new employee and welcome to the company	Line manager
Introduce new employee to other staff	Line manager
Show new employee where desk/work area is	Line manager
Set up of relevant equipment - e.g. phone etc	Line manager
Explain main contacts – Manager, Office Manager, etc	Line manager
Introduce new employee to Team	Line manager
Outline induction timetable for first few days	Line manager
Walk through induction plans with new employee	Line manager
Give tour of facilities	Buddy
Cover section A of individual induction plan	Buddy

Day 2

Action	Responsible
Completion of relevant forms – employee details / pension, life assurance. Collect P45, signed offer/contract if not already returned etc. Provide Contacts sheet – who does what	Office Manager
Provide stationery, uniform, protective equipment etc	Office manager
Explanation and signature for company policies	Office manager
Present individual induction plans to new employee	Office manager
Cover section B of individual induction plan	Office manager
Agree initial tasks and objectives for week 1 and begin some straightforward tasks	Line Manager

Days 3 – 5

Action	Responsible
Discuss the areas covered in team induction plan	Line manager / buddy / other team members as required
Cover sections C and D of individual induction plan	Line manager

After 1 week

Action	Responsible
Review induction plan	Line Manager
Review of tasks and objectives for month 1 and feedback on progress to new employee	Line Manager
Explain and agree communication and reporting arrangements	Line Manager

After 1 month

Action	Responsible
Review induction plan	Line Manager
Review of tasks and objectives for month 2 and feedback on progress to new employee	Line Manager
Set objectives for the next month	Line Manager

After 2 months

Action	Responsible
Review induction plan	Line Manager
Review of tasks and objectives for month 3 and feedback on progress to new employee	Line Manager
Set objectives for the next month	Line Manager

After 3 months

Action	Responsible
Review induction plan	Line Manager
Review of tasks and objectives for month 3 and feedback on progress to new employee	Line Manager
Set objectives for the next 3 months	Line Manager

After 6 months

Action	Responsible
Conduct performance review to ensure employee has met objectives	Line Manager
Set new objectives for the next 6 months	Line Manager
Confirm in writing that probationary period has now ended if appropriate	Office Manager

APPENDIX 2R

SAMPLE INDIVIDUAL INDUCTION PLAN

(Employer Guidance - The following plan is intended as a guide only and should be tailored to individual circumstances)

Name

Welcome to _____ (*The company*).

This is your induction plan. You are responsible for ensuring that all the items here are covered. Please keep a record of each of the activities as they happen and if you are having problems with any of the items please ask _____ or me for help.

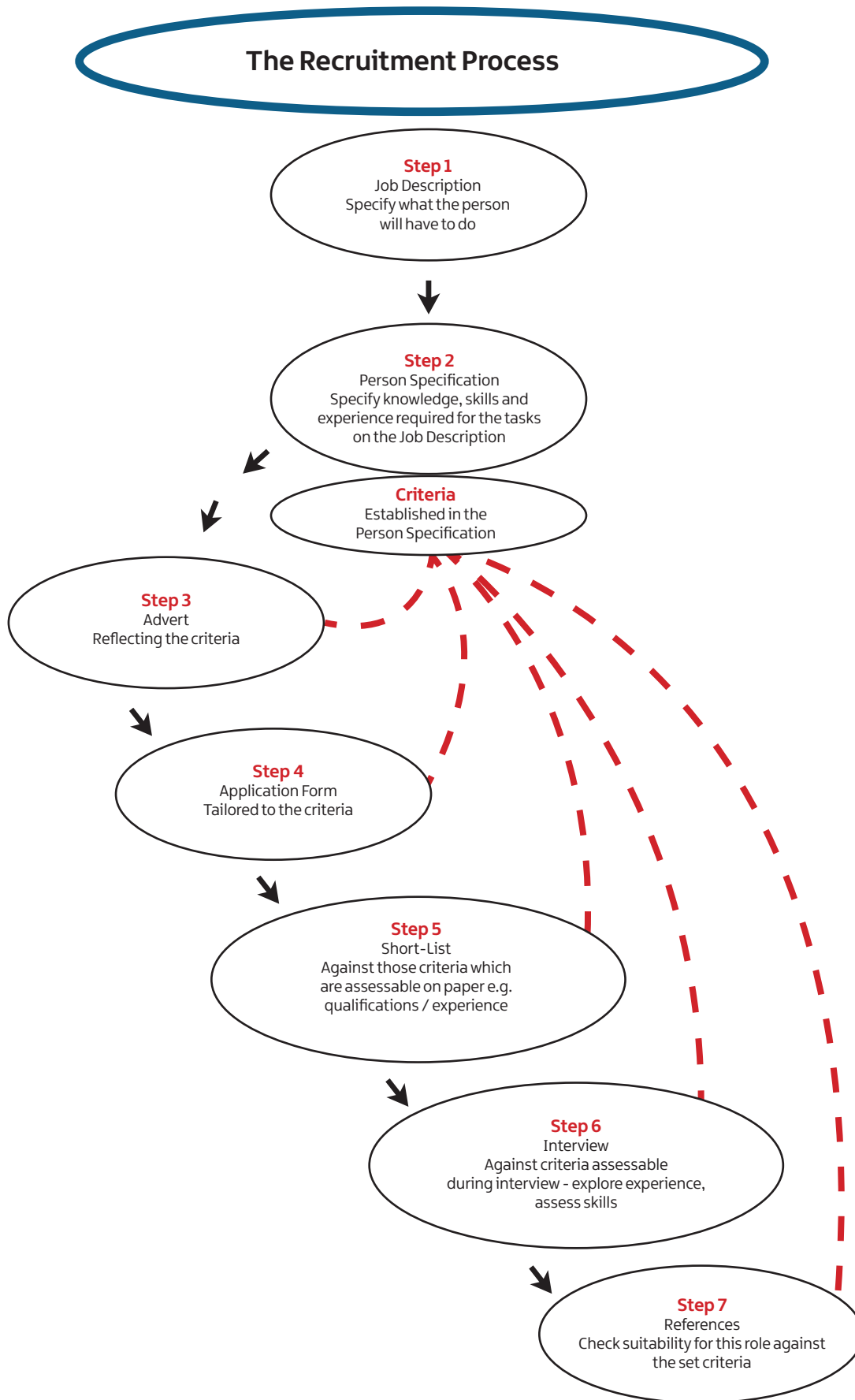
Regards

XXXXXXXXXXXXXXXXXX

Item	Completed (date)
Section A	
Familiarisation with location - nearest banks, sandwich shops and transport etc	
Tour of company premises	
Toilet facilities	
Entrances and exits	
Kitchen and catering	
Car parking facilities	
Notice boards	
Post	
Fax/photocopier	
Computer systems	

Item	Completed (date)
Section B	
Emergency exits	
Fire drill	
Use of fire extinguisher	
List of qualified first aiders	
First Aid boxes	
Health and safety policy	
Accident report book	
Security	
Petty cash	
Contract of employment	
Hours of work	
Holidays and process for applying for holiday leave	
Benefits	
Sick absence procedures	
Conduct	
Smoking/drugs/alcohol policies	
Equal Opportunities	
Performance management – feedback and reviews	
Use of computers, internet, mobile phones	
Other policies	
Communication mechanisms within the company – meetings, notice boards etc	
Salary	
Expenses	
Contacts	

Item	Completed (date)
Section C	
The company:	
Product overview	
Organisational overview	
History	
Mission statement of the company	
Company culture	
Organisation structure/who's who	
How business direction and key results are reviewed and measured	
Budgets	
Quality policy	
Quality systems	
Top 10 customers and key contacts	
Customer files and information	
Protocols for telephone, email, letters etc	
Section D	
Your team:	
The role of your team – how it relates to the rest of the company	
Your own role	
Your objectives for the next 3 months	
Your manager's expectations	
Individual learning plan – training and development required and how best to provide this	



CONTRACTS OF EMPLOYMENT

Introduction

Employers often avoid putting contracts of employment in place because this seems like a time-consuming bureaucratic exercise. However, once a job offer has been accepted, a contract of employment comes into existence regardless of whether or not a written contract exists. An oral contract is as binding as a written one but in order to avoid misunderstandings and possible disputes later in the course of employment, it makes sense to have a written, rather than a verbal, contract.

Employers also have a legal duty to provide employees, whose employment lasts for at least one month, with a written statement of main employment particulars within two months of the start of their employment with the organisation. The written statement is not in itself a contract of employment. It is that part of the contract of employment that employers are required to put in writing. However, if you provide a contract that contains all the items required in a written statement, then you have met your legal obligations. If you fail to provide a written statement, an employee can approach the Industrial Tribunal who can require the employer to provide a written statement. In certain situations if an employee has made another claim to a tribunal the employee could obtain an award of two to four weeks' pay.

The advantage of a contract is that it can include clauses the employer may want but which are not required by law. For example, a written statement does not require clauses on lay-off or short time working but unless these terms have been agreed an employer cannot implement either short time working or lay-off without employees' consent.

The offer letter should reflect the terms of the contract but it may be useful to include a clause in the contract which states that in the event of any inconsistency, it is the contract which will prevail.

Ultimately, however, it would be up to an Industrial Tribunal (or an Independent Arbitrator who may now also hear cases) to decide which prevails.

Items to include in a contract of employment

If the contract is to meet legal requirements of a principal statement (the written statement of employment particulars) it should contain the following information:

- The date the written statement was issued.
- The legal name of the employer company - it is a good idea also to include the trading name, if different.
- The name of the employee.
- The date the current employment began.
- Any earlier date upon which employment with a previous employer began which is treated as 'continuous' with the current employment.
- The employee's pay, or how it is calculated, and the intervals at which it will be paid e.g. weekly or monthly.
- The employee's hours of work.
- Entitlement to holidays including public holidays and holiday pay. The information must be accurate enough to allow precise calculation of accrued entitlement.
- Job title or a brief description of the work.
- The address of the employee's place of work. If the employee will be working in more than one place you should indicate this along with the employer's address.
- The name or job title of the person the employee should apply to in order to resolve a grievance, and how this application should be made.
- The name or job title of the person the employee should apply to if they are dissatisfied with any disciplinary decision or decision to dismiss them, and how this application should be made.
- If a new employee will normally work in the UK but you need them to work abroad for more than a month at a time, the written statement you give them must include the following details:
 - the currency in which they will be paid;
 - the period they will be employed abroad;
 - terms relating to their return to the UK; and
 - any additional pay or benefits provided because of employment abroad.
- Period of employment - where the employment is temporary, the period for which it is to continue, or if it is a fixed-term contract, the date it is to end.
- Notice periods - the length of notice required from both parties which should be in line with statutory provisions.
- Collective agreements - details of any collective agreements with trade unions that directly affect the terms and conditions of employment.
- Any terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay; and
- Particulars of Pension and pension schemes including whether the employment is covered by a pensions contracting-out certificate and where further information can be obtained.

SECTION 3

The employer may refer the employee to another document such as a company handbook for details of the following. Any separate document must be easily accessible to all employees:

- **Disciplinary rules** - any disciplinary rules that you have.
- **Disciplinary or dismissal procedures** - any disciplinary or dismissal procedures that you have.
- **Grievance** - any further steps that follow an application to resolve a grievance or if the employee is dissatisfied with a disciplinary or dismissal decision.

Employers may also include other optional clauses relating to the following in the contract:

- Probationary periods;
- Flexibility in relation to duties performed;
- Lay-off and temporary short time working.

Note that if any clause infringes an employee's statutory rights it will be invalid.

When a written contract is issued, it should include a term stating that it replaces all previous discussions and correspondence in relation to terms of employment provided the employee has agreed to such changes.

A company handbook can be a useful method for collating all relevant policies such as those mentioned above but also policies on health and safety, email and internet use, equal opportunities, bullying and harassment, maternity and paternity etc. Having such policies will hopefully prevent issues arising in these areas and will also establish a procedure for dealing with any problems that do occur.

The law also recognises certain employee rights even if these are not explicitly stated in the contract of employment, such as the right not to be discriminated against on certain grounds and to equal pay, as well as the right not to suffer an unlawful deduction of wages. The law also recognises that employees have certain duties, such as the duties of fidelity, obedience and confidentiality. Similarly, there are implied duties on employers such as the duty to provide work and to pay wages.

In addition, there are numerous other legal rights that protect employees and it is recommended that in the event of any contractual or other dispute during the course of employment, legal advice is obtained where appropriate.

The Labour Relations Agency provides a free service to assist employers to prepare and review the Written Statement of employment particulars and also provides a Self Help Guide on their website www.lra.org.uk

The NI Business Info website (www.nibusinessinfo.co.uk) contains an interactive tool to help employers prepare a written statement of employment. See a sample contract of employment at Appendix 3A.

Changing an employee's contract

You may wish to change an employee's agreed contract of employment because your business has changed, for example through economic circumstances. Areas you may want to change can include pay, hours worked, different duties or a new workplace.

Sometimes an employee may wish to change the contract, perhaps to get better pay or working conditions, or to switch to flexible working.

Before altering any of your employees' contracts it is important to check exactly what is in the original documents and consult as far as possible with your employees. (See below). You should also put any agreed changes in writing within one month.

Consulting employees about changes to their terms of employment

Some contracts may contain terms that allow employers to make changes in working conditions. These should be reasonable, for example performing additional tasks to reflect seasonal fluctuations in demand or to work in other locations. Do not rely on such terms to make more fundamental changes because your employee may then claim the contract has been breached and may make various legal claims against you, for example breach of contract.

Individual consultation can take place on a one-to-one basis or in the form of group briefings. Whichever method you choose, you should provide an opportunity for employees to ask questions about why the change is needed and so on. Employees are more likely to agree the change if they understand why it is needed. Be prepared to answer these questions and ensure employees have the relevant information they need to prepare for the meeting. Always consider an individual's particular circumstances.

SECTION 3

Failure to agree to employment contract changes

Sometimes, despite negotiation, you may not be able to reach agreement with an employee over changes to a contract.

But if you impose changes without agreement, there will be a **breach of contract**.

If the breach is a fundamental one, for instance if it involves a significant change in pay or working hours, an employee could resign and regard themselves as having been given no other choice than to do so ('constructively dismissed'). If they have one year or more of continuous employment with you, they will be able to claim **unfair constructive dismissal** in an industrial tribunal. If the breach of contract has caused them a measurable financial loss, employees can also sue for damages, either in industrial tribunals or in the ordinary courts. Industrial tribunal claims must normally be made within three months of the employment ending but civil court claims may be made up to six years from the breach of contract. Awards for damages in industrial tribunals are limited but there is no limit in the ordinary courts.

If employees are unable to seek damages because they have not suffered financial loss, the court may require the employer to abide by the original contract.

If you have tried to consult about change but have been unable to reach agreement on the change, you can consider terminating the original contract (dismissing the employee), provided you give the required notice and offer a new, revised contract to the dismissed employee. You should provide the minimum statutory notice period, or the notice specified in the employment contract, whichever is longer. In such instances there is no break in employment and continuity of employment is preserved.

If the employee believes the dismissal was unfair, and they have one year or more of continuous employment with you, they may complain to an industrial tribunal. It would be up to the tribunal to decide whether the dismissal was fair or unfair.

The offer of a new contract could reduce the amount of a tribunal award because the employee's financial loss has been lessened by accepting the revised terms or because by rejecting the offer, they have not complied with their duty to mitigate the loss.

APPENDIX 3A

CLAUSES HIGHLIGHTED IN BLUE SHOULD BE CONSIDERED IN TERMS OF COMPANY POLICY.

CLAUSES HIGHLIGHTED IN GREY SHOULD BE ADJUSTED FOR EACH INDIVIDUAL.

CLAUSES IN RED TYPE ARE FOR EMPLOYER GUIDANCE AND SHOULD BE REMOVED BEFORE ISSUE TO EMPLOYEES.

SAMPLE

COMPANY NAME

CONTRACT OF EMPLOYMENT

In compliance with the Employment Rights (Northern Ireland) Order 1996, this statement sets out certain terms and conditions of your employment contract which are relevant on dd/mm/yyyy.

1. **Name and address of employer:**

2. **Name of employee:** xxxxxxxxxxxxxxxxx

3. **Date of commencement of employment:** dd/mm/yyyy

4. **Date of continuous employment:**

Previous employment with this or any other employer, prior to the date specified (at 3), will not count as part of your period of continuous employment.

OR

Previous employment with (insert Company Name) will count as part of your period of continuous employment, which therefore began on dd/mm/yyyy.

5. **Period of employment**

Your employment is permanent subject to the Sections on Probation and Notice of this Statement.

OR

Your employment contract is for a fixed term and expires on dd/mm/yyyy.
This is subject to the Sections on Probation and Notice of this Statement.

(Employer Guidance - If a fixed term employee has their contract renewed when they already have a period of 4 or more years of continuous employment, the new contract takes effect as a permanent contract unless it can be objectively justified to do otherwise. Employers are advised to seek additional guidance on this issue which the LRA can provide.)

OR

Your employment is temporary and is expected to continue for (period of likely duration).
However, circumstances may dictate an earlier or later termination. This is subject to the Sections on Probation and Notice of this Statement.

6. **Job title:** xxxxxxxxxxxxxxxxx

However as and when considered necessary or appropriate you are liable to transfer to or undertake other duties, within competence and within reason, in order to meet fluctuations or priorities in work demands.

7. Probation (New Employees):

You will be on probation initially for a period of (e.g. six) months during which time your progress will be monitored, and feedback provided. At the end of this period, provided a satisfactory standard is achieved and maintained, your employment will be confirmed. In the event of unsatisfactory progress, the appropriate procedures will be implemented and the probationary period may be extended or your employment terminated either during or at the end of probation.

8. Collective Agreements:

There are no collective agreements in force that directly affect the terms and conditions of your employment.

OR

The collective agreements which directly affect the terms and conditions of your employment are:

(If you are not a party to the collective agreement/s, also indicate the parties who made it/them.)

9. Place of Work:

Your place of work is _____.

OR

You are based at _____ but you may be required to work at the following places _____.

OR

You are based at _____ but due to the nature of your job you are required to work at any place where the employer has clients or prospective clients.

10. Requirement to work outside the UK

You are not required to work outside the UK (for more than one month).

OR

You are not required to work outside the UK for more than one month. You may however be required to work in the Republic of Ireland for periods of short duration.

OR

You are liable under your contract of employment to work outside the UK. Particulars currently applicable to such situations, where the duration of the period of working is to exceed one month are as follows:-

(Under each of the 4 headings listed below specify the relevant particulars if such exist. If there are no relevant particulars which can be entered under any particular heading at the time of issue of the statement, then state that fact under the particular heading.) Employer guidance - this should be removed when issued to employee.

1. Duration of the period _____
2. Currency of remuneration during the period _____
3. Additional remuneration or benefits applicable during the period _____
4. Terms and conditions applicable on return to UK _____

Where there is any change in the information provided at 1 to 4 above, you will be individually notified in writing, within one month of the change or before the date on which you leave to work outside the UK for more than a month, if this date is less than one month from the change.

11. Pay Rate:

Your rate of pay *on commencement will be/*is currently £_____ (gross) per hour/week/month/annum and thereafter as itemised on the pay/salary slip which you receive with your pay/salary.

Pay Arrangements:

The pay week runs from _____ to _____ and you will be paid weekly (*in arrears) on _____ by cash/cheque/credit transfer.

OR

You will be paid monthly, on the last banking day of each month by cheque/credit transfer.

Optional:

In addition the company operates a *bonus/*commission scheme. Written details of the scheme will be provided to you separately.

12. Pension Scheme:

The Company will comply with its employer pension duties in accordance with relevant legislation (if applicable). Details in this respect will be furnished to you separately.

A contracting out certificate *is/*is not in force in respect of the employment.

OR: (The following wording is appropriate where the employer has reached their staging date. Employer guidance - to be removed before issuing)

You will be automatically enrolled, have the right to opt in or be entitled to join a pension scheme provided by the Employer. The category which you qualify under will be determined by your age and earnings at the end of each pay period. If you meet the criteria which requires you to be auto enrolled in the pension scheme, you will be entitled to opt out. Further details will be provided to you by _____.

There is/is no contracting-out certificate in force for the Scheme.

(Due to new pensions regulations all employers will be required to automatically enroll certain employees into a "qualifying" pension scheme. This obligation commenced in October 2012, however, it is being phased in over a number of years depending upon the size of the employer's PAYE scheme. Full guidance, including dates when the auto enrolment obligation will apply for employers, is available on the Pensions Regulator website. Employer guidance - this should be removed when issued to employee.)

13. Hours of Work and Breaks:

Your normal hours of work are _____ hours per week (**e.g. 9.00 am to 5.00 pm Monday to Friday**). You will receive a (**paid/unpaid meal break of xx minutes and a paid/unpaid morning/afternoon tea break of e.g. 15 minutes.**)

OR

Your employment shall be _____ net hours per week and your daily working hours, including paid/unpaid meal breaks and paid/unpaid tea breaks, shall be in accordance with a (variable) rota determined by management. Details of the rota are posted in the _____.

OR

Your employment shall be ____ hours per week and your daily hours of work shall be as follows:-

Monday	_____	am/pm to	_____	am/pm
Tuesday	_____	am/pm to	_____	am/pm
Wednesday	_____	am/pm to	_____	am/pm
Thursday	_____	am/pm to	_____	am/pm
Friday	_____	am/pm to	_____	am/pm
Saturday	_____	am/pm to	_____	am/pm
Sunday	_____	am/pm to	_____	am/pm

You will receive a paid/unpaid meal break of ____ minutes and a paid/unpaid tea break of ____ minutes in the morning/afternoon.

Optional:

You will be required to clock in and out at the beginning and end of the day and also for your lunch and at any other time that you leave the premises for any reason.

14. Overtime

Requirement

Overtime/additional hours may arise from time to time. When called upon to do so, you will be expected to work a reasonable amount of overtime/additional hours.

OR

Overtime/additional hours may arise from time to time and it is a condition of employment that you will be required to work a reasonable amount of overtime/additional hours when called upon to do so.

Payment/Compensation for overtime/additional hours

(Employer Guidance - There is no requirement to pay for overtime. Overtime rates are for the employer to agree with the employee)

Payment for overtime/additional hours worked shall be at the basic hourly rate/rate of £____.

OR

When you work in excess of ____ hours each week you shall be paid at the rate of £____.

OR

You will not receive payment for additional hours worked. You will however receive equivalent time off in lieu. This must be taken within 1 month, at a time to be agreed with management.

15. Holidays:

Annual Days

The holiday year runs from dd/mm/yyyy to dd/mm/yyyy.

If you are in this employment for a full holiday year, you will be entitled to xxxxx hours/days/weeks paid holiday in that year.

(The minimum paid leave entitlement is 5.6 weeks based on the employee's contracted hours. Part-time employees are entitled to the same holidays, on a pro rata basis, as a comparable full time employee. You must ensure when completing this document for part-time employees that you clearly outline the part-time employee's holiday entitlement. Employer guidance - this should be removed when issued to employee.)

If you join this employer after the commencement of a holiday year, you shall be entitled in that holiday year to annual holiday with pay proportional to your length of service in the remainder of that holiday year.

Customary Days

(The statutory entitlement to 5.6 weeks' holiday may include customary days – although the employer may choose to provide more than the statutory minimum. Employer guidance - this should be removed when issued to employee.)

This employer does not recognise any customary days.

OR

This employer recognises the following customary holidays with pay:

(a) in addition to your annual leave entitlement.

OR

(b) as part of your annual leave entitlement.

New Year's Day, St Patrick's Day, Easter Monday, Easter Tuesday, May Day, Spring Bank Holiday, July 12 and 13, August Bank Holiday, Christmas Day and Boxing Day. *(Choose from this list the days you recognise)*

Part time employees are entitled to customary holidays on a pro rata basis.

Due to the nature of the business/organisation you will be required to work on some, if not all, of these days. When you are required to work on any of these days, you shall be paid at your basic rate/at the rate of ____ and receive a day off in lieu to be mutually agreed.

(If this clause is used in a situation where the employer's holidays in total meet but do not exceed the statutory minimum, a paid day off in lieu must be given i.e. it should not be optional. Employer guidance - this should be removed when issued to employee.)

On termination of your employment

You shall be entitled to annual holiday with pay, or pay in lieu thereof, proportional to your length of service in that holiday year, less any annual holidays already taken. If you leave employment and have taken more leave than you have earned, the employer will recover from your final pay, monies equivalent to the leave you have taken, in excess of your entitlement.

16. Annual Holiday Arrangements

(You may wish to include in this section any rules relating to booking/ taking of holidays. The proposed wordings included here reflect the notice requirements provided in the Working Time Regulations. You are free to change these with the agreement of the employee. Employer guidance - this should be removed when issued to employee.)

Employee Notification

Advance notice must be given to (Position title) when you wish to seek approval for holiday dates. The notice must be at least twice as long as the holiday being requested.

In your own interest, you should not make any holiday bookings until you receive approval.

OR

Employee/Employer Notification and Closures

The business closes down for holiday at certain times/on certain days during the year and you are required to take all/part of your holidays at these times/on these days which are as follows; *(enter the details)*

The exact dates of these close-down periods will be notified to you in advance each year.

The dates for the balance of holidays must be approved in advance by (Position title).

The notice to be given must be at least twice as long as the holiday being requested.

In your own interest, you should not make any holiday bookings until you receive approval.

Employer Refusals

If the employer is unable to approve the dates you requested for holidays, you will be given notice of refusal in advance of the first requested day. The notice will be at least as long as the number of days/weeks of holiday being requested.

Carryover

Holidays may not be carried forward into the next holiday year. Unused holidays will be forfeited without compensation.

OR

Holidays in excess of 4 weeks may be carried over into the next holiday year. Unused holidays in excess of your carry over entitlement, will be forfeited without compensation.

(An employer can allow carryover of any leave in excess of 4 weeks but cannot offer payment in lieu. Employers must allow carryover of at least 4 weeks' leave where an employee has not taken their leave due to absence from work due to illness. Employers can however set a limit on the period over which holidays can accrue during periods of sickness. Current case law suggests that carryover can be limited to any leave accrued in the previous 18 months. Under current EU case law this leave must be used within 18 months of the leave year in which it accrued. Employer guidance - this should be removed when issued to employee.)

17. Holiday Pay

During holidays, those employees with entitlement to holiday pay will be paid at their normal rate of pay.

OR

If you are entitled to holiday pay, it will be based on your average earnings over the last 12 working weeks prior to the holiday.

OR

Annual leave will be paid each year to the extent required by the current law.

(Employer Guidance - remove before issuing - You should seek up to date legal advice on what to pay employees who do not have a 'normal' pay e.g. commission or bonus based or pay for additional hours the employee normally works.)

18. Sickness Absence and Sick Pay

There is no Employer's Sick Pay Scheme relating to your employment. Provided you meet the qualifying conditions, you will be paid sick pay according to the rules and regulations of the Statutory Sick Pay Scheme (SSP) for a maximum of 28 weeks subject to compliance with the Company's Sickness/Absence Notification and Sick Pay Procedure as set out in Annex A of this document. Your attention is drawn to this Procedure. It is your responsibility to familiarise yourself with and to comply with it at all times.

You agree to consent to a medical examination (at our expense) by a doctor nominated by the Company should the Company so require. You agree that any report produced in connection with any such examination may be disclosed to the Company and the Company may discuss the contents of the report with the relevant doctor.

19. Notice Entitlement/Requirement

(The sample reflects the minimum statutory provisions. Contractual variations are possible. Employer guidance - this should be removed when issued to employee.)

If you have one month's continuous service or more you must give the employer one week's notice of your intention to terminate your employment.

If you have one month's continuous service you are entitled to receive one week's notice in the event of termination. This increases to 2 weeks after 2 year's continuous service and then by a further week for each complete year of continuous service up to a maximum of 12 weeks.

The employer reserves the right in the case of gross misconduct to dismiss you summarily i.e. without notice and without payment in lieu of notice.

You may be required to take some, or all, of your accrued holidays during the notice period.

The company reserves the right to pay in lieu of notice on termination of employment.

20. Compassionate Leave

(This section is optional but many employers will chose to grant some compassionate leave. Employer guidance - this should be removed when issued to employee.)

In the case of absence due to the death of a close relative (i.e. spouse, child, parent, sibling, parent-in-law) the Company will provide up to three days paid compassionate leave, depending on the circumstances. This is in addition to statutory unpaid time off for dependants to enable employees to deal with emergencies.

21. Grievance Procedure

The procedures relating to handling of grievances are set out in the Company Grievance Procedure which can be found in the Employee Handbook / obtained from the HR department / obtained from the Office Manager *(delete as appropriate)* The procedure does not form part of your contract of employment.

If you wish to raise a grievance you may apply in writing to [POSITION] in accordance with our Grievance Procedure.

Note: the main statement (not an appendix) must contain these details.

(If the grievance procedure forms part of the contract of employment, an employer must abide by the terms of the contract at all times or risk a possible breach of contract claim. For this reason it is recommended that grievance procedures are separated from the contract. Employer Guidance - this should be removed when issued to the employee.)

22. Discipline and Dismissal Procedures

Disciplinary Rules and Procedures for Misconduct

The disciplinary rules and the procedure for dealing with disciplinary matters and appeals are set out in the Disciplinary Rules and Procedure which can be found in the Employee Handbook / obtained from the HR department / obtained from the Office Manager (*delete as appropriate*). You are required to make yourself familiar with this document. The procedure does not form part of your contract of employment.

If you wish to appeal against a disciplinary decision you may apply in writing to [POSITION] in accordance with our Disciplinary Rules and Procedure.

Note: the main statement (not an appendix) must contain these details.

All employers are required to adhere to the Minimum Statutory Procedures for handling disciplinary matters and for dismissal. See Section 18 of this Guide for further detail and a sample policy on disciplinary rules and procedures for misconduct. (As with any policy or procedure, it is possible to incorporate the disciplinary procedure into the contract but this means that an employer must abide by the terms of the procedure at all times or risk a possible breach of contract claim. For this reason it is recommended that disciplinary rules and procedures are clearly separated from the contract. Employer guidance - this should be removed when issued to employee.)

23. Restrictive Covenant

Employers will often insert restrictive covenants/trade clauses in order to protect any confidential information or trade secrets that employees have access to during their employment. These are designed to prevent employees from disclosing or using confidential information, trade secrets, etc, and/or soliciting or dealing with customers during a specified period after leaving the business. Restrictive covenants will NOT be required for all businesses. Legal advice should be obtained on any restrictive covenant since each case will depend on the nature of the business and the particular role.

24. Lay Off and Short Time Working

In the event of a reduction or shortage of work or disruption in the provision of the kind of work you are employed to do, or any other occurrence effecting the normal working of the Company, the Company reserves the right to temporarily lay you off work without pay, save for guarantee payments to which you will be entitled, or alternatively, to reduce your normal working hours and to reduce your pay proportionately. The Company shall give as much notice as is reasonably practicable of any further change to your hours including a return to normal working hours. Where you have been laid off or put on short time working under this rule your employment shall, for all contractual purposes, be deemed to have been continuous throughout that period.

25. Changes in Terms and Conditions

The Company reserves the right to make reasonable changes to any of your terms of employment. You will be notified in writing of any change as soon as possible and in any event within one month of the change.

(An employment contract is a legally binding agreement between the employer and the employee. Therefore, it is subject to the basic principle that one party cannot unilaterally alter the terms of the contract without the other party's consent. The purpose of clause 25 is to give the employer the contractual right to make "reasonable" changes to the terms of employment without the employee's specific consent. This is intended to cover minor or administrative matters which do not fundamentally alter the employee's terms of employment. This clause does not give the employer wide powers to make any substantial changes to the contract, and would be narrowly construed by the courts. Employer guidance - this should be removed when issued to employee).

26. Relevant Agreement

For purposes of the Working Time Regulations (Northern Ireland) 2016, it is agreed that the sections on holidays, including holiday entitlement, annual holiday arrangements and holiday pay of this Statement constitute a relevant agreement and are to be treated as agreed in writing:-

Signature _____ (Employer) _____ (Date)

Signature _____ (Employee) _____ (Date)

Your employment with the Company will be in accordance with and subject to the policies and procedures in force for the duration of your employment. You are required at all times to comply with these policies and procedures in force from time to time. Breaches of company policy/procedure may result in disciplinary action up to and including dismissal. These policies and procedures do not form part of your contract of employment. The Company reserves the right to renew, revise, amend or replace these policies and procedures from time to time to reflect the changing needs of the business. These policies and procedures are available for inspection in the **Managing Director's office/Office Manager's office/HR Department/ in the Employee Handbook.**

(Delete as appropriate.)

(As with any policy or procedure, it is possible to incorporate these procedures into the contract but this means that an employer must abide by the terms of the procedure(s) at all times or risk a possible breach of contract claim. For this reason it is recommended that these procedures are clearly separated from the contract.

On one hand the employer wants policies and procedures that are expressed not to be contractually binding so that it can change them more easily than contractual terms and can avoid a penalty (such as an employee bringing a breach of contract claim) for its inadvertent breach of the non-contractual terms. On the other hand you want the employees to comply with the non-contractual policies and procedures. You can achieve this by including the above statement in employees' contracts of employment. This allows you to take disciplinary action against the employees should they not comply with the non-contractual terms. Employer guidance - this should be removed when issued to employee).

ACKNOWLEDGEMENT OF RECEIPT

I acknowledge receipt of a copy of this Statement, together with the documents listed below.

Annex A Sickness/Absence Notification and Sick Pay Procedure

I have read and understood this Statement

Signed: _____

Dated: _____

ANNEX A

SICKNESS/ABSENCE NOTIFICATION AND SICK PAY PROCEDURE

Management are committed to the health and wellbeing of all staff and recognise that from time to time employees may be ill, or for some other justifiable reason may be unable to attend work. Should this occur, the following procedure must be followed:

1. Notification/Evidence of Sickness/Absence Procedure:

- i) Employees who are unable to attend work must notify (Owner/Managing Director), or in his(her) absence the (second in charge), of the nature and expected duration of the absence. This contact should be made by telephone prior to 9:00 a.m. on the first day of absence. Should the absence continue, you must contact the Company as above on the eighth (8th) day and on a regular basis thereafter.
- ii) If you are ill and your absence extends beyond three (3) working days, you must present a completed HMRC self-certification form SC2. This form is available from doctors' surgeries and must be presented to the Company on the fourth (4th) day of your absence.
- iii) In all cases of absence a self-certification form, which is available from (title of person), must be completed on your return to work and supplied to (title of person). If your absence extends beyond seven (7) calendar days, you must also submit to the Company a Statement of Fitness for Work (Fit Note) covering absence from the eighth (8th) day. The certificate, which can be obtained from your doctor, must be presented to the Company as soon as possible after the eighth (8th) day of your absence.
- iv) Continued absence must also be covered by further medical certificates on a regular basis (i.e. each month thereafter).
- v) The Company may require you to be examined by a Company nominated doctor, as it considers necessary.
- vi) If you are absent on sick leave you may be contacted from time to time by (title of person) in order to discuss your wellbeing, expected length of continued absence from work and any of your work that requires attention. Such contact is intended to provide reassurance and will be kept to a minimum.

If you have any concerns while absent on sick leave, whether about the reason for your absence or your ability to return to work, you should feel free to contact (title of person) at any time.

- vii) Upon return to work, you may be required to attend a Return to Work Interview with the person to whom you report. The purpose of this interview is to update you on any developments in your absence, clarify the impact of the absence on the company, and review whether any action is required in terms of appropriate remedies. *(This is a contractual commitment; employer should consider whether this will take place. Employer guidance - this should be removed when issued to employee).*
 - viii) Unacceptable delays in notifying the Company or failure to provide evidence of incapacity may result in the withholding of any SSP due.
 - ix) Any person who knowingly makes a false statement on a self-certification form shall be dealt with in accordance with the Disciplinary Procedure.
- #### 2. Sick Pay:
- i) Statutory Sick Pay (SSP) is payable to employees for up to twenty-eight (28) weeks of sickness absence.
 - ii) For SSP purposes, Qualifying Days are Monday to Friday.
 - iii) An employee, absent from work due to illness or injury, shall be paid SSP providing the qualifying conditions for receipt of such are satisfied and provided that the requirements in respect of notification and supply of evidence of incapacity as set out in the Notification/Evidence of Incapacity procedure are complied with.

(This procedure is contractual. Employers should therefore be careful when making changes to this procedure to help avoid a breach of contract claim. Employer guidance - this should be removed when issued to employee).

WORKING HOURS, REST BREAKS AND TIME OFF

Employers must ensure that the limits on the hours worked and breaks given comply with the Working Time Regulations (NI) Order 2016. This legislation generally affects all workers although there are stricter obligations with regard to night workers and young workers. Shop employees have special rules relating to them if they work on Sundays.

The minimum regulatory standards that employers must comply with relate to:

- the average weekly working time and night work;
- daily and weekly rest periods, and in work rest breaks; and
- annual leave.

While employers must ensure compliance, workers are not obliged to make use of their entitlements and an employer cannot force a worker to take an entitlement that is made available to him, subject to health and safety considerations.

Working Hours

- An employee's **average working time**, including overtime, for each seven-day period must not exceed 48 hours, unless the employee has given their **voluntary consent in writing** to opt-out. For **younger workers under 18**, the maximum working week is **40 hours** and **no opt-out** is available. Young workers should not usually work more than eight hours per day.
- The legal requirements on working time apply to all workers, agency workers and those receiving relevant training, e.g. work experience.
- Hours are **averaged over a 17-week period**, though this can be **extended by agreement up to 52 weeks**. This "reference period" does not include time spent on holiday or sick leave.
- Employees are required to work **no more than six days in every seven, or 12 days in every 14**.
- Employers are required to keep records to show they are complying with the 48-hour limit – but can do this using records they already keep for pay (i.e. a payslip quoting hours worked).
- Employers need to keep up-to-date records of employees who have voluntarily waived the 48-hour limit (see Appendix 4A). Employees can cancel the opt-out agreement whenever they want, although they must give at least seven days' notice.

- There are special regulations governing **lorry drivers** and **night workers' hours**. Employees should not **work more than an average of eight hours a night** and should also be offered a **free health assessment** to check they are fit to work at night (this should be repeated regularly, typically once per year).

What counts as work

As well as carrying out their normal duties, an employee's working week can include:

- job-related training
- job-related travelling time (e.g. a sales rep)
- working lunches
- time spent working abroad
- paid and some unpaid overtime
- time spent 'on-call' at the workplace
- anytime that is treated as 'working time' under a contract
- travel between home and work at the start and the end of the working day may count if an employee doesn't have a fixed place of work. Employers should seek further advice.

Rest Breaks

- Employees have the right to have a minimum **20 minute rest break in each shift lasting more than six hours**. This break may be paid or unpaid. The contract of employment should clarify this issue. Lunch breaks count as rest breaks. A worker **under 18** who works for more than **4.5 hours** is entitled to a rest break of **30 minutes**. Employers can determine the break's timing, avoiding taking this at the beginning or end of a shift.
- Employees have a right to **11 hours rest between each working day**. **Young workers must have twelve hours rest** between each working day and two rest days per week. Young workers must not work at night between 10.00 pm and 6.00 am, or between 11.00 pm and 7.00 am if the contract of employment provides for work after 10.00 pm.
- It is advisable to offer breaks as required to employees as a result of any health condition or disability.

SECTION 4

Time Off

Leave

- Employees are legally entitled to a minimum of **5.6 weeks' paid holiday**. For those working a **five day week** this means **28 days (5.6 x 5)**. Leave is reduced on a **pro rata** basis for those working **part-time** (see Appendix 4B for sample calculation). The contract of employment may provide the right to take more than the statutory minimum.
- The entitlement to 5.6 weeks' paid holiday **can include public holidays**.
- The leave entitlement starts building up from an employees' first day at work. During the first year the amount of leave taken at any time can be limited to the amount the employee has accrued.
- Holiday pay is based on the employee's average pay. However, there is no **legal right to time off on public holidays**.
- Employers and employees can agree how much notice of leave is required.
- An employer may **require employees to take all their leave at specified times** as long as they give notice which is twice as long as the holiday they wish employees to take. Employers may also refuse requests for leave provided they give the same amount of notice as the holiday the employee wishes to take. Refusal should be with good reason, fair and not based on prohibited discrimination grounds (See section 1).
- Employers may agree to allow employees to **carry over** a portion of their holiday entitlement to be taken in the next holiday year, but employees should take at least four weeks per year. Employees **cannot request payment in place of taking the time off**.
- Employers must allow carryover of at least 4 weeks' leave where an employee has not taken their leave due to absence from work due to illness. Employers can however set a limit on the period over which holidays can accrue during the period of illness. The LRA can offer further guidance.
- If someone stops working for you, they are entitled to be paid for any leave they have accrued but not taken (see Appendix 4C for sample calculation).

Other circumstances for Time Off

Employees may be entitled to time off work in specified circumstances.

If an employee is pregnant, she is entitled to **paid time off for any antenatal appointments** made on the advice of a registered medical practitioner, midwife or health visitor.

Employees are entitled to '**reasonable**' **paid time off** to:

- Carry out duties or receive training as a **Safety Representative**;
- Carry out **industrial relations** duties or be trained as an official of a recognised trade union;
- Carry out duties as an **Information and Consultation Negotiating Representative** or employee representative;
- Carry out duties as a **pension scheme trustee**;
- **Look for another job** or arrange training for future employment **when being made redundant**;
- Carry out duties or receive training as an **employee representative for consultation** over collective redundancies or business transfers;
- **Study or train leading to a relevant qualification** (if the employee is aged 16 or 17);
- Attend **antenatal care appointments** (pregnant women).

Employees are entitled to '**reasonable**' **unpaid time off** for:

- Taking action to deal with an **emergency** involving a dependant (see section 12);
- To accompany their partner to an antenatal appointment in the case of an expected child's father or certain other people who are in a relationship with the expectant mother e.g. husband or civil partner (maximum of 2 occasions for up to 6.5 hours each time).
- Taking part in certain **union activities**;
- Performing **public duties** i.e. jury service, school board of governors.

When deciding how much time off to allow for public duties, employers should take into account:

- How much time off the employee requires;
- How much time off the employee has already had;
- The effect the time off will have on the business.

Employees may also require time off for reasons related to disability e.g. for treatment or rehabilitation.

Employers may allow time off work to visit the doctor or dentist but are not legally obliged to do so unless the contract of employment allows this.

Penalties

The Health and Safety Executive for Northern Ireland is the body responsible for enforcing the Regulations. For more information please see www.hseni.gov.uk

Employers will commit a criminal offence and will be subject to penalties if they do not comply with some of the above Regulations. Workers can also ensure that employers comply with their entitlements and have the option of pursuing remedies through either the Civil Courts or the Employment Tribunals.

[insert company name]

WORKING TIME REGULATIONS OPT-OUT AGREEMENT

Name of Employee _____

Post _____

This agreement is drawn up under the Working Time Regulations (Northern Ireland) 2016 and provides for you to enter into an agreement with [insert company name] to opt out of the 48 hours limit in respect of the total weekly average hours required in your case.

- 1 I agree that the 48 hours weekly limit specified in the Working Time Regulations (Northern Ireland) 2016 shall not apply in my case.
- 2 I understand that this agreement will apply from _____.
- 3 Notwithstanding my agreement to dis-apply this limit, I am fully aware that I have a responsibility not to work hours so long that they may impair my efficiency or expose my colleagues, the public or property to risk.
- 4 I understand that [insert company name] may need me to keep a record of my working hours and I will do this as and when required. If requested at any time, I will produce the record to [insert company name].
- 5 I agree to give not less than one month's notice to bring this agreement to an end.
- 6 I am aware that I am under no obligation to sign this agreement and that it is illegal for me to be subject to any detriment if I decline to sign.

Signature: _____ Date: _____

The original to be placed in the Employee's Personal File.

APPENDIX 4B

CALCULATING PRO RATA LEAVE ENTITLEMENT FOR STAFF WHO WORK PART-TIME HOURS

Stage 1

Calculate the number of hours a full-time employee is entitled to.

Full-time leave entitlement in days x number of hours contracted to work per day

e.g. the staff member has 28 days leave per year and is contracted to work 7.25 hours per day (36.25 hours per week)

$$28 \times 7.25 = 203 \text{ hours}$$

Stage 2

Calculate the number of hours a part-time employee is entitled to.

Full-time leave entitlement in hours **divided** by full-time working hours per week multiplied by number of part-time hours to be worked per week

e.g. $203 / 36.25 \times 25 = 140$ hours
(where the part-time employee is working 25 hours)

The part-time employee is entitled to 140 hours per leave year.

Stage 3

If the employee reduces their hours during the leave year, the leave calculation will need to be calculated on a pro rata basis to reflect the proportion of the year worked full-time and the proportion to be worked part-time. For example:

1 Jan – 30 September – full time hrs

203 hours divided by 12 months x 9 months =
152.25 hours

1 October – 31 December – part-time hrs

140 hours divided by 12 months x 3 months = 35 hours

TOTAL HOURS per year = $152.25 + 35 = 187.25$ hours

CALCULATING LEAVE FOR LEAVERS

Stage 1

Determine the employee's leave entitlement

i.e. 28 days

Stage 2

Determine the number of days leave the employee is entitled to for the period up to and including their last day of employment with you (ensure any carry over of leave is included in this calculation if applicable)

e.g. Leave year runs from 1 April – 30 March
employee is entitled to 28 days per leave
year employee resigns and their last day
of employment is 31 July

No of days per year (28 days) divided by 12 months
x 4 months worked = 9.333 days

This is the actual number of days the employee is entitled to from 1 April – 31 July

Stage 3

Check the number of leave days the employee has taken up to and including their last day of employment with you.

i.e. 7 days

The 7 days are then deducted from the 9.333 days and you should ensure that the employee receives payment in lieu of the leave untaken i.e. 2.333 days. Similarly, if the employee has taken more leave than the actual number of days allowed you should advise the employee that the deficit will be deducted from their final pay.

PAY AND BENEFITS

Introduction

It is important to establish a clear strategy in relation to pay and benefits which supports the business strategy. Pay and benefits can play an important part in establishing the company's reputation as an employer of choice which can help in attracting and retaining the right people to deliver the business strategy - people who are intrinsically motivated rather than those who require external incentives to motivate them. The importance of non-financial elements to your overall strategy, e.g. management style, working environment etc, should not be underestimated.

Any pay strategy should also reward effective employee behaviour and business focused results. On the other hand, an unfair or inequitable reward package can be very de-motivating, so decisions about pay and benefits need to be thought through carefully.

The Basics

Before considering rates of pay and possible benefits, employers need to ensure that they are complying with statutory requirements. Further information on the following is available on the HMRC website: www.hmrc.gov.uk

Registering as an employer with Her Majesty's Revenue and Customs (HMRC).

All employers need to be registered for tax purposes and deduct income tax and National Insurance Contributions (NICs) from employees whose earnings meet certain thresholds.

Keeping records

Employers must keep adequate records showing how NICs were calculated and what payments have been made for each employee.

Deduct tax and National Insurance

Employers have a responsibility to deduct Pay As You Earn (PAYE) tax and National Insurance Contributions (NICs) from employees' pay. The employee's tax code and National Insurance category can be used to work out how much Income Tax and National Insurance to deduct from their pay.

Employers also pay NICs on the earnings paid to employees who earn above a certain threshold.

Earnings include not only cash amounts but also other benefits such as company cars.

This information must be reported to HMRC each time an employee is paid.

Issue pay statements

Each employee must receive a written itemised pay statement or pay slip at or before the time they are paid. This can be in paper or electronic format but it must show certain items, including the employee's gross pay before deductions, all deductions and the purpose for which they are made, and the net amount payable after the deductions.

At the end of the tax year employees whose earnings reached the National Insurance Lower Earnings Limit during the tax year must receive a summary of their pay and deductions on form P60. This must be in paper format and must be given to the employee before 1 June following the end of the tax year.

Further information is available on the HMRC website: www.hmrc.gov.uk

All of the above information relating to tax and National Insurance payments should be checked with HMRC.

Pay Strategy

1. Have a plan and a structure

If you are operating in a market where there is a high **demand** and a short **supply** of the **skills** you need, you may need to pay more to attract and retain the most suitable staff.

If you are based in a remote **location** you may need to provide an incentive for employees to travel to your premises or offer remote working. Your **market sector** or the type of job may influence staff expectations about what additional benefits should supplement basic pay.

You will also need to consider what you can afford and where you want to position yourself in the market. The plan should ensure value for money. There may be other factors that make your organisation an attractive place to work, such as the location of your business, your reputation, the facilities which are available, the range of opportunities for learning and development and the opportunity of becoming involved in interesting work. Resist the temptation to copy pay systems from other organisations that may have very different goals and structure to your business.

Also, think about the kind of culture you want to create in your company. Paying higher rates of pay will not guarantee better performance but paying inadequately could lead to difficulties with recruitment, retention and motivation of staff.

SECTION 5

2. Determine pay levels

In determining pay levels for each role it is important to consider **external market rates** but also **internal comparisons** to ensure that any internal variations can be justified.

Pay levels will also be affected by the company's **ability to pay**. You need to be conscious that it is very difficult to reduce an employee's pay in the absence of their consent so paying something which your business can afford from one year to the next is of the utmost importance.

Define the roles within your organisation clearly and then gather market data on what other employers in your industry and region are paying. Market data can be gathered from:

- recruitment adverts, including online adverts, recruitment websites etc;
- agencies;
- personal contacts;
- job applicants;
- specialist surveys.

This data will help to establish starting salaries. When comparing jobs in your organisation with the market, bear in mind matters including levels of responsibility, qualifications required, size of company and any particular difficulties associated with the role.

Ensure that there is a sound rationale for any differences in starting pay and that people are treated fairly. All pay rates must also comply with the **National Minimum Wage /National Living Wage** legislation. The rates are age based i.e. there are separate rates for employees aged 25 and over, those aged 21 - 24, those aged 18 – 20 those aged 16 – 17 and some apprentices. Current rates are available on the NI Business Info website: www.nibusinessinfo.co.uk

The market should also be checked regularly to ensure that pay for existing roles is still competitive.

3. Decide how and when pay will be reviewed

Decide how often pay will be reviewed and how increases will be determined e.g. **across the board annual increases** in line with inflation or increases based on **individual performance, skills or the value the employee brings**.

Generally it is easier to manage pay increases if they all happen at the same time, rather than on the anniversary of start date, by way of example. Increases can also be linked to **market rates or company profitability**. If increases are to be related to either company or individual performance, it helps to establish objectives against which performance can be measured. Some organisations include an element based on individual performance and a separate element based on company performance.

Whichever system is chosen, it is important to ensure that people are treated consistently and fairly and that pay systems do not disadvantage any category of employee.

It is probably best to keep the wording in employment contracts flexible in relation to pay so that the organisation can respond effectively to changing circumstances. However, this does not mean that the employer can unilaterally reduce the rate of pay.

4. Consider carefully the purpose of bonus and commission arrangements

Some employers operate a system where all or part of an employee's pay is based on performance, skills, results or profits. The employer still has an obligation with this type of system to ensure that the employee is paid at least the appropriate National Minimum /Living Wage rate.

The advantage of bonus and commission schemes is that they provide a flexible element of the reward "package" and they provide payments which are not pensionable. Individual incentive schemes can motivate employees but may also encourage individualistic behaviour. Furthermore, they tend to narrow focus and this may not always be beneficial, particularly in work that requires creative thinking and the ability to see the "big picture". Group incentive schemes can encourage team working but could result in unequal performances. It can be helpful to base bonuses on company performance. If the company does well everyone is rewarded. People then have an interest in the company's success. If this approach is taken it is important to show people how they impact on the success of the business.

The advantages and disadvantages of any potential scheme should be considered carefully as poorly thought through schemes can lead to unintended consequences. Financial information is easy to measure but an over-focus on financial metrics may drive inappropriate behaviour. Non-financial measures such as customer satisfaction and retention, brand recognition and employee engagement and retention may require more judgement to assess but may be equally important for the sustainability and growth of the business.

Bonus or commission arrangements should therefore avoid a focus on any one goal and should only reward behaviour which contributes to the purpose and the long term success of the organisation. In order for this to work effectively, it is important to have a clear organisation strategy in place.

SECTION 5

Care should be taken to ensure that variable pay does not come to be taken for granted or seen as an entitlement since this will not improve motivation and in fact may negatively impact motivation if circumstances change and it is no longer possible to pay it. Measures and targets should be reviewed regularly to ensure they remain relevant.

It is also important to ensure that part-time employees, disabled employees and employees on maternity leave do not miss out on the opportunity to earn a bonus due to the nature of targets. This can be a complex area so employers should consider taking legal advice on this.

It is important to provide clear and written guidelines on the operation of any planned bonus system.

In particular, employers should be clear on whether any bonus and/or commission scheme is to be purely discretionary/non-contractual and/or contractual i.e. part of an employee's terms and conditions of employment. This is important, particularly in terms of potential litigation, and employers should consider taking legal advice.

More information on different pay systems including bonus and incentive plans can be found on the ACAS website (www.acas.org.uk) and the CIPD website (www.cipd.co.uk).

5. Ensure that all pay arrangements are transparent and fair and that they do not discriminate

Any system should be as transparent as possible. Everyone should know how their pay is calculated and how they might get a bonus or other type of pay enhancement. All managers and employees should understand the rationale for the system.

It is unlawful for employers to discriminate in how they pay salaries and wages and other benefits to their employees. Where two people are doing equal work, they should normally expect to receive the same rate of pay. Any differences will need to be explained and should be based on legitimate factors and not on prohibited discrimination grounds, like sex, religion, race, sexual orientation or disability (see Section 1).

The law allows for very few exceptions. One example is the National Minimum/Living Wage rate which is based on age bands.

Further information on avoiding discrimination in pay, including how to do equal pay audits which can help to identify potential problems, is available from the Equality Commission at www.equalityni.org

6. Consider the entire reward package

Financial rewards can easily be bettered by competitors so on their own they are unlikely to create high levels of motivation and commitment. Employees are attracted and motivated by a range of factors in addition to basic pay. Surveys show that in fact most people are not motivated by pay and a large proportion put "interesting work" at the top of the list of desirable reward factors.

While pay needs to be at a certain level, if people are not to become dissatisfied and seek other employment, it will not actually motivate people to perform better. When recruiting, think about the kind of people who will make the best contribution to the business and how they are likely to be motivated.

In addition, think about what **benefits** your company can offer **apart from pay**. Other benefits offered by employers include employer pension contributions, death in service benefits, life assurance, company sick pay scheme, use of a car or car allowance, private healthcare, private health insurance, life insurance, additional annual leave and childcare vouchers. Share options can also be a useful way of attracting, retaining and motivating staff. Some companies allow employees to select benefits from a pre-defined list. Others allow employees to determine their own benefits with the option of salary sacrifice.

Provision of benefits should not be used to discriminate against any particular category of employee. For example, a benefit that is available to an employee's spouse should also be available to a civil partner, as otherwise there would be a risk of a discrimination claim on grounds of sexual orientation.

Some organisations also offer a range of **rewards** to recognise individual employee performance that goes beyond the normal performance of the role. These may include small gifts or meal vouchers as a way of recognising and rewarding an employee's contribution. Team events such as a meal out can be an effective way of saying 'thank you' and maintaining morale amongst your workforce.

It is worth discussing the cost of various options with the company's accountant before any decisions are made. It is also advisable to check with HMRC if these benefits are taxable.

7. Ensure compliance with pensions legislation

By the end of 2018, all employers will have to comply with the legal requirement to **automatically enrol** certain members of their workforce into a qualifying company pension scheme which complies with the minimum automatic enrolment requirements (or the National Employment Savings Trust (NEST) scheme). All employers must also make employer pension contributions which comply with the automatic enrolment requirements, where required. The law came into force for large employers from 2012 and since then smaller employers have followed. Further information is available on the Pensions Regulator website at: www.thepensionsregulator.gov.uk

8. Review the system regularly

It is important to check, at least annually, that pay rates are competitive and that the reward strategy is meeting its objectives by contributing to the achievement of business goals.

It is also recommended that employers conduct periodic equal pay audits to check that their pay systems are not operating in an unlawfully discriminatory way and that men and women are receiving equal pay for equal work.

Conclusion

An effective reward strategy will use a variety of methods to recognise and reward employees for their contribution to business success. A 'thank you' from a manager can be the most meaningful reward. A pleasant and supportive work environment, opportunities for training and development, flexibility in relation to hours of work or facility to work partly at home can all help to improve recruitment, retention and commitment of employees. However, it is important to offer benefits that your employees actually value. The best way to ensure that this happens is to ask employees either directly through line managers or through employee surveys.

Once the whole reward package has been defined, remember to communicate the value of their total benefits package to employees. If the reward strategy is not working, do not be afraid to change it. However, do take legal advice before changing a reward package where it is, or has become, a contractual entitlement.

HEALTH AND SAFETY

1. The Health and Safety Executive

The Health and Safety Executive for Northern Ireland (HSENI) is the leading agency responsible for workplace health and safety in Northern Ireland. The Executive works hand in hand with the local councils to ensure adequate standards of health and safety in the workplace. HSENI administers health and safety legislation in areas such as manufacturing, construction, schools, hospitals, agriculture, etc. while the councils are responsible for offices, shops, hotels, catering, etc. Advice and support is available to employers at www.hseni.gov.uk/topic/small-business-advice

The Employment Medical Advisory Service (EMAS) is a statutory advisory body within the Health and Safety Executive for Northern Ireland (HSENI). It is staffed by a specialist doctor, nurse and support staff. EMAS gives advice on work related health matters to organisations and individuals including employers, employees, trade unions, regulators, health care professionals and others. It aims to prevent ill health caused by work and to promote good health in the workplace. If you are a Northern Ireland based company and you would like someone from EMAS to conduct a free and entirely confidential visit to advise you on matters pertaining to health and your workforce/workplace you may contact them for assistance.

2. Legal Obligations

Employers have a number of obligations in relation to health and safety at work. Under common law, the employer's duty is generally one of reasonable care. For example, employers have a duty to take reasonable care of the health and safety of staff. Failure to comply with health and safety responsibilities may lead to criminal proceedings and fines, irrespective of whether an individual worker is injured. In addition, individual directors and managers can be personally prosecuted and fined or even imprisoned as a result of offences committed by their company for breaches of statutory rules. A worker may also bring a civil claim for damages where he or she has suffered injury as a result of a breach of health and safety legislation.

Employers should also be aware of the principle of vicarious liability which means that an employer is liable for its employees' acts or omissions and may be held responsible if an employee injures someone in the course of their employment, even when the employer did not authorise the act that caused the injury.

Employers carrying on a business in the UK are also obliged to maintain insurance against liability for injury or disease sustained by employees in the course of their employment in the UK. Employers must make a copy of the Certificate of Insurance available to employees, e.g. via the internet or displaying a copy on the staff notice board.

3. Legislation

There are numerous pieces of health and safety related legislation, some applicable only to specific industries or types of business (e.g. construction). Some legislation applies to all employers, such as:

- The Health and Safety at Work (NI) Order 1978;
- The Management of Health and Safety at Work Regulations (NI) 2000;
- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (NI) 1997 (RIDDOR).

The Health and Safety at Work (NI) Order 1978

This Order places a general duty on all employers to ensure, so far as is 'reasonably practicable', the health, safety and welfare of all employees. The main employer responsibilities are:

- To provide safe plant and systems of work;
- To provide adequate arrangements for the use, handling, storage and transport of articles and substances;
- To provide information, training and supervision on health and safety matters;
- To maintain a safe place of work and safe means of access and egress;
- To maintain a safe and healthy working environment;
- To protect others (i.e. the public), who may be affected by the way business is conducted;
- To prepare a written health and safety policy detailing the organisation and arrangements for implementation and to bring this policy to the attention of all employees. The health and safety policy should detail the responsibilities of key members of staff within the organisation and the health and safety procedures and standards that apply.

'Reasonably practicable' implies a balance of the seriousness of the risk against the cost and difficulty of overcoming it.

SECTION 6

The Order also imposes a duty on employers to consult with trade union appointed safety representatives or, where there is no trade union, representatives selected by the employees. This consultation is generally carried out through the formation of a Safety Committee. The employer may also choose, where there is no trade union, to consult with all employees directly. The law gives employees protection against dismissal or discipline because they have taken part in consultation. Some of the other requirements of the Order include:

- Employers must also undertake **risk assessments** on tasks performed by employees and put in place **adequate control measures** to prevent injury;
- Employers must provide **relevant health and safety training** for all employees;
- Employers must provide **personal protective equipment** (PPE) for employees performing hazardous tasks;
- Employers with **5 or more employees** must have a **written health and safety policy**.

Employees also have general duties placed on them by the Order:

- To take reasonable care for their own health and safety and of the health and safety of others who may be affected by their actions at work;
- To cooperate with their employer so far as is necessary in the implementation of measures to fulfil their employer's duties in compliance with health and safety legislation;
- Workers must not work in a dangerous way or refuse to wear or use appropriate protective equipment as this will amount to a breach of their statutory obligations, even if it is only their own safety that is affected.

The Management of Health and Safety at Work Regulations (NI) 2000

The Regulations require that employers assess the risks to the health and safety of workers and others who may be affected by the undertaking of work. A risk assessment involves finding out what in your workplace could cause harm to people and deciding if you have done enough, or need to do more, to protect them. The level of detail in a risk assessment should be broadly proportionate to the risk involved. Specific risk assessments must be made regarding pregnant women and children and young people. In addition, risk assessments are required in jobs involving manual handling, noise, work stations and display screen equipment under various statutory requirements.

The Regulations also require the employer to appoint a 'competent person' to assist them with their duties. This may be an employee or an external provider – the critical point is that they must be competent. When an internal employee is chosen for this role, adequate training must be provided.

Many of the duties contained in the Regulations overlap with other existing Regulations.

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (NI) 1997 (RIDDOR)

Employers must record and report certain accidents and ill health situations at work. The Regulations not only apply to employees, but to members of the public and anyone who may suffer injury or death from an accident arising from or connected with work. These include:

- Death or major injury connected with work;
- Accidents where a person is incapacitated for more than 3 days;
- Dangerous occurrences;
- Disease.

Records should be kept of any reportable occurrence. The record should include the date, time and place of the event, the date and method of reporting, personal details of those involved and a brief description of the event.

Incidents must be reported to the authority responsible for your workplace (i.e. HSENI or your local council).

It is good practice for employers to operate an accident book to log details of all incidents whether or not they require reporting to the HSENI.

4. Information and Advice

HSENI offers an extensive range of services. These include:

- A comprehensive publications reference library;
- A video library;
- Internet access for health and safety information;
- A range of leaflets, publications and videos free of charge.

Further information on the management of health and safety at work (including forms) may be found on the following websites:

HSENI - www.hseni.gov.uk

NI Business Info - www.nibusinessinfo.co.uk

See the bibliography for more details.

SECTION 7

FLEXIBLE WORKING AND PART-TIME WORKERS' RIGHTS

Introduction

Many employers believe that providing flexible working arrangements can have a positive impact in terms of improving productivity and reducing costs.

Very often the needs of the business cannot be accommodated within a standard working day. Employees may need to stay late or come in early to get something finished. This is less likely to be a problem if the company offers some flexibility in return. There may also be peaks and troughs within the working day when more or fewer employees are required. It may be in the company's interest to stagger start and finish times.

Certainly some companies have found that employees value flexibility more than the higher salaries offered by competitors. Also employing more staff working fewer hours can allow a company to employ a broader mix of skills.

Offering flexible working can therefore have a positive effect on recruitment, employee commitment and staff retention. Flexibility can enable employees to achieve balance between their work and personal life and can enable companies to respond more quickly to customer demand.

Types of Flexible Working

Part-time working	Workers are contracted to work less than standard, basic, full-time hours.
Flexi-time	Workers can vary the time they start or finish, provided an agreed period each day (core time) is spent at work and an agreed total number of hours are worked.
Staggered hours	Workers have different start, finish and break times, allowing a business to open longer hours.
Compressed working hours	Workers can cover their standard working hours in fewer working days.
Job sharing	One full-time job is split between two workers who agree the work pattern between them.
Shift swapping	Workers arrange shifts among themselves, provided all required shifts are covered.
Self rostering	Workers nominate the shifts they would prefer, leaving you to compile shift patterns matching their individual preferences while covering all required shifts.
Term-time working	A worker remains on a permanent contract but can take paid/unpaid leave during school holidays.
Annual hours	Workers' contracted hours are calculated over a year. While the majority of shifts are allocated, the remaining hours are kept in reserve so that workers can be called in at short notice as required.
V-time working	Workers work fewer hours according to a prearranged schedule, with a corresponding reduction in salary and benefits. After a specified time limit, the employees may return to their full time status.
Zero-hours contracts	Workers agree to make themselves available for work as and when required, but have no guaranteed hours or shift patterns. They work only the hours they are needed.
Home working/teleworking	Workers spend all or part of their week working from home or somewhere else away from the employer's premises.
Sabbatical/career break	Workers are allowed to take an extended period of time off either paid or unpaid.

SECTION 7

The legal right to request flexible working

Eligible employees

All employees have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly for any reason.

The statutory right is a 'right to request' and not a right to be granted flexible working. An employer must give it serious consideration.

The employee must have worked for the employer for 26 weeks continuously at the date the application is made. Employees can only make one statutory request in any 12 month period.

Employers should also be aware that certain types of people are protected by Equality legislation. These include:

- Women returning from maternity leave who wish to reduce their hours;
- Disabled employees for whom an employer is legally required to make "reasonable adjustments" in order to allow them to do their jobs.

The Statutory Procedure

The statutory procedure is summarised in the flow chart shown later in this section and detailed below.

An employee may only make one request under the statutory procedure every 12 months.

Employees have the right not to be treated detrimentally or dismissed by their employer for a reason relating to their flexible working request.

Making a request

Eligible employees can make a request to:

- change the hours they work;
- change the times they are required to work; or
- work from home (whether for all or part of the week).

An employee's request must be in writing and dated and must provide:

- as much information as they can about current and desired working pattern, including working days, hours and start and finish times, and give the date from which they want their desired working pattern to start;
- an explanation of what effect, if any, the employee thinks the proposed change would have on the employer and how they feel such effect might be dealt with;
- information to confirm that they meet the eligibility criteria set out above; and
- details of whether they have made a previous formal request for flexible working and, if so, when.

It must also clearly state that the request is being made under the statutory right to make a Flexible Working request.

Flexible arrangements are required to comply with the law on working time.

Employers are required to give serious consideration to such requests.

Arrange a meeting

A meeting should be held with the employee within 28 days of receipt of the request to discuss their request. If the requested working pattern cannot be accommodated, there may still be a possibility of finding a working pattern suitable to both parties.

It is possible to accept a request on the basis of the application, without the need for a meeting.

The employee is entitled to bring a fellow colleague to the meeting if they wish to act as a companion.

Accepting a Request

The employer may be able to decide at this stage that the proposed pattern is feasible. If accepting an employee's flexible working request the employer is required to write to the employee within 14 days of the meeting:

- detailing the new working pattern;
- stating the date on which it will start;
- ensuring that this notice is dated; and
- stating that the arrangement means a permanent change to their terms and conditions of employment and the employee may not revert back to the previous working pattern unless agreed otherwise.

If the employer needs more time to make a decision, they should ask for the employee's agreement to delay the decision for an agreed period.

Trial period

If you and/or your employee are not sure that the proposed flexible working pattern will work in practice, you could think about trying a different working arrangement or alternatively you could consider a trial period.

The statutory procedure does not provide for trial periods and there are specified time limits within the procedure which must be adhered to.

However, a trial period can potentially happen at two stages before a formal agreement:

- Firstly, the employer could give informal agreement to a trial before a formal flexible working request has been made by the employee. If this happens, the formal procedure would still be available to the employee if they wished to use it at some stage in the future.

SECTION 7

- Secondly, if a formal application is made, an extension of time for the employer to make a decision could be agreed and the trial period could take place; in this case the rest of the formal procedure would still be available to the employee.

In addition, a written agreement should be produced, stating the start and end dates for the trial period and also specifying that this is a **temporary** change to terms and conditions. This agreement should also be dated and signed by both parties.

Refusing a Request

If you decide that you cannot accommodate any kind of flexible working for an employee, you should write to the employee, within 14 days of the meeting:

- Stating which of the listed business ground(s) below apply as to why you cannot accept the request:
 - (i) the burden of additional costs,
 - (ii) detrimental effect on ability to meet customer demand,
 - (iii) inability to re-organise work among existing staff,
 - (iv) inability to recruit additional staff,
 - (iv) detrimental impact on quality,
 - (v) detrimental impact on performance,
 - (vii) insufficiency of work during the periods the employee proposes to work,
 - (viii) planned structural changes.
- Providing an explanation of why the business reasons apply in the circumstances;
- Setting out the appeal procedure.

This written notice must be dated.

Appeals

If the employee wishes to appeal they must make their appeal in writing within 14 days of receiving the written notice refusing the request. In the appeal notice the employee must set out their grounds for appeal. The notice of appeal must be dated. There are no restrictions on the grounds for appeal.

The employer must then meet with the employee to hear the appeal within 14 days. The appeal should be heard by a different manager. The employee should be informed of the result of the appeal in writing within 14 days.

Complaints

There are a number of options open to an employee if a request is refused:

- Informal discussions with the employer;
- Use of the internal grievance procedure;
- Assistance from a third party such as a trade union representative.

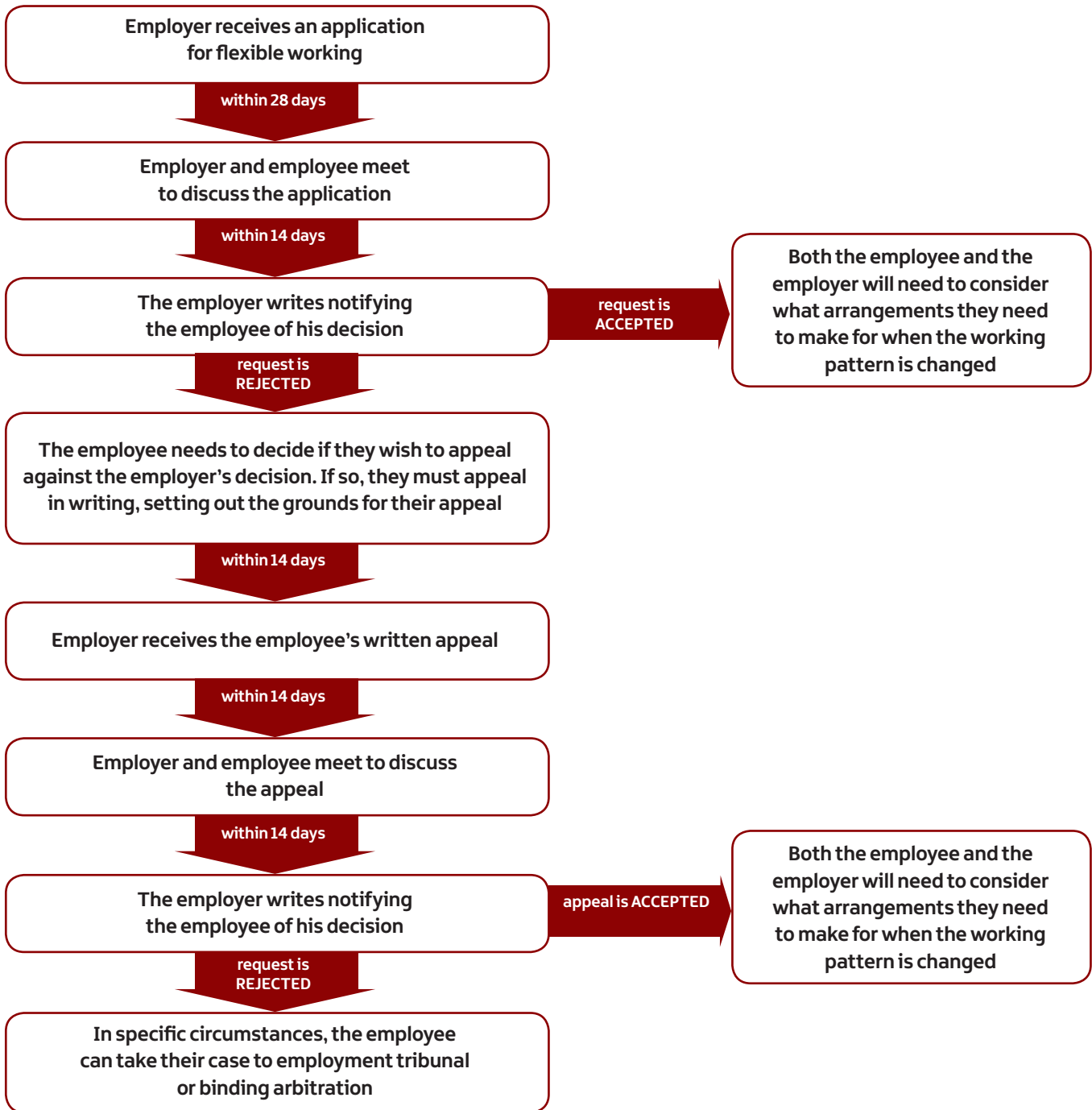
An employee can make a complaint to an Industrial Tribunal on the following grounds:

- the employer has failed to follow the correct procedures;
- the employer has rejected the request for a reason other than the listed business grounds;
- the decision to reject the application was based on incorrect facts.

Once the complaint is lodged at the Industrial Tribunal, it can be determined by either the tribunal or by an arbitrator. If the employer and employee agree to do so, they can refer the complaint for determination under the Labour Relations Arbitration Scheme. An arbitrator's decision is binding in law and has the same effect as a tribunal. Further details of the Labour Relations Arbitration Scheme can be found on the LRA website (www.lra.org.uk).

SECTION 7

Statutory Procedure for dealing with requests for flexible working



Note: The employee is entitled to be accompanied by a worker employed by the same employer at the meeting to discuss the application.

SECTION 7

Changes to flexible working arrangements

When a statutory request is granted, it becomes a permanent change to the employee's contract. If at a later date the arrangement is not working out, the employer does not have the right to change it back to the original arrangement since this would be an unilateral change to the employee's contract (see Section 3). The best option in this case is to discuss the situation with the employee in order to reach a voluntary agreement.

Flexible working policies

If you do not have one already, consider putting together a policy for dealing with all flexible working requests. This will help you deal with requests consistently and fairly. The Equality Commission has produced a model 'flexible working policy and procedure' which you can download from www.equalityni.org

It is good practice for the policy to cover recruitment and part-time working, i.e. how you would consider requests to work part time from both internal and external job applicants applying for full-time positions.

Part-time workers' rights

Part-time employees must not be treated less favourably than comparable full-time employees unless different treatment can be objectively justified.

Pay for part-time workers

Compared with comparable full-time workers, part-time workers are entitled to receive equal:

- Hourly rates of pay – hourly rates for part-time employees should be equal to those of equivalent full-time employees.
- Overtime premiums – payable once the employee has worked more than the normal full-time hours of a comparable full-time worker, e.g. if a comparable full-time worker normally works 40 hours per week, and their contract offers a premium rate for overtime pay (e.g. time and a half/double time) a part-time worker working 20 hours per week would have to work another 20 hours before receiving the premium rate of overtime pay.
- Enhanced rates of pay - for working outside normal contractual hours, e.g. bonus pay, shift allowances, unsocial hours payments and weekend payments.

Equal treatment of part-time workers

Compared with full-time workers, part-time workers are entitled to receive equal:

- access to any company pension scheme;
- access to training and career development - when scheduling training courses, employers should do as much as possible to include part-time workers;

- rights to career breaks;
- rights to receive enhanced sick, maternity, paternity and adoption leave and pay;
- parental leave rights; and
- consideration for promotion.

Pro rata contractual benefits

Part-time workers have the right to receive contractual benefits pro rata, i.e. in proportion to the hours they work.

This applies to benefits such as:

- annual leave above the statutory minimum;
- company cars;
- staff discounts;
- health insurance;
- subsidised mortgages; and
- profit-sharing and share-option schemes.

If you cannot easily divide a benefit, e.g. health insurance or a car, it may be reasonable to withhold it from part-time workers. However, this decision would need to be justified on objective grounds. The best thing to do may be to work out the cash value of the benefit and give the appropriate pro rata amount to the part-time worker. For example, you could calculate the financial benefit of a company car and pay half that amount to part-time workers who work half the number of hours of full-time workers in the same role.

Justifying unequal treatment

Although it is important to treat full and part-time workers equally, there may be instances where an employer is able to justify unequal treatment on objective grounds if it can be shown that it is necessary and appropriate to achieve a legitimate business objective.

For example, an employer may be justified in withholding a health insurance scheme from a part-time worker because of the disproportionate cost.

In the case of share option schemes, an employer may be able to justify the exclusion of a part-time worker where the value of the share options is so small that the potential benefit to the part-timer of the options is less than the likely cost of realising them.

SECTION 7

Complaints of unequal treatment

Part-time workers who believe their employer has treated them less favourably can ask for a written statement of reasons for this. The employer has 21 days in which to respond.

Part-time workers who still believe they are being treated unfavourably by their employer, and do not believe their employer has objectively justified this, can make a complaint to an Industrial Tribunal that they have been treated less favourably or suffered a detriment. Once the complaint is lodged at the Industrial Tribunal, it can be determined by either the Tribunal or by an arbitrator. If the employer and employee agree to do so, they can refer the complaint for determination under the Labour Relations Arbitration Scheme. An arbitrator's decision is binding in law and has the same effect as a tribunal. Further details of the Labour Relations Arbitration Scheme can be found on the LRA website.

A tribunal/arbitrator can make a declaration, make an employer pay compensation, and recommend that the employer take whatever action it considers necessary to prevent or reduce the adverse effect on the worker if they find in the part-time worker's favour.

MATERNITY LEAVE AND PAY

Key Legal Points

- All female employees are entitled to take up to **52 weeks' maternity leave** regardless of length of service.
- All pregnant employees are entitled to **paid time off for antenatal care**. If the employer requests, the employee must show her employer a certificate from a doctor and an appointment card unless it is the first appointment.
- Expectant fathers and partners are entitled to take unpaid time off work to accompany a pregnant woman to **2 antenatal appointments** (up to 6.5 hours for each but the employer can choose to give more) if they are: the baby's father; or the expectant mother's spouse or civil partner; or in a long-term relationship with the expectant mother; or the intended parent (for surrogacy arrangements).
- The **first 26 weeks** of maternity leave are called **Ordinary Maternity Leave (OML)**. Employees may also take an **additional 26 weeks** maternity leave called **Additional Maternity Leave (AML)**, regardless of their length of service.
- An eligible mother can end her maternity leave early, and with her partner or the child's father, opt for **Shared Parental Leave** (see Section 11).
- The earliest day that **leave can begin** is the 11th week before the **Expected Week of Confinement (EWC)** i.e. the week the baby is due. The latest day that leave can begin is on the day after the birth.
- Leave is compulsory for the two weeks immediately following the birth or four weeks if the woman works in a factory.
- For eligible employees, **Statutory Maternity Pay (SMP)** is paid for **39 weeks**. The employer pays SMP but can reclaim all or most of it from the government. For the **first six weeks** employees are entitled to SMP at the rate of **90%** of their average weekly earnings. For the next **33 weeks** employees are entitled to **the standard, flat weekly rate** as set by government or **90% of their average weekly earnings, whichever is the lesser**.
- If an employee suffers a miscarriage or still birth after the 24th week of pregnancy, she is still entitled to statutory maternity leave and statutory maternity pay if she meets the eligibility criteria below.
- **Health and safety regulations** require employers to take account of the special position of new and expectant mothers and mothers who are breastfeeding and to conduct a risk assessment. This should take account of any risks where the worker may be exposed to any process, working conditions, or physical, chemical or biological agents which might adversely affect the health and safety of the worker or their baby. Risks should primarily be avoided by adopting prevention and control measures.

Notification

Employees must inform their employer as soon as possible that they are pregnant. This is important as there may be health and safety considerations.

Before the end of the 15th week before the Expected Week of Confinement (EWC), or as soon as reasonably practical afterwards, the employee must notify the employer:

- that she is pregnant;
- the EWC; and
- the date on which she would like to start maternity leave.

The employee must provide a certificate from a doctor or midwife (usually a MAT B1 form) confirming their EWC.

The employee can give notice for her Statutory Maternity Pay at the same time.

Statutory Maternity Pay - Qualifying Conditions

Employees must meet certain qualifying conditions to receive statutory maternity pay (SMP). They must:

- Have been **continuously employed with the employer for at least 26 weeks by the beginning of the 15th week** before the EWC;
- Have average weekly earnings at or above the lower earnings limit for National Insurance Contributions (NICs);
- Provide the employer with a doctor's or midwife's certificate (MAT B1 form) stating the EWC;
- Give at least 28 days' notice (or if that is not possible, as much notice as they can) of their intention to take maternity pay; this notice can be given at the same time as notice is given for maternity leave; and
- Still be pregnant 11 weeks before the start of the EWC or have already given birth.

SECTION 8

Terms and conditions of employment during maternity leave

- During OML and AML, an employee is entitled to **continue to benefit from all the terms and conditions** of employment which would have applied to her had she been at work. **The exception is wages or salary or other benefits with a transferable cash value** such as a car allowance or luncheon vouchers, though statutory maternity pay must be paid if the employee is eligible.
- The employee continues to accrue both full statutory **annual leave** (i.e. 5.6 weeks or pro rata equivalent) and any additional contractual leave throughout the 52 weeks.
- **Benefits** such as share schemes, private healthcare, use of company car and phone (unless these are provided for business use only) do continue during OML and AML. Whether childcare vouchers constitute “benefits/ remuneration” is under consideration by the courts so you should seek further advice on this issue.
- Contributions to an **Occupational Pension Scheme** should continue as if the employee is working normally. During any period that your employee is on additional maternity leave (AML) but not receiving any maternity pay e.g. during the last 13 weeks of AML, it is not obligatory to make any employer pension contributions unless the contract of employment provides otherwise.

If the pension scheme rules require employee contributions to continue during maternity leave, her contributions should be based on the amount of statutory and/or enhanced maternity pay she is receiving.

Employee contributions will therefore stop during any period of unpaid maternity leave - e.g. during the last 13 weeks of AML - but the scheme rules may allow her to still make voluntary contributions.

- Any **pay increase** an employee receives or would have received had she not been on maternity leave must be taken into account in the calculation of her maternity-related pay.

The position in relation to the payment of bonuses to employees during maternity leave is extremely complicated and inconsistent. Individual advice should be sought on a case by case basis. Whether a bonus will be payable to an employee on maternity leave will depend upon the nature of the bonus, contractual obligations and the custom and practice of the employer.

- Ordinary and Additional Maternity Leave counts towards an employee’s period of **continuous employment** for the purposes of entitlement to other statutory employment rights, e.g. the right to a **redundancy payment**.
- It also counts towards assessing **seniority and personal length-of-service payments**, such as pay increments, under the contract of employment.

Communication before and during maternity leave

After receiving notification of when the employee wishes her maternity leave to start the employer must in turn notify her (within 28 days of her notification) of the date on which the leave will end.

It is helpful for both parties to confirm the employee’s maternity plans in writing – see Appendix 8A.

An employee can change her start date by giving 28 days’ notice of her new start date.

The employee should provide the employer with a MATB1 form which she will receive from her midwife or doctor. This will confirm the employee is pregnant and advise the expected due date. If the employee does not qualify for SMP, return the MATB1 form to her and in addition complete the form SMP1 from the Social Security Agency.

Maternity leave shall start on the earliest of:

- the employee’s intended start date;
- the day after any day on which the employee is absent for a pregnancy-related reason during the four weeks before the EWC; and
- the day after the employee gives birth.

If the employee is absent for a pregnancy-related reason during the four weeks before EWC, she must let the employer know as soon as possible in writing. Periods of pregnancy-related sickness absence from the start of the employee’s pregnancy until the end of her maternity leave will be recorded separately from other sickness records and will be disregarded in any future employment-related decisions.

During the maternity leave period an employer can make reasonable contact with an employee and she may make contact with her employer. In addition, an employee can **choose to come** to work as a way of **keeping in touch (KIT)** with workplace developments for 10 days or less of her leave. An employee is **entitled to be paid for KIT days** and it should be noted that an employee cannot be required to take KIT days nor is an employer obliged to offer them. KIT days may not be used in the first two weeks after giving birth or during the first four weeks if the employee works in a factory.

Remember that you must keep an employee informed of promotion opportunities and other information relating to their job that they would normally be made aware of if they were working e.g. redundancy situations.

SECTION 8

Returning to work following maternity leave

Employees have a **right to return to the same job** on the same terms and conditions of employment as if they had not been absent after Ordinary Maternity Leave unless a redundancy situation has arisen, in which case they are entitled to be offered a suitable alternative vacancy.

If the employee takes **Additional Maternity Leave she is still entitled to return to her old job** on the same terms and conditions of employment as if she had not been absent **unless this is not reasonably practicable**, but she must still be offered a job that is suitable for her and the terms and conditions must be no less favourable.

If an employee wishes to return to work early, she must give notice to the employer at least eight weeks before her new return date. The employer has the discretion to accept less or no notice. When exercising discretion, caution should be taken to avoid claims of unfair treatment or discrimination.

If the employee attempts to return to work earlier than planned without giving notice, the employer can postpone her return by up to eight weeks. However, her return may not be postponed to a date later than the end of her 52 week SML period.

If an employee terminates her contract before the end of the statutory maternity pay (SMP) period, the employer must continue to pay her SMP for the full 39 week SMP pay period, provided she has not started work for an employer who did not employ her in the 15th week before her EWC.

Employees who don't return are not required to pay back any SMP they have received. Employees should give notice of resignation in accordance with their contract. The amount of maternity leave left to run when notice is given must therefore be at least equal to the statutory/contractual notice required.

On her return to work an employee should receive any pay increases which would have been paid to her had she not been on maternity leave.

Protection from detrimental treatment and dismissal

Pregnant employees and those on maternity leave are protected under sex discrimination legislation which outlaws unfair treatment, including dismissal, on grounds of their sex, pregnancy or maternity leave. Examples of detrimental treatment include denial of promotion or selection for redundancy based on reasons solely related to the employee's pregnancy or subsequent maternity leave. An employee dismissed for a reason related to pregnancy or childbirth may make a claim of automatically unfair dismissal regardless of length of service.

If a redundancy situation arises, an employee on maternity leave must be offered a suitable vacancy if one is available, in preference to any affected employee who is not on maternity leave.

Related rights

Be aware that working parents have the right to request **parental leave, shared parental leave, time off for dependants and flexible working** (see sections 7, 11 and 12). Any request for flexible working from a returning employee should be seriously considered. Any such requests should be made as early as possible. Refusal to offer such an option without an objective business reason may amount to indirect sex discrimination.

For further details see www.nibusinessinfo.co.uk

APPENDIX 8A

Model letter for employers to acknowledge notification of maternity leave.

This letter can be used when only the statutory levels of leave and pay are provided and as such could be amended if additional leave/pay are offered (Employer should respond within 28 days of receipt of employee's notification.)

Date:

Dear [name of employee],

Congratulations and thank you for telling me about your pregnancy and the date that your baby is due. I am writing to you about your maternity leave and pay.

As we have discussed, you are eligible for 52 weeks' maternity leave (26 weeks' Ordinary Maternity Leave plus 26 weeks' Additional Maternity Leave). Given your chosen start date of [insert date], your maternity leave will end on [insert date].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before (your original start date), whichever is sooner.

If you decide to return to work before [insert date leave ends], you must give me at least eight weeks' notice.

As we discussed, you are eligible for **39 weeks' Statutory Maternity Pay / not eligible for Statutory Maternity Pay.** *[delete as appropriate].*

Your maternity pay will be £[insert amount] from [insert date] to [insert date] and £[insert amount] from [insert date] to [insert date].

OR

The form SMP1 (enclosed) explains why you do not qualify for Statutory Maternity Pay. You may however be entitled to Maternity Allowance. If you take this form to the Jobcentre Plus or Social Security Office at [insert local details], they will be able to tell you more.

As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant, or breastfeeding mothers. Now you have told me you are pregnant I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns, following this assessment and specifically in relation to your pregnancy, please let me know immediately.

During your maternity leave we are both able to make reasonable contact with each other to help with staying in touch. We are also able to agree that you can do up to ten days' work during your maternity leave without it affecting either your maternity leave or your SMP. Before you begin your maternity leave we should discuss how we will keep in touch during your time off.

If you decide not to return to work you must still give me proper notice. Your decision will not affect your entitlement to SMP.

If you have any questions about any aspect of your maternity entitlement, please do not hesitate to get in touch with me. I wish you well.

Yours sincerely,

PATERNITY LEAVE AND PAY

Key Legal Points

- Paternity leave and pay is available to an employee who is the partner of either a woman who has given birth or someone who is adopting a child, either one of two parents jointly adopting or having a baby through a surrogacy arrangement.
- The leave must be used for the purpose of caring for the child or supporting the child's mother in her caring for the child.
- To qualify for paternity leave, an employee must **tell their employer** that they intend to take paternity leave **by the end of the 15th week before the week the baby is due**.
- Eligible employees (see below) can take **either one or two consecutive weeks' paternity leave**. Paternity leave can start on any day of the week. Paternity leave **cannot be taken as odd days or as two separate weeks**.
- Employees who have worked for their employer continuously for **26 weeks by the end of the 15th week before the baby is due** may be entitled to paid paternity leave for the birth or adoption of a child.
- Leave cannot start until the birth of the baby and must be taken **within 56 days of the actual date of birth of the child**.
- The employee is not obliged to give you any medical evidence of the pregnancy or birth.
- Employees can take unpaid time off work to accompany a pregnant woman to **2 antenatal appointments** (up to 6.5 hours for each but the employer can choose to give more) if they are: the baby's father; or the expectant mother's spouse or civil partner; or in a long-term relationship with the expectant mother; or the intended parent (for surrogacy arrangements).
- An employee may still get paternity leave or pay if the child is stillborn after 24 weeks of the pregnancy or the child is born alive at any point in the pregnancy but later dies.
- During Statutory Paternity Leave employees **may be eligible for Statutory Paternity Pay (SPP)**. SPP is payable at a standard weekly rate which changes every year. If SPP is paid, employers will normally be able to recover some or all of the amount paid.
- Employees may also be eligible for **Shared Parental Leave (SPL)**, see Section 11 for details, which is different to **Parental Leave** (See Section 12). Employees cannot take Paternity Leave after Shared Parental Leave.

Qualifying Conditions for Statutory Paternity Pay

To qualify for **SPP**, an employee **must tell their employer that they want to get SPP at least 28 days beforehand** and must meet the same earnings and service criteria as an employee seeking to qualify for SMP (See Section 8 for SMP entitlements). To claim SPP the employee must make a declaration by completing a self-certificate 'Becoming a Parent' (SC3) form available from HMRC.

Where an employee is entitled to both pay and leave, the notice given for leave by the 15th week before the week the baby is due can count for pay as well. It may therefore make sense for the employee to provide a completed self-certificate for both leave and pay when giving their notice for leave.

Terms and Conditions during Paternity Leave

- The employee has a statutory right to **continue to benefit from all the terms and conditions** of their employment which would have applied had they been at work, **the exception being wages** or salary (although the employee may be entitled to SPP).
- The employee **continues to accrue** both full statutory **annual leave** (i.e. 5.6 weeks or pro rata equivalent) and any additional contractual leave during the period of paternity leave. An employee is not entitled to take annual leave during paternity leave but, subject to the usual arrangements with you, there is no reason why they cannot take a period of annual leave immediately before and/or after paternity leave.
- **Benefits** such as share schemes, use of company car and phone (unless these are provided for business use only) **do continue** during the entire period of Paternity Leave. However what is determined as "benefits/renumeration" is dependent on the specific circumstances so it is advisable to seek further legal advice if in doubt.
- While an employee is on Paternity Leave, employer contributions to an **Occupational Pension Scheme** should continue as if the employee is working normally and receiving normal pay for doing so. This is regardless of whether or not the employee is receiving ordinary statutory and/or enhanced paternity pay.

SECTION 9

If the Pension Scheme rules require employee contributions to continue during Paternity Leave, the employee's contributions should be based on the amount of statutory and/or contractual paternity pay they are receiving. Employee contributions will therefore stop if the employee is not receiving any paternity pay but the scheme rules may still allow them to make voluntary contributions.

- Paternity Leave counts towards an employee's period of **continuous employment** for the purposes of entitlement to other statutory employment rights, e.g. the right to a redundancy payment.
- It also counts towards assessing **seniority and personal length-of-service payments**, such as pay increments, under the contract of employment.

Communication

An employee can change the date on which they want their leave to start (but not the length of the leave being taken). However, the employee must give the employer notice of this (i.e. 28 days notice of the change should be given). A new self-certificate should also be completed by the employee.

If the employee is not entitled to SPP for any reason, provide them with a written statement. The form 'Why I cannot pay you SPP' (SPP1) is available from Her Majesty's Revenue and Customs website (www.hmrc.gov.uk).

Protection from Detrimental Treatment and Dismissal

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, paternity leave. Examples of detrimental treatment include denial of promotion, facilities or training opportunities which would normally have been available to the employee.

Related rights

Be aware that employees have the **right to request flexible working, shared parental leave, parental leave and time off for dependants**. See Sections 7, 11 and 12.

See the NI Business Info website (www.nibusinessinfo.co.uk) for full details and further information.

ADOPTION LEAVE AND PAY

Key Legal Points

One member of a couple, or an individual, who adopts a child can take Statutory Adoption Pay and Leave. The other member of a couple may qualify for Statutory Paternity Pay and Leave (See Section 9). If they are adopting the child together, they can choose which of them will take adoption leave and pay and which will take paternity leave and pay.

Eligible employees (see below for further clarification on eligibility) are entitled to take **52 weeks' Statutory Adoption Leave (SAL) and receive Statutory Adoption Pay (SAP) for 39 weeks** when they adopt a child. The first **26 weeks are classed as Ordinary Adoptive Leave (OAL)** and the second **26 weeks as Additional Adoptive Leave (AAL)**.

Eligible employees are entitled to SAL regardless of their length of service. The rules are different depending on whether the child is adopted from within the UK or from overseas. An employee may also be entitled to adoption leave and statutory adoption pay if they are an intended parent in a surrogacy arrangement.

Rules in relation to **Shared Parental Leave and Pay** also apply to adoption or surrogacy (See Section 11 for further details). The period of leave can start from **the date of the child's placement** or from **up to 14 days beforehand**.

Employees who are the primary adopter of a child are entitled to paid time off to attend 5 appointments (6.5 hours each) after being notified of a match for adoption.

Employees who are secondary adopters are entitled to unpaid time off to attend 2 appointments (6.5 hours each) after being notified of a match for adoption. No qualifying length of service applies.

Employees won't qualify for either adoption leave or pay if they:

- become a special guardian or kinship carer
- adopt a stepchild
- adopt a family member or stepchild
- adopt privately, e.g. without permission from a UK authority or adoption agency.

Statutory Adoption Leave

Qualifying Conditions for UK Adoptions

An employee qualifies for 52 weeks' SAL when they adopt a child in the UK if they:

- Have been matched with a child to be placed with them by a UK adoption agency.

- Have notified the agency that they agree that the child should be placed with them and agree with the date of placement.
- Notify you of: when they want to take their SAL no more than seven days after they are notified that they've been matched with a child; that they intend to take adoption leave; when they intend to start it; and the date the child is expected to be placed with them for adoption.

Qualifying Conditions for Overseas Adoptions

An employee qualifies for 52 weeks' SAL when they adopt a child from overseas if they:

- Have received official notification from the relevant UK authority of their eligibility to adopt a child from abroad.
- Have given you the correct notification and confirmation that the adopter has been officially approved.
- Are the child's adopter. This is the person who will adopt or has adopted the child or, in a case where the child will be or has been adopted by two people jointly, whichever of the joint adopters has chosen to take statutory adoption leave in respect of the child.

Joint and individual adoptions

Where a couple are adopting jointly, they can choose who will take SAL and who (regardless of gender) will take Statutory Paternity Leave (SPL). They cannot both take SAL or SPL. If an employee is adopting individually, only they are eligible for SAL although their partner (regardless of gender) may be eligible for SPL.

Foster parents who adopt a child

A foster parent may be able to take SAL if they go on to adopt a child, but only if:

- The child that the employee fostered is then matched with them for adoption by a UK adoption agency. Adoption via a court order does not count.
- The child is then actually placed with them for adoption.
- The foster parents have not previously availed of adoption leave in respect of the same child in the circumstances described under the heading 'UK Adoptions' above.

The usual notification and service criteria still apply. The adoption leave only relates to the actual placement for adoption. Any period of ordinary foster caring does not count.

SECTION 10

Surrogacy

An employee who becomes a parent through an arrangement with a surrogate mother is also entitled to SAL and SAP.

They will also be entitled to the right to request a flexible working arrangement from their employer.

The intended parent who does not take adoption leave and pay may be eligible for paternity leave and pay.

Intended parents may also qualify for Shared Parental Leave and Pay where the parent who qualifies for adoption leave and pay chooses to return to work before the end of the adoption leave period.

Intended parents are also entitled to unpaid time off to attend ante-natal appointments with the surrogate mother.

Statutory Adoption Pay

- Many employees will find it convenient to give notice of the date for the start of Statutory Adoption Pay (SAP) at the same time as they give notice for SAL. The date for the start of SAP can be the same as the start date for adoption leave.
- Employees must provide evidence (if their employer requests it) from the adoption agency as proof of their entitlement to adoption pay, for example, a letter on headed paper confirming they have been matched with a child or a 'matching certificate' together with relevant notifications outlined above.
- Employees may be eligible for Statutory Adoption Pay. There are different eligibility criteria for SAP for UK and overseas adoptions.
- The employee's average weekly earnings during the eight weeks ending with the week that the adoption agency told the adopter they had been matched with a child must not be less than the lower earnings limit set by the government.
- Statutory Adoption Pay is paid for 39 weeks and usually covers the first 39 weeks of an employee's adoption leave. The amount payable to employees is the lower of:
 - The standard weekly rate (see www.nibusinessinfo.co.uk for current rates);
 - Their Average Weekly Earnings.
- Employers will normally be able to recover some or all of the SAP paid.

See the HMRC website for further information and advice. www.hmrc.gov.uk

Terms and conditions during Statutory Adoption Leave

- The employee has a statutory right to continue **to benefit from all the terms and conditions** of his/her employment which would have applied to him/her had he/she been at work, the **exception being wages or salary**, though you must pay him/her statutory adoption pay if he/she is eligible.
- The employee continues to accrue both full statutory annual leave (i.e. 5.6 weeks or pro rata equivalent) and any additional contractual leave throughout the 52 weeks.
- An employee may not take annual leave during adoption leave. However, the employer may allow the employee to take any untaken annual leave before and/or after their adoption leave.
- **Benefits such as share schemes, use of company car and phone** (unless these are provided for business use only) do continue during the period of leave.
- Contributions to an **Occupational Pension Scheme** should continue as if the employee is working normally. During any period that your employee is on additional adoption leave (AAL) but not receiving any pay e.g. during the last 13 weeks of AAL, it is not obligatory to make any employer pension contributions unless the contract of employment provides otherwise. If the pension scheme rules require employee contributions to continue during adoption leave, contributions should be based on the amount of statutory and/or enhanced adoption pay he/she is receiving. Employee contributions will therefore stop during any period of unpaid leave e.g. during the last 13 weeks of AAL but the scheme rules may allow voluntary contributions.
- Statutory Adoption Leave **does not break continuity of employment**.
- Similarly, the entire SAL period **counts towards an employee's period of continuous employment** for the purposes of entitlement to other statutory employment rights, e.g. the right to a redundancy payment.
- Both OAL and AAL count for **assessing seniority and personal length-of-service payments**, such as pay increments, under the contracts of employment of employees who have had a child placed with them for adoption **on or after 5 October 2008**, or who have a child adopted from overseas that entered Northern Ireland on or after 5 October 2008.
- However, for employees who had a child placed with them before 5 October 2008, it was only necessary to count the period of OAL for assessing length of service payments.
- Therefore, when assessing length of service for a pay rise for example, it's possible that an employee who has adopted twice or more while employed with one employer could have a later period of AAL count towards their length of service but not an earlier one.

SECTION 10

Communication

After receiving notification of when the employee wishes their adoption leave to start, it is important in turn to notify him/her (within 28 days of his/her notification) of the date on which the leave will end. This will normally be 52 weeks from the intended start of their adoption leave.

It is helpful for both parties to confirm the employee's adoption plans in writing – see Appendix 10A.

During the adoption leave period you can make reasonable contact with an employee and he/she may make contact with you. In addition, an employee can choose to come to work as a way of keeping in touch with workplace developments. The employee may work (including attending training) on up to ten days during adoption leave without bringing the adoption leave to an end. This is not compulsory and arrangements, including any additional pay, would be discussed and agreed with the employer.

Remember that you should keep an employee informed of promotion opportunities and other information relating to their job that they would normally be made aware of if they were working e.g. redundancy situations.

Terminated Placement

If a child's placement is terminated during adoption leave, specific rules governing when the adoption leave will end will apply if:

- the employee has started the adoption leave before the placement and the adoption agency has notified the employee that the child will no longer be placed with him or her; or
- the child dies/is returned to the adoption agency during the leave.

In such circumstances, the adoption leave will end eight weeks after the end of the week during which the employee is notified that the adoption will not be taking place or the child dies unless the employee's entitlement to leave and/or pay would have ended earlier in the normal course of events.

Returning to Work following Adoption Leave

Employees have a right to return to the same job after Ordinary Adoptive Leave. If the employee takes Additional Adoptive Leave he/she is still entitled to return to his/her old job unless this is not reasonably practicable, but must still be offered a job that is suitable for him/her and the terms and conditions must be no less favourable.

Unless the employee has notified you otherwise, the date on which they return to work will normally be the first working day 52 weeks after their statutory adoption leave (SAL) began.

If an employee wishes to return to work before the planned return date (usually the date confirmed to them before they went on leave), they must give notice at least eight weeks **before** their new return date although the employer can accept less or no notice.

If the employee attempts to return to work earlier than planned **without** giving notice, the employer can postpone their return until after the eight weeks have elapsed.

However, their return may not be postponed to a date later than the end of their 52 week SAL period.

Returning Late

If the employee wishes to return later than the planned return date they must either:

- request unpaid parental leave, giving as much notice as possible but not less than 21 days; or
- request paid annual leave in accordance with their contract, which will be at the employer's discretion.

If the employee is unable to return to work due to sickness or injury, this will be treated as sickness absence and the employer's usual sickness policy will apply.

In any other case, late return will be treated as unauthorised absence.

Deciding not to return

If the employee does not intend to return to work, or is unsure, it is helpful if he/she discusses this with the employer as early as possible. If the employee decides not to return he/she should give notice of resignation in accordance with their contract. The amount of adoption leave left to run when the employee gives notice must be at least equal to their contractual notice period, otherwise the employer may require the employee to return to work for the remainder of the notice period.

Once the employee has given notice that he/she will not be returning to work, they cannot change their mind without the employer's agreement.

This does not affect the employee's right to receive SAP.

Protection from Detrimental Treatment and Dismissal

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, adoption leave. Examples of detrimental treatment include denial of promotion, facilities or training opportunities which you would normally have made available to the employee.

Related rights

Be aware that employees have the **right to request Parental Leave, Shared Parental Leave, time off for dependants and flexible working**. See Sections 7, 11 and 12.

See the NI Business Info website (www.nibusinessinfo.co.uk) for full details and further information.

APPENDIX 10A

MODEL LETTER FOR EMPLOYERS TO ACKNOWLEDGE NOTIFICATION OF ADOPTION LEAVE

This letter should be used when only the statutory levels of leave and pay are provided and as such could be amended if additional leave/pay are offered. (Employer must respond within 28 days of receipt of employees' notification).

Date:

Dear [name of employee],

Congratulations and thank you for telling me that you will be adopting a child. I am writing to you about your adoption leave and pay.

As we have discussed, you are eligible for **52 weeks' adoption leave** (26 weeks' Ordinary Adoptive Leave plus 26 weeks' Additional Adoptive Leave / **you are not eligible for adoption leave** *[delete as appropriate]*.

Given your chosen start date of [insert date] your adoption leave will end on [insert date].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before [insert date leave starts] (your original start date), whichever is sooner. Please contact me if you wish to discuss this.

If you decide to return to work before [insert date leave ends], you must give me at least eight weeks' notice.

As we discussed you are eligible for **39 weeks' Statutory Adoption Pay** / **not eligible for Statutory Adoption Pay** *[delete as appropriate]*.

Your adoption pay will be £[insert amount] from [insert date] to [insert date]

OR

The SAP1 form (enclosed) explains why you do not qualify for Statutory Adoption Pay. You should contact your adoption agency to find out if you can get any other help.

During your adoption leave we are both able to make reasonable contact with each other to help with staying in touch. We are also able to agree that you can do up to ten days' work during your adoption leave without it affecting either your adoption leave or your SAP. Before you begin your adoption leave we should discuss how we will keep in touch during your time off.

If you decide not to return to work, you must still give me proper notice. Your decision will not affect your entitlement to SAP.

If you have any questions about any aspect of your adoption entitlements please do not hesitate to get in touch with me. I wish you well.

Yours sincerely,

SHARED PARENTAL LEAVE AND PAY

Key Legal Points

- Shared Parental Leave (SPL) is designed to give parents more flexibility in how to share the care of their child in the first year following birth or adoption. The shared parental leave and pay provisions are governed by the Work and Families (Northern Ireland) Act 2015.
 - Shared Parental Leave is different to the similarly named **Parental Leave** (See Section 12). Qualifying employees may take both as appropriate.
 - Qualifying mothers and adopters continue to be entitled to Maternity and Adoption rights but they may also be able to choose to end this early and exchange it for Shared Parental Leave and Pay (called curtailing). They and their named partner will then need to decide how they want to share this new entitlement.
 - 2 weeks of paid **Paternity Leave** (see Section 9) continues to be available to qualifying fathers and the partner of a mother or adopter. However, Shared Parental Leave has replaced the Additional Paternity Leave entitlement.
 - **To qualify for SPL**, the child's mother (or adoptive parent) must be eligible for either:
 - maternity leave or pay (see Section 8);
 - maternity allowance; or
 - adoption leave or pay.
- Your employee must also:
- have worked for you continuously for at least 26 weeks by the end of the 15th week before the due date (or date they are matched with their adopted child)
 - still be employed by you while they take SPL
 - give you the correct notice including a declaration that their partner meets the employment and income requirements which allow your employee to get SPL.
- **To qualify for Shared Parental Leave** the mother or adopter must be entitled to some form of maternity (see Section 8) or adoption entitlement (see Section 10), have given notice to curtail it and must share the main responsibility for caring for the child with the named partner. For a **parent to be eligible** to take Shared Parental Leave they must **be an employee** and they must pass the **continuity of employment test**. In turn, the other parent in the family must meet the **employment and earnings test**. Agency workers, the self-employed or parents who are not employed are not entitled.
 - **Continuity of employment test:** the person must have worked for the same employer for at least 26 weeks at the end of the 15th week before the week in which the child is due (or at the week in which an adopter was notified of having been matched with a child or adoption) and is still employed in the first week that Shared Parental Leave is to be taken.
 - **Employment and earnings test:** the other person in the family must have worked for at least 26 weeks in the 66 weeks leading up to the due date and have earned above the maternity allowance threshold of £30/week in 13 of the 66 weeks (check www.nibusinessinfo.co.uk for updates).
 - The mother or adopter decides whether to keep taking their maternity or adoption entitlement or to use Shared Parental Leave. In any event, the first 2 weeks, or the first 4 weeks for factory workers, must be taken by the mother for health and safety reasons. If they choose to use Shared Parental Leave, they can end their entitlement or give advance notice to curtail it. This advance notice means their partner could begin to take Shared Parental Leave while the mother or adopter is still on maternity or adoption leave.
 - Shared Parental Leave may be taken at any time within the period which begins on the date the child is born/date of the placement and ends 52 weeks after that date. An employee is entitled to submit three separate notices to book leave.
 - Employees can take SPL in up to **3 separate blocks**. They can also **share the leave with their partner** if they are also eligible.
 - Parents can choose how much of the SPL each of them will take.
For example, a mother could end her maternity leave after 12 weeks, leaving 40 weeks (of the total 52 week entitlement) available for SPL. If both the mother and her partner are eligible, they can share the 40 weeks. They can take the leave at the same time or separately.
 - **Leave must be taken in complete weeks** and may be taken either in a continuous period, which an employer cannot refuse, or in a discontinuous period, which the employer can refuse. If a request for **discontinuous leave** is refused the total amount of leave requested in the notice will automatically become a continuous block unless it is withdrawn.

SECTION 11

- **Statutory Shared Parental Pay (ShPP)** is paid at a government set rate (see www.nibusinessinfo.co.uk for current rates) or 90% of the employee's average weekly earnings (whichever is lower).
- To qualify for ShPP a parent must pass the continuity of employment test and have earned an average salary of the lower earnings limit (see www.nibusinessinfo.co.uk for current rates) for the 8 weeks prior to the 15th week before the expected due date or matching date. The other parent in the family must meet the employment and earnings test.
- SPL and ShPP must be taken between the baby's birth and first birthday (or within one year of adoption).
- You can refuse SPL or ShPP if the employee doesn't qualify. You must tell the employee the reason if you refuse ShPP. You do not have to give a reason for refusing SPL.

Notification

The employee must give you **written notice** of their entitlement to SPL and ShPP, including:

- their partner's name;
- maternity leave start and end dates;
- the total amount of SPL and ShPP available and how much they and their partner intend to take;
- that they are sharing childcare responsibility with their partner; and
- a non-binding indication of how the employee will take the SPL that is available to them.

It must also include a **signed declaration** from the partner stating:

- their name, address and National Insurance number;
- that they satisfy the qualifying requirements for your employee to take SPL and ShPP; and
- that they agree to your employee taking SPL and ShPP.

After receiving this notice, you can ask for:

- a copy of the child's birth certificate; and
- the name and address of their partner's employer.

You have 14 days to ask for this information. Your employee then has a further 14 days to provide it. If a birth certificate cannot be produced at first instance, the employee must provide the relevant information as soon as is reasonably practicable.

Notice period

An employee must give at least 8 weeks' notice of any leave they wish to take.

If the child is born more than 8 weeks early, this notice period can be shorter.

Your employee has a statutory right to a maximum of 3 separate blocks of leave, although you can allow more if you wish.

The notice may specify a single, continuous block of leave or may request discontinuous periods of leave.

If the employee requests a single block of leave, they are entitled to take this and it cannot be refused. If the employee requests a period of discontinuous leave, an employer does not have to agree to this pattern and there is a 2 week consultation period to seek an agreed pattern.

SPL and ShPP cannot begin before the birth (or placement of adoption) of the child and must be taken within 1 year of birth or the date that the child was placed with the family.

Cancelling the decision to end maternity or adoption leave

The mother or adopter may be able to change their decision to end maternity or adoption leave early if both:

- the planned end date hasn't passed; and
- they haven't already returned to work.

One of the following must also apply:

- it is discovered during the 8 week notice period that neither partner is eligible for either SPL or ShPP;
- the employee's partner has died; or
- it is less than 6 weeks after the birth (and the mother gave notice before the birth).

Contact and work during Shared Parental Leave

Your employee can work up to 20 days during SPL without bringing it to an end. These are called **Shared Parental Leave in Touch (or SPLiT) days**. The 20 days can be in a continuous block or it can be odd days.

These days are in addition to the 10 **Keeping in Touch (or KIT) days** already available to those on maternity or adoption leave.

Keeping in touch days are optional. Both you and your employee must agree to them.

SECTION 11

Required Records

You must keep records for HM Revenue and Customs (HMRC), including:

- the evidence provided by the employee to show that they're eligible for Statutory Shared Parental Pay (ShPP);
- the date ShPP began;
- your ShPP payments (including dates);
- the ShPP you've reclaimed; and
- any weeks you did not pay and why.

You must keep records for at least 3 years from the end of the tax year they relate to.

Policy & Practice

Employers should ensure that they have clear policies in place, which are applied to all employees fairly, in order to minimise the risk of any claims of discrimination etc. surrounding the application of a Shared Parental Leave Policy (see Appendix 11A and 11B).

Appendices 11C, 11D, 11E and 11F are sample letters to the employee.

Terms & Conditions during absence

During any period of SPL an employee continues to benefit from all of the terms and conditions of their contract of employment (except remuneration). An employee is protected from detriment or dismissal in connection with taking SPL.

Returning to Work

The right to return to the same job will be maintained for returning from any period of relevant statutory leave that includes maternity, paternity adoption or SPL that totals 26 weeks or less in aggregate. Therefore an employee who takes 26 weeks or less of any combination of relevant statutory leave will have the right to return to the same job. Once an employee has taken more than 26 weeks of relevant statutory leave in aggregate, that employee will have the right to return to the same job that they were doing immediately preceding the last period of absence, or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable for the employee and appropriate for the employee to perform in the circumstances.

For further details see the LRA website (www.lra.org.uk) and their guide 'Shared Parental Leave: a good practice guide for employers and employees'.

SAMPLE POLICY (Text highlighted in blue needs to be amended as appropriate. Text in red should be deleted before issuing)

SHARED PARENTAL LEAVE (BIRTH) POLICY

1. ABOUT THIS POLICY

- 1.1 This policy outlines the arrangements for shared parental leave and pay in relation to the birth of a child. If you are adopting a child please see the Shared Parental Leave (Adoption) Policy instead.
- 1.2 This policy applies to employees. It does not apply to agency workers or self-employed contractors.
- 1.3 This policy does not form part of any employee's contract of employment and we may amend it at any time.

2. FREQUENTLY USED TERMS

The definitions in this paragraph apply in this policy.

Expected week of childbirth (EWC): the week, beginning on a Sunday, in which the doctor or midwife expects your child to be born.

Parent: One of two people who will share the main responsibility for the child's upbringing (and who may be either the mother, the father, or the mother's partner if not the father).

Partner: your spouse, civil partner or someone living with you in an enduring family relationship, but not your sibling, child, parent, grandparent, grandchild, aunt, uncle, niece or nephew.

Qualifying Week: the fifteenth week before the EWC.

3. WHAT IS SHARED PARENTAL LEAVE?

- 3.1 Shared parental leave (**SPL**) is a form of leave that may be available if your child is expected to be born on or after 5 April 2015.
- 3.2 It gives you and your partner more flexibility in how to share the care of your child in the first year after birth than simply taking maternity and paternity leave. Assuming you are both eligible, you will be able to choose how to split the available leave between you, and can decide to be off work at the same time or at different times. You may be able to take leave in more than one block.

4. ENTITLEMENT TO SPL

- 4.1 You are entitled to SPL in relation to the birth of a child if:
 - (a) you are the child's mother, and share the main responsibility for the care of the child with the child's father or with your partner;
 - (b) you are the child's father and share the main responsibility for the care of the child with the child's mother; or
 - (c) you are the mother's partner and share the main responsibility for the care of the child with the mother (where the child's father does not share the main responsibility with the mother).
- 4.2 The following conditions must also be fulfilled:
 - (a) you must have at least 26 weeks continuous employment with us by the end of the Qualifying Week, and still be employed by us in the week before the leave is to be taken;
 - (b) the other parent must have worked (in an employed or self-employed capacity) in at least 26 of the 66 weeks before the EWC and had average weekly earnings of at least £30 during 13 of those weeks; and
 - (c) you and the other parent must give the necessary statutory notices and declarations as summarised below, including notice to end any maternity leave, statutory maternity pay (SMP) or maternity allowance (MA) periods.

- 4.3 The total amount of SPL available is 52 weeks, less the weeks spent by the child's mother on maternity leave (or the weeks in which the mother has been in receipt of SMP or MA if she is not entitled to maternity leave).
- 4.4 If you are the mother you cannot start SPL until after the compulsory maternity leave period, which lasts until two weeks after birth [or four weeks for factory workers].
- 4.5 If you are the child's father or the mother's partner, you should consider using your two weeks' paternity leave before taking SPL. Once you start SPL you will lose any untaken paternity leave entitlement. SPL entitlement is additional to your paternity leave entitlement.

5. OPTING IN TO SHARED PARENTAL LEAVE AND PAY

Not less than eight weeks before the date you intend your SPL to start, you must give us a written opt-in notice giving:

- (a) your name and the name of the other parent;
- (b) if you are the child's mother, the start and end dates of your maternity leave;
- (c) if you are the child's father or the mother's partner, the start and end dates of the mother's maternity leave, or if she is not entitled to maternity leave, the start and end dates of any SMP or MA period;
- (d) the total SPL available, which is 52 weeks minus the number of weeks' maternity leave, SMP or MA period taken or to be taken;
- (e) how many weeks of the available SPL will be allocated to you and how many to the other parent (you can change the allocation by giving us a further written notice, and you do not have to use your full allocation);
- (f) if you are claiming statutory shared parental pay (ShPP), the total ShPP available, which is 39 weeks minus the number of weeks of the SMP or MA period taken or to be taken);
- (g) how many weeks of available ShPP will be allocated to you and how much to the other parent. (you can change the allocation by giving us a further written notice, and you do not have to use your full allocation);
- (h) an indication of the pattern of leave you are thinking of taking, including suggested start and end dates for each period of leave. This indication will not be binding at this stage, but please give as much information as you can about your future intentions; and
- (i) declarations by you and the other parent that you both meet the statutory conditions to enable you to take SPL and ShPP.

6. ENDING YOUR MATERNITY LEAVE

- 6.1 If you are the child's mother and want to opt into the SPL scheme, you must give us at least eight weeks' written notice to end your maternity leave (**a curtailment notice**) before you can take SPL. The notice must state the date your maternity leave will end. You can give the notice before or after you give birth, but you cannot end your maternity leave until at least two weeks after birth.
- 6.2 You must also give us, at the same time as the curtailment notice, a notice to opt into the SPL scheme or a written declaration that the other parent has given their employer an opt-in notice and that you have given the necessary declarations in that notice.
- 6.3 The other parent may be eligible to take SPL from their employer before your maternity leave ends, provided you have given the curtailment notice.
- 6.4 The curtailment notice is binding and cannot usually be revoked. You can only revoke a curtailment notice

if maternity leave has not yet ended and one of the following applies:

- (a) if you realise that neither you nor the other parent are in fact eligible for SPL or ShPP, in which case you can revoke the curtailment notice in writing up to eight weeks after it was given;
- (b) if you gave the curtailment notice before giving birth, you can revoke it in writing up to six weeks after birth; or
- (c) if the other parent has died.

6.5 Once you have revoked a curtailment notice you will (subject to 6.4(b)) be unable to opt back into the SPL scheme.

7. ENDING YOUR PARTNER'S MATERNITY LEAVE OR PAY

If you are not the mother, but the mother is still on maternity leave or claiming SMP or MA, you will only be able to take SPL once she has either:

- (a) returned to work;
- (b) given her employer a curtailment notice to end her maternity leave;
- (c) given her employer a curtailment notice to end her SMP (if she is entitled to SMP but not maternity leave); or
- (d) given the benefits office a curtailment notice to end her MA (if she is not entitled to maternity leave or SMP).

8. BOOKING YOUR SPL DATES

- 8.1 Having opted into the SPL system, you must book your leave by giving us a period of leave notice. This may be given at the same time as the opt-in notice or later, provided it is at least eight weeks before the start of SPL.
- 8.2 The period of leave notice can either give the dates you want to take leave or, if the child has not been born yet, it can state the number of days after birth that you want the leave to start and end. This may be particularly useful if you intend to take paternity leave starting on the date of birth and wish to take SPL straight afterwards.
- 8.3 Leave must be taken in blocks of at least one week.
- 8.4 If your period of leave notice gives a single continuous block of SPL you will be entitled to take the leave set out in the notice.
- 8.5 If your period of leave notice requests split periods of SPL, with periods of work in between, we will consider your request as set out in paragraph 9 below.
- 8.6 You can give up to three period of leave notices. This may enable you to take up to three separate blocks of SPL (although if you give a notice to vary or cancel a period of leave this will in most cases count as a further period of leave notice).

9. PROCEDURE FOR REQUESTING SPLIT PERIODS OF SPL

- 9.1 In general, a period of leave notice should set out a single continuous block of leave. We may be willing to consider a period of leave notice where the SPL is split into shorter periods with periods of work in between. It is best to discuss this with your manager and HR in good time before formally submitting your period of leave notice. This will give us more time to consider the request and hopefully agree a pattern of leave with you from the start.
- 9.2 If you want to request split periods of SPL, you must set out the requested pattern of leave in your period of leave notice. We will either agree to the request or start a two-week discussion period. At the end of that period, we will confirm any agreed arrangements in writing. If we have not reached agreement, you will be entitled to take the full amount of requested SPL as one continuous block, starting on the start date given in your notice (for example, if you requested three separate periods of four weeks each, they will be combined into one 12-week period of leave).

Alternatively, you may:

- (a) choose a new start date (which must be at least eight weeks after the date you submitted the notice requesting split periods of leave), and tell us within five days of the end of the two-week discussion period; or
- (b) withdraw the notice and tell us within two days of the end of the two-week discussion period (in which case it will not be counted as a period of leave notice, and you may submit a new one if you choose).

10. CHANGING THE DATES OR CANCELLING YOUR SPL

- 10.1 You can cancel a period of leave by notifying us in writing at least eight weeks before the start date in the period of leave notice.
- 10.2 You can change the start date for a period of leave by notifying us in writing at least eight weeks before the original start date or the new start date, whichever is earlier.
- 10.3 You can change the end date for a period of leave by notifying us in writing at least eight weeks before the original end date or the new end date, whichever is earlier.
- 10.4 You can combine discontinuous periods of leave into a single continuous period of leave. Since this will involve a change to the start date or end date of a period of leave, see 10.2 and 10.3 above which set out how much notice is required.
- 10.5 You can request that a continuous period of leave be split into two or more discontinuous periods of leave, with periods of work in between. Since this will involve a change to the start date or end date, see 10.2 and 10.3 above which set out how much notice is required for the request. We do not have to grant your request but will consider it as set out in 9.2 above.
- 10.6 A notice to change or cancel a period of leave will count as one of your three period of leave notices, unless:
 - (a) it is a result of your child being born earlier or later than the EWC;
 - (b) you are cancelling a request for discontinuous leave within two days of the end of the two-week discussion period under 9.2;
 - (c) it is at our request; or
 - (d) we agree otherwise.

11. PREMATURE BIRTH

Where the child is born early (before the beginning of the EWC), you may be able to start SPL in the eight weeks following birth even though you cannot give eight weeks notice. The following rules apply:

- (a) If you have given a period of leave notice to start SPL on a set date in the eight weeks following the EWC, but your child is born early, you can move the SPL start date forward by the same number of days, provided you notify us in writing of the change as soon as you can. (If your period of leave notice already contained a start date which was a set number of days after birth, rather than a set date, then no notice of change is necessary.)
- (b) If your child is born more than eight weeks early and you want to take SPL in the eight weeks following birth, please submit your opt-in notice and your period of leave notice as soon as you can.

12. SHARED PARENTAL PAY

- 12.1 You may be able to claim Statutory Shared Parental Pay (ShPP) of up to 39 weeks (less any weeks of SMP or MA claimed by you or your partner) if you have at least 26 weeks' continuous employment with us at the end of the Qualifying Week and your average earnings are not less than the lower earnings limit set by the government each tax year. ShPP is paid by employers at a rate set by the government each year.
- 12.2 You should tell us in your period of leave notice(s) whether you intend to claim ShPP during your leave (and if applicable, for what period). If it is not in your period of leave notice you can tell us in writing, at least eight weeks before you want ShPP to start.

13. OTHER TERMS DURING SHARED PARENTAL LEAVE

- 13.1 Your terms and conditions of employment remain in force during SPL, except for the terms relating to pay.
- 13.2 Annual leave entitlement will continue to accrue at the rate provided under your contract. If your SPL will continue into the next holiday year, any holiday entitlement that cannot reasonably be taken before starting your leave can be carried over [and must be taken immediately before returning to work unless your manager agrees otherwise]. Please discuss your holiday plans with your manager in good time before starting SPL. All holiday dates are subject to approval by your manager.
- 13.3 If you are a member of the pension scheme, we will make employer pension contributions during any period of paid SPL, based on your normal salary, in accordance with the pension scheme rules. Any employee contributions you make will be based on the amount of any shared parental pay you are receiving, unless you inform [the Human Resources Department OR the Pensions Administrator] that you wish to make up any shortfall.

14. KEEPING IN TOUCH

- 14.1 We may make reasonable contact with you from time to time during your SPL although we will keep this to a minimum. This may include contacting you to discuss arrangements for your return to work.
- 14.2 You may ask or be asked to work (including attending training) on up to 20 "keeping-in-touch" days (KIT days) during your SPL. This is in addition to any KIT days that you may have taken during maternity leave. KIT days are not compulsory and must be discussed and agreed with [your line manager OR the Human Resources Department].
- 14.3 You will be paid at your normal basic rate of pay for time spent working on a KIT day and this will be inclusive of any shared parental pay entitlement.

15. RETURNING TO WORK

- 15.1 If you want to end a period of SPL early, you must give us eight weeks' written notice of the new return date. If you have already given us three periods of leave notices you will not be able to end your SPL early without our agreement.
- 15.2 If you want to extend your SPL, assuming you still have unused SPL entitlement remaining, you must give us a written period of leave notice at least eight weeks before the date you were due to return to work. If you have already given us three periods of leave notices you will not be able to extend your SPL without our agreement. You may instead be able to request annual leave or parental leave (see our Parental Leave Policy), subject to the needs of the business.
- 15.3 You are normally entitled to return to work in the position you held before starting SPL, and on the same terms of employment. However, if it is not reasonably practicable for us to allow you to return into the same position, we may give you another suitable and appropriate job on terms and conditions that are not less favourable, but only in the following circumstances:
 - (a) if your SPL and any maternity or paternity leave you have taken adds up to more than 26 weeks in total (whether or not taken consecutively); or
 - (b) if you took SPL consecutively with more than four weeks of parental leave.
- 15.4 If you want to change your hours or other working arrangements on return from SPL you should make a request under our Flexible Working Policy. It is helpful if such requests are made as early as possible.
- 15.5 If you decide you do not want to return to work you should give notice of resignation in accordance with your contract.

SAMPLE POLICY (Text highlighted in blue needs to be amended as appropriate. Text in red should be deleted before issuing)

SHARED PARENTAL LEAVE ADOPTION POLICY

1. ABOUT THIS POLICY

- 1.1 This policy outlines the arrangements for shared parental leave and pay in relation to the adoption of a child. If you or your partner is pregnant or has given birth please see the Shared Parental Leave (Birth) Policy instead.
- 1.2 This policy applies to employees. It does not apply to agency workers or self-employed contractors.
- 1.3 This policy does not form part of any employee's contract of employment and we may amend it at any time.

2. FREQUENTLY USED TERMS

The definitions in this paragraph apply in this policy.

Partner: your spouse, civil partner or someone living with you in an enduring family relationship at the time the child is placed for adoption, but not your sibling, child, parent, grandparent, grandchild, aunt, uncle, niece or nephew.

Qualifying Week: the week the adoption agency notifies you that you have been matched with a child for adoption.

3. WHAT IS SHARED PARENTAL LEAVE?

- 3.1 Shared parental leave (**SPL**) is a form of leave that may be available where a child is placed with you and/or your partner for adoption on or after 5 April 2015.
- 3.2 It gives you and your partner more flexibility in how to share the care in the first year after your child is placed with you for adoption than simply taking adoption and paternity leave. Assuming you are both eligible, you will be able to choose how to split the available leave between you, and can decide to be off work at the same time or at different times. You may be able to take leave in more than one block.

4. ENTITLEMENT

- 4.1 You may be entitled to SPL if an adoption agency has placed a child with you and/or your partner for adoption, or where a child is placed with you and/or your partner as foster parents under a "fostering for adoption" or "concurrent planning" scheme. You must intend to share the main responsibility for the care of the child with your partner.
- 4.2 The following conditions must be fulfilled:
 - (a) you must have at least 26 weeks continuous employment with us by the end of the Qualifying Week, and still be employed by us in the week before the leave is to be taken;
 - (b) your partner must have worked (in an employed or self-employed capacity) in at least 26 of the 66 weeks before the Qualifying Week and had average weekly earnings of at least £30 during 13 of those weeks; and
 - (c) you and your partner must give the necessary statutory notices and declarations as summarised below, including notice to end adoption leave or statutory adoption pay (**SAP**).

- 4.3 Either you or your partner must qualify for statutory adoption leave and/or SAP and must take at least two weeks of adoption leave and/or pay.
- 4.4 If your partner is taking adoption leave and/or claiming SAP, you may be entitled to two weeks' paternity leave and pay (see our Paternity Leave Policy). You should consider using this before taking SPL. Paternity leave is additional to any SPL entitlement you may have, but you will lose any untaken paternity leave entitlement once you start a period of SPL.
- 4.5 The total amount of SPL available is 52 weeks, less the weeks of adoption leave taken by either you or partner (or the weeks in which your partner has been in receipt of SAP if they were not entitled to adoption leave).

5. OPTING IN TO SHARED PARENTAL LEAVE AND PAY

Not less than eight weeks before the date you intend your SPL to start, you must give us a written opt-in notice which includes:

- (a) your name and your partner's name;
- (b) if you are taking adoption leave, your adoption leave start and end dates;
- (c) if you are not taking adoption leave, your partner's adoption leave start and end dates, or if your partner is not entitled to adoption leave, the start and end dates of their SAP;
- (d) the total SPL available, which is 52 weeks minus the number of weeks' adoption leave or SAP taken or to be taken by you or your partner;
- (e) how many weeks of the available SPL will be allocated to you and how many to your partner (you can change the allocation by giving us a further written notice, and you do not have to use your full allocation);
- (f) if you are claiming statutory shared parental pay (ShPP), the total ShPP available, which is 39 weeks minus the number of weeks of SAP taken or to be taken;
- (g) how many weeks of the available ShPP will be allocated to you and how many to your partner (you can change the allocation by giving us a further written notice, and you do not have to use your full allocation);
- (h) an indication of the pattern of leave you are thinking of taking, including suggested start and end dates for each period of leave. This indication will not be binding at this stage, but please give as much information as you can about your future intentions; and
- (i) declarations by you and your partner that you both meet the statutory conditions to enable you to take SPL and ShPP.

6. ENDING YOUR ADOPTION LEAVE

- 6.1 If you are taking or intend to take adoption leave and want to opt into the SPL scheme, you must give us at least eight weeks' written notice to end your adoption leave (a curtailment notice). The notice must state the date your adoption leave will end. You can give the notice before or after adoption leave starts, but you must take at least two weeks' adoption leave.
- 6.2 You must also give us, at the same time as the curtailment notice, a notice to opt into the SPL scheme or a written declaration that your partner has given their employer an opt-in notice and that you have given the necessary declarations in that notice.
- 6.3 If your partner is eligible to take SPL from their employer they cannot start it until you have given us your curtailment notice.
- 6.4 The curtailment notice is binding on you and cannot usually be revoked. You can only revoke a curtailment notice if your adoption leave has not yet ended and one of the following applies:
 - (a) if you realise that neither you nor your partner are in fact eligible for SPL or ShPP, in which case you can revoke the curtailment notice in writing up to eight weeks after it was given; or
 - (b) if your partner has died.
- 6.6 Once you have revoked a curtailment notice you will be unable to opt back in to the SPL scheme.

7. ENDING YOUR PARTNER'S ADOPTION LEAVE OR PAY

If your partner is taking adoption leave or claiming SAP from their employer, you will only be able to take SPL once your partner has either:

- (a) returned to work;
- (b) given their employer a curtailment notice to end adoption leave; or
- (c) given their employer a curtailment notice to end SAP (if they are entitled to SAP but not adoption leave).

8. BOOKING YOUR SPL DATES

- 8.1 Having opted into the SPL system, you must book your leave by giving us a period of leave notice. This may be given at the same time as the opt-in notice or later, provided it is at least eight weeks before the start of SPL.
- 8.2 The period of leave notice can either give the dates you want to take SPL or, if the child has not been placed with you yet, it can state the number of days after the placement that you want the SPL to start and end. This may be particularly useful if you intend to take paternity leave starting on the date of placement and wish to take SPL straight afterwards.
- 8.3 Leave must be taken in blocks of at least one week.
- 8.4 If your period of leave notice gives dates for a single continuous block of SPL you will be entitled to take the leave set out in the notice.
- 8.5 If your period of leave notice requests split periods of SPL, with periods of work in between, we will consider your request as set out in paragraph 9.
- 8.6 You can give up to three period of leave notices. This may enable you to take up to three separate blocks of SPL (although if you give a notice to vary or cancel a period of leave this will in most cases count as a further period of leave notice).

9. PROCEDURE FOR REQUESTING SPLIT PERIODS OF SPL

- 9.1 In general, a period of leave notice should set out a single continuous block of leave. We may be willing to consider a period of leave notice where the SPL is split into shorter periods with periods of work in between. It is best to discuss this with your manager and HR in good time before formally submitting your period of leave notice. This will give us more time to consider the request and hopefully agree a pattern of leave with you from the start.
- 9.2 If you want to request split periods of SPL, you must set out the requested pattern of leave in your period of leave notice. We will either agree to the request or start a two-week discussion period. At the end of that period, we will confirm any agreed arrangements in writing. If we have not reached agreement, you will be entitled to take the full amount of requested SPL as one continuous block, starting on the start date given in your notice (for example, if you requested three separate periods of four weeks each, they will be combined into one 12-week period of leave).

Alternatively, you may:

- (a) choose a new start date (which must be at least eight weeks after your original period of leave notice was given), and tell us within five days of the end of the two-week discussion period; or
- (b) withdraw your period of leave notice within two days of the end of the two-week discussion period (in which case it will not be counted and you may submit a new one if you choose).

10. CHANGING THE DATES OR CANCELLING YOUR SPL

- 10.1 You can cancel a period of leave by notifying us in writing at least eight weeks before the start date in the period of leave notice.
- 10.2 You can change the start date for a period of leave by notifying us in writing at least eight weeks before the original start date or the new start date, whichever is earlier.
- 10.3 You can change the end date for a period of leave by notifying us in writing at least eight weeks before the original end date or the new end date, whichever is earlier.
- 10.4 You can combine discontinuous periods of leave into a single continuous period of leave. Since this will involve a change to the start date or end date of a period of leave, see 10.2 and 10.3 above which set out how much notice is required.
- 10.5 You can request that a continuous period of leave be split into two or more discontinuous periods of leave, with periods of work in between. Since this will involve a change to the start date or end date, see paragraph 10.2 and 10.3 above which set out how much notice is required for the request. We do not have to grant your request but will consider it as set out in paragraph 9.
- 10.6 A notice to change or cancel a period of leave will count as one of your three period of leave notices, unless:
- (a) the variation is a result of the child being placed with you earlier or later than the expected placement date;
 - (b) you are cancelling a request for discontinuous leave within two days of the end of the two-week discussion period under paragraph 9.2
 - (c) the variation is at our request; or
 - (d) we agree otherwise.

11. SHARED PARENTAL PAY

- 11.1 You may be able to claim Statutory Shared Parental Pay (ShPP) of up to 39 weeks (less any weeks of SAP claimed by you or your partner) provided you have at least 26 weeks' continuous employment with us at the end of the Qualifying Week and your average earnings are not less than the lower earnings limit set by the government each tax year. ShPP is paid at a rate set by the government each year.
- 11.2 You should tell us in your period of leave notice(s) whether you intend to claim ShPP during your leave (and if applicable, for what period). If it is not in your period of leave notice you can tell us in writing, at least eight weeks before you want ShPP to start.

12. OTHER TERMS DURING SHARED PARENTAL LEAVE

- 12.1 Your terms and conditions of employment remain in force during SPL, except for the terms relating to pay.
- 12.2 Annual leave entitlement will continue to accrue at the rate provided under your contract. If your SPL will continue into the next holiday year, any holiday entitlement that cannot reasonably be taken before starting your leave can be carried over [and must be taken immediately before returning to work unless your manager agrees otherwise]. Please discuss your holiday plans with your manager in good time before starting SPL. All holiday dates are subject to approval by your manager.
- 12.3 If you are a member of the pension scheme, we will make employer pension contributions during any period of paid SPL, based on your normal salary, in accordance with the pension scheme rules. Any employee contributions you make will be based on the amount of any shared parental pay you are receiving, unless you inform [the Human Resources Department OR the Pensions Administrator] that you wish to make up any shortfall.

13. KEEPING IN TOUCH

- 13.1 We may make reasonable contact with you from time to time during your SPL although we will keep this to a minimum. This may include contacting you to discuss arrangements for your return to work.
- 13.2 You may ask or be asked to work (including attending training) on up to 20 "keeping-in-touch" days (KIT days) during your SPL. This is in addition to any KIT days that you may have taken during adoption leave. KIT days are not compulsory and must be discussed and agreed with [your line manager OR the Human Resources Department].
- 13.3 You will be paid at your normal basic rate of pay for time spent working on a KIT day and this will be inclusive of any shared parental pay entitlement. [Alternatively, you may agree with [your line manager OR the Human Resources Department] to receive the equivalent paid time off in lieu.

14. RETURNING TO WORK

- 14.1 If you want to end a period of SPL early, you must give us eight weeks' written notice of the new return date. If you have already given us three period of leave notices you will not be able to end your SPL early without our agreement.
- 14.2 If you want to extend your SPL, assuming you still have unused SPL entitlement remaining, you must give us a written notice at least eight weeks before the date you were due to return to work. If you have already given us three period of leave notices you will not be able to extend your SPL without our agreement. You may instead be able to request annual leave or parental leave (see our Parental Leave Policy), subject to the needs of our business.
- 14.3 You are normally entitled to return to work in the position you held before starting SPL, and on the same terms of employment. However, if it is not reasonably practicable for us to allow you to return into the same position, we may give you another suitable and appropriate job on terms and conditions that are not less favourable, but only in the following circumstances:
 - (a) if your SPL and any adoption or paternity leave you have taken adds up to more than 26 weeks in total (whether or not taken consecutively); or
 - (b) if you took SPL consecutively with more than four weeks of parental leave.
- 14.4 If you want to change your hours or other working arrangements on return from SPL you should make a request under our Flexible Working Policy. It is helpful if such requests are made as early as possible.
- 14.5 If you decide you do not want to return to work you should give notice of resignation in accordance with your contract.

SAMPLE LETTER *(Text in blue needs to be amended as appropriate)*

CONFIRMATION OF ENTITLEMENT TO SHARED PARENTAL LEAVE

Date dd/mm/yy

Dear

Thank you for advising us of your entitlement to take Shared Parental Leave.

We confirm that, based on the information you have provided us, you are entitled to take Shared Parental Leave.

We can confirm that you currently have weeks of Shared Parental Leave to take. You have weeks of Statutory Shared Parental Pay.

If you and your partner wish to vary the amount of leave and/or pay that you are each entitled to you must notify us of the change in writing and inform us:

- (a) of any Shared Parental Leave or Pay that you or your partner have already booked;
- (b) the number of weeks you are adding to your entitlement from your partner's entitlement or the number of weeks you are deducting to give to your partner; and
- (c) when you expect to take any additional weeks of leave.

You will also need to give us a declaration signed by you and your partner both consenting to the change.

If you have any questions about any aspect of your shared parental leave and/or pay entitlement, please do not hesitate to speak to **[name of individual/HR department]**.

Yours sincerely

.....

APPENDIX 11D

SAMPLE LETTER *(Text in blue needs to be amended as appropriate)*

CONFIRMATION OF SHARED PARENTAL LEAVE BOOKING

Date dd/mm/yy

Dear

Thank you for your notice to take Shared Parental Leave commencing on dd/mm/yy.

We confirm that you are entitled to take Shared Parental Leave as set out in your notification.

I can confirm that you will be away from work on Shared Parental Leave from dd/mm/yy to dd/mm/yy.
[If leave is discontinuous then please amend as needed] You are expected to return to work on the first working day after your leave period ends.

During your leave period you will receive Statutory Shared Parental Pay from dd/mm/yy to dd/mm/yy.
[If leave is discontinuous, or where no pay is applicable then please amend as needed].

If you wish to vary or reduce the leave that you have booked, you must give at least eight weeks notice before any amended dates occur. A notice to vary your booked leave will count as a new notice thereby reducing your entitlement to make three statutory notifications by a further one.

If you have any questions about any aspect of your Shared Parental Leave and/or pay entitlement, please do not hesitate to speak to **[name of individual/HR department]**.

Yours sincerely

.....

APPENDIX 11E

SAMPLE LETTER *(Text in blue needs to be amended as appropriate)*

SHARED PARENTAL LEAVE REQUEST TO DISCUSS LEAVE BOOKING

Date dd/mm/yy

Dear

Thank you for your notice to book a period of Shared Parental Leave that was given on dd/mm/yy. We would like to arrange a convenient time to discuss your notification with you.

I therefore suggest a meeting at [location] on [date] at [time]. You may, if you wish, be accompanied by a workplace colleague or a trade union representative.

Please could you contact [name of individual/HR department] to confirm whether you are able to attend the meeting suggested above or, if not, to suggest an alternative time and date.

Yours sincerely

.....

APPENDIX 11F

SAMPLE LETTER *(Text in blue needs to be amended as appropriate)*

SHARED PARENTAL LEAVE: REFUSAL OF A DISCONTINUOUS LEAVE BOOKING

Date dd/mm/yy

Dear

Thank you for your notice booking Shared Parental Leave that was given on dd/mm/yy.

Having given the proposal thorough consideration, I regret that the organisation is unable to agree to the pattern of discontinuous leave that you requested.

Unless your notice is withdrawn the total amount of leave requested in your notice, amounting to weeks, will automatically become a continuous block. Unless the organisation is informed otherwise this will begin on the date you originally requested your leave period to start dd/mm/yy.

If you would like the period to begin on a different date please confirm this to **[name of individual/HR department]** on or before dd/mm/yy. Please remember that the start date cannot be sooner than eight weeks from the date your original notice was given.

Alternatively you may withdraw your notification on or before dd/mm/yy. This would then not count as one of your notifications.

If you have any questions about any aspect of your Shared Parental Leave and/or pay entitlement, please do not hesitate to speak to **[name of individual/HR department]**.

Yours sincerely

.....

PARENTAL LEAVE AND TIME OFF FOR DEPENDANTS

Parental Leave – Key Points

- Employees who have, or expect to have, responsibility for a child and who have completed one year's service are entitled to 18 weeks' unpaid parental leave for each child under the age of 18. This right applies to both parents individually and it cannot be transferred between parents. Parents of an adopted child are entitled to 18 weeks' unpaid parental leave until the child's 18th birthday.
- The leave must be used to care for a child.
- Employees can take a maximum of 4 weeks' leave in any year in respect of any individual child unless you agree otherwise. Periods of leave are to be taken in blocks of a week's leave or a multiple of a week's leave unless the child is disabled, in which case it may be taken as individual days.
- The right applies to a single child. Therefore, if an employee has twins they are entitled to 36 weeks' parental leave.
- An employee must give the employer at least 21 days' notice before a period of parental leave begins, of both the start and end dates of the leave period they intend to take. The employee does not have to give this notice in writing; however it is good practice to use a pro-forma to have a written record of the request (see Appendix 12A).
- If there are good business reasons (i.e. if it would cause significant disruption to your business), the employer can postpone the leave for up to 6 months after the beginning of the leave period the employee originally requested. Examples of reasons include if leave was requested over a period of peak seasonal production; at the same time as other employees have requested leave; or when the employee's absence would unduly harm your business. See Appendix 12B for example of a standard letter for notifying the employee that their parental leave has been postponed. Leave cannot be postponed so that it ends after a child's 18th birthday. Leave cannot be postponed where the employee wants to take it immediately after their child is born or placed with them for adoption.
- The employment contract continues during any period of parental leave, unless it is terminated by the employer or employee. The employee is entitled to return to the same job after an isolated period of four weeks of parental leave or parental leave for four weeks or less which was the last of two or more consecutive periods of statutory leave and which did not include any period of additional maternity leave or additional adoption leave.
- Where an employee takes parental leave of more than four weeks, or parental leave of four weeks or less that was immediately preceded by a period of statutory leave which included additional maternity leave or additional adoption leave, they have the right to return to the same job OR, if not reasonably practicable for the employer, another job which is both suitable and appropriate for the employee in the circumstances.
- An employee continues to benefit from most of their terms and conditions of employment (except pay) during parental leave.
- Although similarly titled, Parental Leave is not the same as **Shared Parental Leave**. See Section 11 for details of an employee's entitlements under Shared Parental Leave.
- Employees have the right to request time off for dependants (Section 12) and flexible working (Section 7).

See the NI Business Info website for further details:
www.nibusinessinfo.co.uk

SECTION 12

Time off for Dependants - Key Points

- All employees have the right to a reasonable amount of unpaid time off to deal with an emergency involving a dependant. A dependant is defined as a spouse, civil partner, child or parent, or a person who lives with the employee but not as a lodger. A dependant could also be someone else who reasonably relies on the employee for care, e.g. an elderly neighbour.
- Employees can take leave when a dependant:
 - falls ill, or is injured or assaulted including mental illness or injury; or
 - goes into labour.
- Employees can also take time off to:
 - make longer-term care arrangements for a dependant who is ill or injured;
 - arrange or attend a dependant's funeral;
 - deal with unexpected problems in care arrangements e.g. if a childminder is unexpectedly unavailable;
 - deal with an incident involving the employee's child during school hours e.g. suspension from school.
- The amount of time is not fixed. It should simply allow the employee to deal with the immediate problem and put any other necessary care arrangements in place.
- The employee must tell their employer as soon as reasonably practicable, the reason for their absence and how long they expect to be away from work.
- Employees do not have to complete a qualifying period in order to be able to take time off in an emergency. They are entitled to this right from day one of starting their job.
- You must not subject an employee to detrimental treatment for taking emergency time off.
- You must not dismiss an employee or select them for redundancy because they took, or sought to take, emergency leave.
- Regardless of their length of service, if an employee believes that you have treated them unfairly or dismissed them in these circumstances, they may take a claim of detrimental treatment or unfair dismissal to a tribunal.
- See the NI Business Info website for further information about all rights for working parents and carers; www.nibusinessinfo.co.uk

APPENDIX 12A

APPLICATION FORM FOR PARENTAL LEAVE

An application for Parental Leave should be made to [redacted] at least 21 days in advance of the start of the leave.

Please complete this form and pass to [redacted]

Full Name: _____ Title: _____

I wish to apply for a period of unpaid Parental Leave from:

(Dates) _____ to _____, a total of _____ weeks.

I confirm that this period of Parental Leave will be used to look after or make arrangements for the welfare of a child to whom, as set out under the Parental Leave Regulations and at the time the leave will be taken, one of the following applies (please tick as applicable):

- I am named as a parent on his/her birth certificate, and s/he is under the age of 18, or
- I have adopted him/her and s/he is under the age of 18, or
- I have acquired formal parental responsibility for him/her, and s/he is under the age of 18.

I attach a copy of evidence* that I am entitled to take Parental Leave for this child.

(*For example, a copy of his/her birth certificate, papers confirming his/her adoption or date of placement, or proof of the expected week of childbirth.)

I am aware that this period of Parental Leave will be unpaid and that appropriate adjustments will be made to my salary to reflect this.

Yes/No

Please sign below to confirm the details above.

Signature: _____

Date: _____

For completion by the applicant's manager

I have discussed the above application with this employee and approve this period of unpaid Parental Leave. (Please add any comments overleaf).

Signature: _____

Date: _____

PLEASE RETURN THIS FORM TO [redacted]

APPENDIX 12B

LETTER FOR EMPLOYER TO NOTIFY POSTPONEMENT OF PARENTAL LEAVE

Dear [insert name]

I am writing in response to your notification that you would like to take parental leave for [insert length of leave applied for] beginning on [insert date employee wished to begin parental leave].

I am unable to grant your application to take parental leave from that date because [insert reason for postponement].

We have discussed alternative dates for you to take your parental leave. I confirm your parental leave will begin on [insert new start date] and end on [insert new end date].

Yours sincerely,

(Name) _____

(Position) _____

(Date) _____

EFFECTIVE MEETINGS

Why bother with meetings?

Much time at work is spent in meetings but if the meetings fail to produce anything useful it can seem that this time is wasted. It is understandable in these circumstances that employees believe that meetings detract from, rather than assist, their work. However, if they are managed effectively, meetings can be an excellent way to generate teamwork and commitment to shared goals, to ensure that all employees have the right information to do their jobs well, to keep track of progress against company goals and solve problems. They also give employees a forum to raise issues and make suggestions. As such they form an important part of any system for managing company performance.

When well planned and controlled, meetings can therefore be a useful management tool and so it is important that the chairperson prepares properly for the meeting. The practical steps outlined below can help to ensure that meetings are more productive.

In advance of the meeting:

1. Why have a meeting?

Certain management meetings will need to be held regularly, with actions agreed at the end of one meeting picked up at the next, others may be one-off meetings in response to a particular situation or event.

Meetings must have a purpose otherwise they are a waste of time. Ensure that the meeting is really necessary and that the information cannot be provided by other means e.g. email, memo etc. What is the purpose of the meeting? Is it to share information? Gather ideas? Connect with others? All of these? What outcome should it realise? What is required to realise that outcome? List the objectives to be fulfilled in the agenda.

2. Who needs to be there?

Ensure that the right people are there and only those people who need to be there. What do they need to contribute? Do they need to do something before the meeting? During the meeting?

3. What resources are needed?

What aids or equipment are needed? What information do you need to have available before the meeting? During the meeting?

4. Practicalities

Decide how long is necessary for the meeting and arrange an appropriate venue. Ensure that the time and venue are suitable for all participants. It is worth remembering that meetings can also be held through conference calls and webinars as well as face to face.

5. Determine the agenda

If there is no agenda there is no meeting. List the specific outcomes required from the meeting clearly and precisely. Beside each topic, note the outcome required (decision, action etc), who is going to lead on this topic and the amount of time allocated to discussing it. Ensure the agenda is circulated to all participants well in advance.

6. Encourage proper preparation

Ensure that all participants have the same expectations of the meeting and that all relevant information is provided in advance. This means that participants can come to the meeting well prepared and this will save time in the meeting itself.

Well in advance, provide details of:

- Start and end times – ask people to be there 10 minutes in advance for tea or coffee and state that the meeting will begin promptly at the start time;
- Venue;
- Purpose – what the meeting is expected to accomplish;
- Agenda with approximate timings;
- Any necessary documentation to read or prepare before the meeting;
- Information required for the meeting;
- Any resources, reports etc they need to bring to the meeting;
- An attendance list – check with participants invited whether anyone else needs to be there.

SECTION 13

During the meeting:

1. **Appoint a Chairperson** if this has not already been done. The chair's responsibilities include ensuring that:
 - everyone is clear on the objective of the meeting;
 - all contribute;
 - the agenda is adhered to;
 - one topic is discussed at a time;
 - objectives are achieved;
 - the meeting stays on time;
 - summaries are provided at intervals;
 - decisions are taken and recorded;
 - actions are agreed; and
 - date and time of any follow up meeting is agreed.
2. **Start the meeting on time.** Set an expectation that participants should make the effort to attend at the specified time.
3. **Open the meeting** by stating the objective of the meeting, clarifying roles and establishing any ground rules.
4. **Stick to the agenda** and use it to structure the meeting. Keep track of time.
5. **Keep the discussion brief and relevant.**
6. If an important issue arises, which will require detailed discussion, **schedule another meeting if necessary.**
7. **Summarise at intervals** and recap on agreed actions at the end.
8. **Take notes** throughout the meeting. Meetings without notes are pointless. It can help to take notes on a flipchart or whiteboard so that everyone has the same view of what has been agreed.
9. If helpful, take five minutes at the end to **evaluate the meeting** and agree how future meetings could be more effective. Ensure that feedback is incorporated into future meetings.

After the meeting:

1. **Circulate minutes and action points** to relevant people immediately after the meeting. Minutes should be brief but also precise and clear. All actions should be clearly described, have a deadline and be assigned to a particular person (see Appendix 13A for template).
2. **Follow up on** agreed actions.
3. **Review actions** at any follow up meetings.

APPENDIX 13A

MEETING ACTION LIST

MEETING TITLE _____

DATE: _____

ATTENDEES: _____

Task	Priority (1,2,3)	Target Date	Person Responsible	Status
1				
2				
3				
4				
5				
6				

MANAGING EMPLOYEE PERFORMANCE

The benefits of managing performance effectively

Companies often put a great deal of effort into specifying, measuring and monitoring the expected output from plant, software or vehicles. This is to be expected since purchase and maintenance of such equipment is a major investment. However, many companies fail to ensure that they take a similarly rigorous approach to the management and development of their staff.

Management of employee performance is critical to business success and effective performance is a combination of motivation and ability. People need to have or develop the skills required for the job, to know what they should be doing, what they are good at, what they need to do better and what support they will have to help them improve. Companies often think of the annual appraisal as the best way to manage performance but annual appraisals are more about monitoring performance after the fact than managing it when it counts. To be effective, performance management should consist of informal, day to day management, reinforced by a more formal system for reviewing and improving performance of both individuals, teams and ultimately the organisation.

Performance Management should be a holistic process, linking to training and development and succession planning. It really begins with having the right people in the right roles. It is therefore worth investing the time and effort from the start to recruit people who have the skills, capability and motivation to do an effective job in your organisation. If you get the right people, they don't need to be tightly managed. The right people are self motivated to produce the best results and to be part of something great. They should then be managed in such a way as not to de-motivate them.

Leaders of companies should strive to create an environment where people who are interested in doing a good job thrive and people who are not motivated move on. This means being rigorous but not ruthless. It means setting clear expectations and holding people accountable, encouraging all employees to contribute their thinking and experience, avoiding blame and cultivating freedom and responsibility. Any systems for managing performance should be simple and focused on providing regular and helpful feedback rather than completing forms. They should also be regularly evaluated and changed to reflect feedback and changing circumstances.

Successful implementation will depend on the commitment and example demonstrated by senior management. One way of reinforcing the importance of the process is to assess managers on how well they manage the performance of their direct reports.

Line managers have a critical role to play in effectively managing performance. They need to have the skills and the motivation to do this effectively and any systems should make their jobs easier rather than being a meaningless form filling exercise. It is helpful to involve managers in deciding how the organisation as a whole will handle the process and to allow them the freedom to decide how and when feedback will be provided. It is also helpful to provide training for line managers on listening and giving feedback and to include management of performance in their objectives. It is important to sustain the effort to keep managers actively involved in both the informal and the more formal side of performance management.

Any system for managing performance should include the elements outlined below. These are summarised in Appendix 14E.

Elements of performance management

1. Determine the company strategy and communicate it to all employees.

All employees need to be highly aware of and focused on company goals.

2. Establish clear roles and responsibilities

Every employee should have an up to date job description and should be clear on who they are accountable to and what they are responsible for. Employees who are clear about their role and responsibilities and have meaningful and varied work will be more motivated to deliver.

3. Set departmental and functional objectives based on company goals.

Each functional area should have defined objectives which link to the company strategy.

The Balanced Business Scorecard can provide a useful framework for companies to measure all important elements of the business, not just the financials which have traditionally been the focus for measurement. See www.nibusinessinfo.co.uk for further guidance.

SECTION 14

4. Set individual objectives which are linked to departmental and company goals

It is vital that the company's employees are focused on doing the things that matter for the business. Each individual should understand the company strategy and how their role contributes to it. They should be capable of using their own initiative to make decisions which are to the long term benefit of the company.

It is very important to ensure that the right things are being measured and managed. Each person should agree a limited number of individual objectives and Key Performance Indicators (KPIs) for a particular period which are explicitly linked to the business objectives and which are important for business success. Try to avoid the tendency to choose objectives which are easy to measure but have little impact on company goals. (See sample performance agreement at Appendix 14A to 14D.)

Objectives should be SMART (Specific, Measureable, Achievable, Realistic, Time bound). They should be fair and relevant, focusing on the things that really matter for the business. They should be agreed with individuals and people should also have the freedom to decide how they accomplish desired results – within guidelines of course. Where people have some involvement in deciding how to go about achieving their objectives, they are more motivated to achieve them.

At this stage it is also useful to agree the resources required, including information, how progress will be monitored, assessed and reported and the consequences of any actions taken.

5. Regular monitoring and feedback

Managers should have frequent, ongoing conversations with their teams and the individuals within the team, rather than saving up issues for a once a year "appraisal" which everyone dreads. In this way, employees receive feedback immediately, it has more meaning and there is the opportunity to make adjustments in time to get back on track. This may also mean adjusting unrealistic objectives or standards. These conversations are more important than completing forms.

Regular reviews of progress against objectives should also be carried out with the team. Feedback should be provided regularly on how the company, the team and the individuals are doing and employee views should be sought. When performance is good, timely positive feedback should help to reinforce it. If there are performance issues, the problem should be explained in an objective, constructive, non-threatening way.

The manager should listen to the individual, explain what improved performance should look like and how it can be achieved. The focus should be on solutions rather than problems.

It is worth acknowledging the obstacles to providing fair, open and constructive feedback and making plans to deal with them. Managers are often reluctant to give negative feedback since they can fear a negative reaction from the employee. They may avoid tackling performance problems because they know that these will take time and they have other pressing problems to deal with. Senior managers can help to address these issues by reinforcing and demonstrating the importance of managing performance, providing appropriate training and providing support as necessary. Any performance problems should be dealt with promptly and constructively. Further detail on managing poor performance is provided at point 9 below.

6. One to one reviews

It is also worthwhile taking time out at specific periods (once a year as a minimum) for a more formal conversation with each individual in the team to review objectives, progress made and determine development needs. Relevant dates should be agreed and scheduled and the review should be given priority. Enough time should be allocated and an appropriate venue should be organised which allows privacy and prevents interruptions.

At these discussions, objectives, achievements, concerns and difficulties should all be discussed. Individuals should be fully involved in reviewing their own performance, analysing how they have performed and how they can improve for the future. They should be encouraged to contribute their views at each stage. Questioning and listening are very important.

People should be held to account for their performance and praised when they do a good job. The manager should take into account both what is achieved and how it is achieved. If the company has defined values, these should also be reflected in feedback. Thus their impact on the rest of their team, on customer satisfaction and the respect shown to others are equally important as the results achieved. The person receiving the feedback should have a full opportunity to respond.

The role of the manager in this process is to provide support and assistance. Feedback should be based on facts, not subjective opinion and should always be backed up with evidence and examples.

SECTION 14

The aim of feedback should be to help the individual understand the impact of their actions and behaviour, to learn how to perform better. Emotive comments about personality should be avoided. Where the feedback indicates that something has gone wrong corrective action may be required. People should be encouraged to come to their own conclusions about what happened and why. Wherever possible, feedback should be used positively to reinforce the good and identify opportunities for further positive action and the emphasis should be on resolving problems and planning how to prevent them in future rather than censuring past behaviour. The intention is to keep the individual responsible and accountable for results. (See sample Performance Review Record at Appendix 14M and 14N).

7. Action planning

All employees should have the opportunity to suggest changes to company systems and procedures in order to remove barriers to doing an effective job. This may involve a change of role, new equipment or a change in process.

Performance reviews and discussions may also identify gaps in an individual's knowledge or skills, highlighting a training and development need. If this is the case a development plan should be agreed to address this.

The discussions may also identify particular aptitudes and potential to take on additional responsibilities or a new role, and time should be given to discussing opportunities to progress within the company, if this is appropriate. See section 16 for more information on succession planning.

Any paperwork should be kept to a minimum and should be simple and straightforward. While the emphasis should be on the monitoring of performance and feedback rather than on paperwork, it may be useful to keep notes of any agreed actions particularly if there are performance issues. If there is any possibility of disciplinary action, the proper procedure should be followed (see below).

8. Recognise good performance

The most effective reward for good performance is often a simple thank you. Organisations may also choose to reward effective performance with gift vouchers, meals out, certificates etc. However, take care to keep the focus on facilitating effective performance rather than using the process to drive pay decisions.

9. Address poor performance

If the company is serious about creating an environment where effective performance is encouraged, it is important to deal with poor performance effectively and promptly. Too often poor performance is tolerated or ignored because managers are unsure how to address the issue or worry about creating an unpleasant atmosphere.

However, addressing performance issues promptly can help to bring about an improvement before performance deteriorates to an unacceptable level. It also means that colleagues do not have to carry a poor performer.

How to manage poor performance

When an employee's performance is not meeting requirements, it is important to deal with the issue promptly and constructively. Employers need to carefully consider the circumstances and reasons for any under performance and when carrying out reviews should not penalise employees e.g. by giving lower scores, for absences during the period under review such as pregnancy related leave or maternity leave.

All employees should have the opportunity to do their jobs effectively. Any employee whose performance is not meeting expectations should receive the appropriate warnings, support and opportunity to improve before dismissal is considered. Any feedback should be based on evidence and fact.

It is worth considering whether the performance problem is caused by a lack of motivation or a lack of ability. If ability is the issue, the need for further training or resources should be considered and discussed. Alternatively, the job may be re-designed or the employee may be moved to another position at the same level. If the problem is due to lack of motivation, it may be helpful to set performance goals and provide support and feedback.

Where the company concludes that unsatisfactory performance is due to a disability, account should be taken of the Disability Discrimination Act 1995 and if it is feasible for the business to make any reasonable adjustments to assist the employee to do their job more effectively these should be discussed and fully considered. A disabled employee should not be penalised where the problem of poor performance stems from the employer's failure to comply with the reasonable adjustment duty e.g. failure to provide special equipment or other support at an earlier date.

It is also important to distinguish poor performance as a result of lack of ability from misconduct which should be dealt with under a disciplinary procedure.

Below is a formal procedure for managing poor performance should that become necessary but minor performance issues should also be dealt with at the time they arise with a view to addressing the causes of the problems.

SECTION 14

The formal performance improvement process

This process is summarised in Appendix 14F. Note that for serious performance issues, such as failure to comply with key responsibilities of the role which result in major damage to the company, it is possible to go straight to the final warning stage.

1. Verbal warning

1.1 Initial meeting to discuss the issues

- The employee will be informed of the reason for the meeting and any information to be relied upon, in advance and in writing. (See Appendix 14G).
- At the meeting the employee will have the opportunity to respond to the points made.

1.2 Verbal warning

Following the meeting, provided there are no extenuating circumstances the employee will be given a formal verbal warning.

The verbal warning will:

- state the areas for improvement and the date for review (e.g. after one month); and
- be copied to the employee and be entered on the employee's personnel file. (See Appendix 14H).

1.3 Verbal warning review meeting

During the relevant period performance should be monitored and any feedback provided promptly. Performance will be formally reviewed after any verbal warning at the specified date at a Verbal Warning Review Meeting.

- The employee will be informed of the reason for the meeting and any information to be relied upon, in advance and in writing.
- The employee will be advised of the right to be accompanied.
- At the meeting the employee will have the opportunity to respond to the points made.

1.4 Performance improved after verbal warning

Where performance has improved after the verbal warning, a further review meeting will be arranged at a specified date (e.g. two months after the Verbal Warning Review Meeting) to review progress.

- The employee will be informed of the reason for the meeting and any information to be relied upon, in advance and in writing.
- The employee will be advised of the right to be accompanied.
- At the meeting the employee will have the opportunity to respond to the points made.

If performance has remained acceptable for three months from the Verbal Warning, the verbal warning will remain on the employee's personnel file but normally will not be considered for disciplinary purposes after the stated period.

2. First written warning

If there has been no improvement and provided there are no extenuating circumstances (e.g. the employee is new to the role and still learning) a First Written Warning will be given following the meeting, by the employee's manager.

2.1 Content of the First Written Warning

The following issues are likely to be covered:

- Summarise previous communications and the discussion on the first written warning review meeting;
- State the performance problem and how it has continued since the prior communication;
- State the specific steps that must be taken by the employee to improve and the timescale for improvement;
- State what the company will do to help the employee improve (if appropriate);
- Provide a statement of the consequences should the employee fail to satisfactorily improve performance;
- State what the employee's expectations should be regarding the First Written Warning;
- State a date for review (e.g. in one month's time).

A copy of the completed First Written Warning will be provided to the employee and his/her manager (see Appendix 14I).

SECTION 14

2.2 First written warning review meeting

Performance will be reviewed in the specified timescale after the First Written Warning at a First Written Warning Review Meeting.

- The employee will be informed of the reason for the meeting and any information to be relied upon, in advance and in writing.
- The employee will be advised of the right to be accompanied.
- At the meeting the employee will have the opportunity to respond to the points made.

If there has been no improvement in performance and there are no extenuating circumstances, the employee's manager will give a Final Written Warning, following the First Written Warning review meeting, and the next stage of the procedure should be followed.

Where performance has improved after the First Written Warning, the warning will remain on file but will normally not be considered for disciplinary purposes after a specified time (e.g. 6 months). A further review meeting will be arranged two months after the First Written Warning Review Meeting. The employee will be informed of the reason for the meeting and any information to be relied upon, in advance and in writing. At the meeting the employee will have the opportunity to respond to the points made.

Any further performance problems during the following three months shall mean a further meeting will be arranged. This may mean that the first written warning will still stand. If performance has remained acceptable for six months from the First Written Warning the First Written Warning will no longer be active. The warning will remain on the employee's personnel file but will normally not be considered for disciplinary purposes after the stated period.

If there have been further performance problems and there are no extenuating circumstances the first written warning will still stand.

3. Final written warning

3.1 Final written warning

The Final Written Warning will be in substantially the same form as the First Written Warning. The Final Written Warning will state that failure to improve performance by a specified date is likely to lead to dismissal and will state the date for the Final Written Warning Review Meeting.

A copy of the completed Final Written Warning will be provided to the employee and retained on the employee's file. (See Appendix 14J).

3.2 Final warning review meeting

Performance will be reviewed after about one month against the goals specified in the Final Written Warning at a Final Written Warning Review Meeting. The employee will be informed of the reason for the meeting and any information to be relied upon, in advance and in writing.

Where performance has improved after the Final Written Warning, review meetings will be arranged at two monthly intervals from the date of the Final Written Warning Review Meeting for a period of approximately one year.

If performance has remained acceptable for one year from the Final Written Warning, the Final Written Warning will remain on the employee's personnel file but will normally not be considered for disciplinary purposes after the stated period.

If performance has not improved and there are no extenuating circumstances it is likely that dismissal will result.

4. Dismissal

The decision to dismiss is likely unless the company determines with the employee's agreement that another action, such as a transfer, is appropriate in all of the circumstances. Where the employee is dismissed, he/she will be provided, as soon as reasonably practicable, with written confirmation of the dismissal and the date on which employment terminated, or will terminate. (See Appendix 14K).

SECTION 14

Appeals Procedure

Where an employee believes that the action (in any stage of the procedure) is unjustified they may request an appeal by an Appeal Manager, preferably someone who has not been involved in the earlier decision.

The request for an appeal should be in writing and lodged with the specified person within five working days of receipt of the written confirmation of the action. The written Notice of Appeal should state whether the employee is appealing against the finding that his/her performance has been unsatisfactory and/or against the form of action.

The Appeal Manager should try to arrange to interview the employee concerned within eight working days of receipt of the Notice of Appeal. The employee should be advised of the right to be accompanied.

Following these meetings, the Appeal Manager will review all the facts and after full consideration either:

- revoke the decision; or
- vary the action with regard to the stage of the procedure to be applied; or
- endorse the action taken.

This decision will be communicated in writing to the employee. The employee is not entitled to any further right of appeal (see appendix 14L).

Where the decision at Stage 4 of the procedure is dismissal, the exercise of the right to appeal does not prevent the dismissal from being effective from its stated date. If it is subsequently decided to revoke the decision to dismiss, the employee will be reinstated and will be treated in all respects as if they had not been dismissed.

As an alternative to dismissal, the company may take any of the following action with the employee's agreement:

- reduction in salary; or
- demotion; or
- job transfer.

The Right to Accompaniment

Employees may choose to be accompanied at all meetings which are conducted at any stage of the Performance Improvement Procedure (and any appeal) by a work colleague or appropriately qualified trade union representative.

The companion should be allowed to address the hearing in order to:

- put the employee's case;
- sum up the employee's case;
- respond on the employee's behalf to any view expressed at the hearing.

The companion can also confer with the employee during the hearing and may participate as fully as possible in the hearing, including being given the opportunity to raise points about any information provided by witnesses. The companion has no right to answer questions on the employee's behalf, or to address the hearing if the employee does not wish it. Additionally, a companion must not act in a manner which would prevent either an employer from explaining his/her case or any other person at the hearing from making his/her contribution to it.

APPENDIX 14A

PERFORMANCE AGREEMENT TEMPLATE

Company objective	Employee linked objective	Next review date	Due date	Comments/status

SAMPLE PERFORMANCE AGREEMENT – OPERATIVE

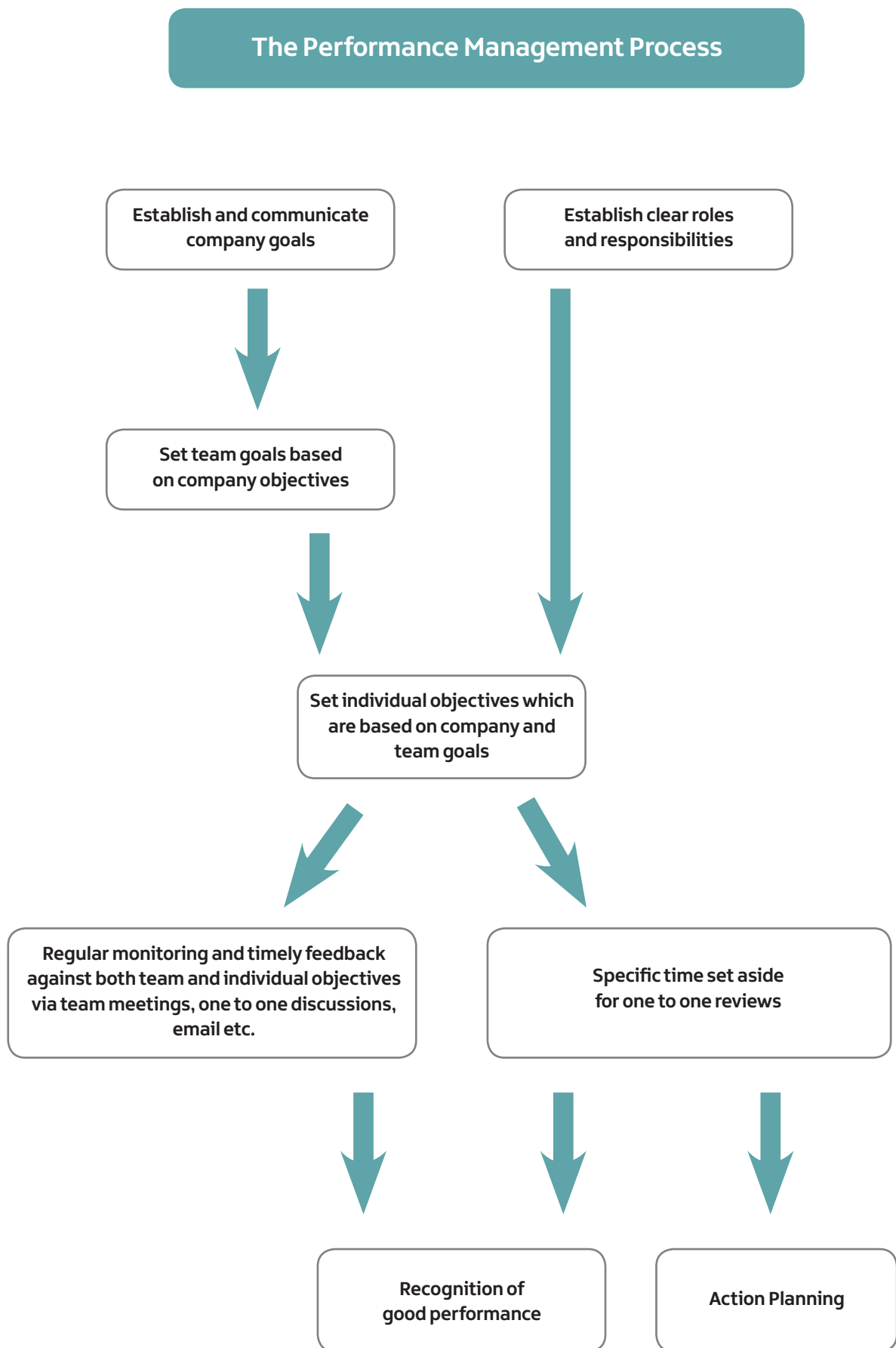
Company objective	Employee linked objective	Next review date	Due date	Comments/status
To produce excellent quality products	All work completed meets company quality standards as specified			
	Support provided to team members as required			
	Time keeping and attendance meet company requirements			
To ensure customers receive products on time	All work completed within agreed timescales as specified			
To provide excellent customer service	All customer requests dealt with promptly and effectively			
To provide a safe and healthy work environment	Adherence to health and safety policies			

SAMPLE PERFORMANCE AGREEMENT - ADMINISTRATOR

Company objective	Employee linked objective	Next review date	Due date	Comments/status
Provide excellent customer service	Deal with telephone enquiries within four working hours and written enquiries within two working days Post – allocate mail within two hours of receipt			
Ensure effective company cash flow	Issue invoices within four days of work being completed			
Ensure effective supplier relationships	Process supplier invoices within 15 days			
Promote a culture of continually upgrading internal skills and knowledge to produce high quality service and results	Undertake formal courses of academic/vocational study and/or participation in relevant Learning & Development courses			

SAMPLE PERFORMANCE AGREEMENT - MANAGER

Company objective	Employee linked objective	Next review date	Due date	Comments/status
To develop and maintain a sustainable and profitable organisation	Costs contained within budget and agreed profit margins are maintained for each quarter			
To produce excellent quality products	Quality standards met and external accreditation retained for the current year			
To ensure customers receive products on time	Delivery times met for all standard orders within the reporting period			
To provide excellent customer service	Customer complaints during the reporting period not exceeding x% and all complaints resolved to customer satisfaction within x days of receipt			
To provide a safe and healthy work environment	All existing employees trained and aware of health and safety obligations by x date. All new employees to receive health and safety training within x weeks of starting.			
To provide a rewarding and enjoyable working environment	Employee turnover for the reporting period not to exceed x%.			
	All team member annual and interim reviews completed by x date.			



FORMAL PERFORMANCE IMPROVEMENT PROCEDURE

The Right to Accompaniment
 Employees may choose to be accompanied at all meetings which are conducted at any stage of the Performance Improvement Procedure (and any appeal) by a work colleague or appropriately qualified trade union representative. The companion should be allowed to address the hearing in order to:

- put the employee's case;
- sum up the employee's case;
- respond on the employee's behalf to any view expressed at the hearing.

Performance problem identified
 (After reasonable investigation)

Initial meeting to discuss the issues

Prior to meeting

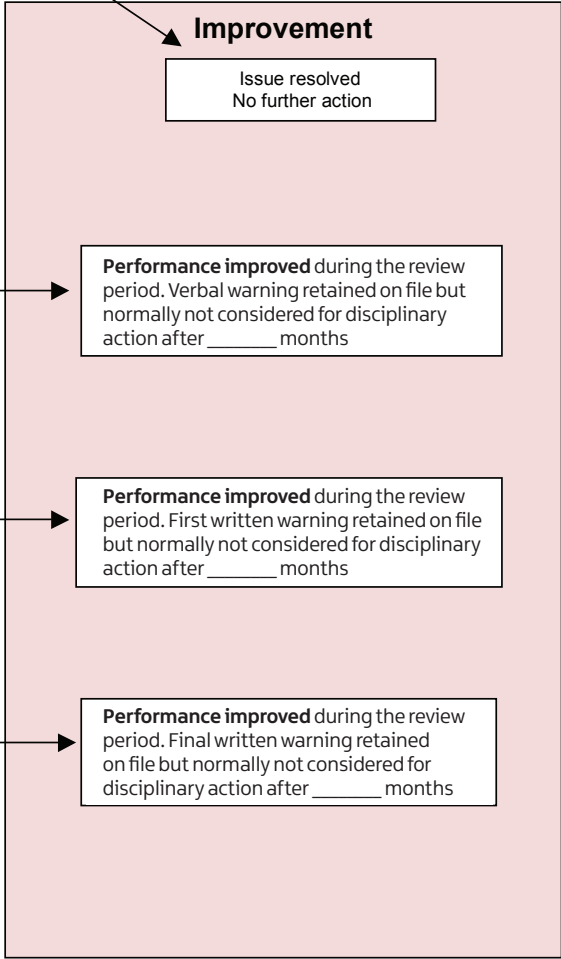
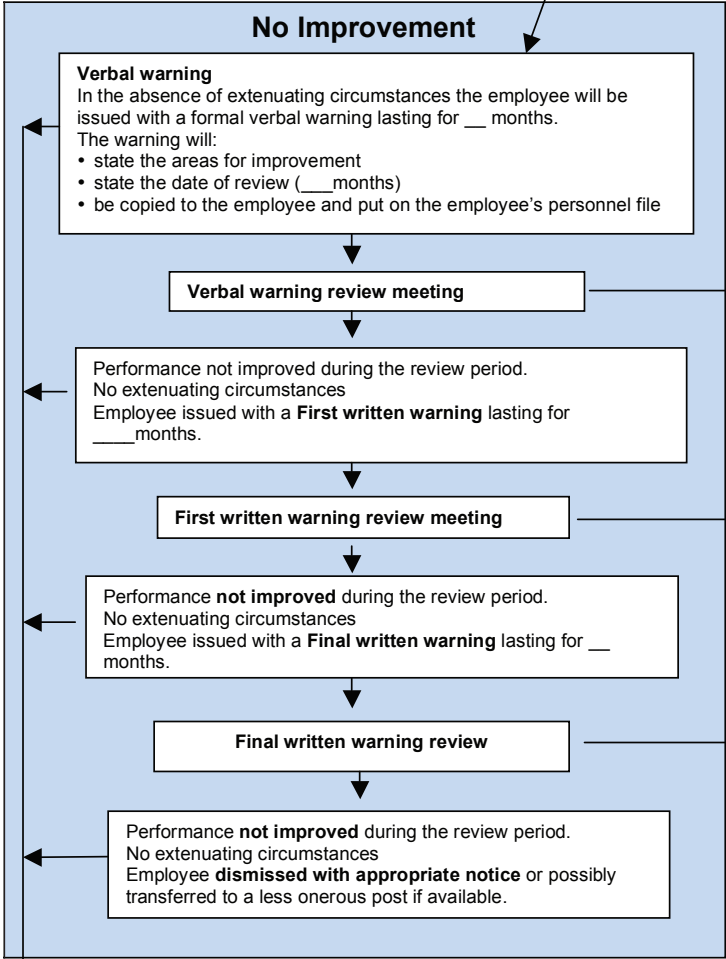
- employee informed of the reason for meeting
- given copies of any information to be relied upon

At the meeting

- the employee will be given the opportunity to respond to points made

After the meeting

- Issue a written note setting out
 - the improvement needed
 - reasonable time scale for improving
 - a review date
 - any support that will be provided to help employee meet required standards



Appeal: Where an employee believes that the action is unjustified they may request an appeal by an Appeal Manager, preferably someone who has not been involved in the earlier decision. The Appeal Manager will review all the facts and after full consideration either:

- revoke the decision; or
- vary the action with regard to the stage of the procedure to be applied; or
- endorse the action taken.

This decision will be communicated in writing to the employee. There is no further right of appeal.

APPENDIX 14G

NOTICE OF PERFORMANCE IMPROVEMENT MEETING

Date _____

Dear _____

I am writing to tell you that you are required to attend a performance improvement meeting on ____/____/____ at _____ am/pm which is to be held in _____.

At this meeting the question of disciplinary action against you, in accordance with the organisation's poor performance procedure will be considered with regard to

(Specify)

I enclose the following documents* (Evidence of poor performance)

The possible consequences arising from this meeting might be: *a recorded verbal warning/*a first written warning/*a final written warning/*dismissal or some other disciplinary penalty (e.g. disciplinary transfer).

You are entitled, if you wish, to be accompanied by another work colleague or a trade union representative.

Yours sincerely

Signed Manager

*Delete if not applicable

APPENDIX 14H

POOR PERFORMANCE - RECORDED VERBAL WARNING

Date _____

Dear _____

I refer to our meeting on (date) which was held under stage 1 of the Company's Performance Improvement Procedure, a copy of which has been supplied to you. You were accompanied at the meeting by (insert name), your union representative/work colleague*. The following areas of under-performance were discussed:

(Specify the performance problem/problems identified)

This letter is a formal, recorded, verbal warning that your performance does not reach the required standard, as defined in the attached action plan.

(Detail the improvement needed, a reasonable time scale for improving, a review date and any support that you will provide to help the employee to meet required standard/s)

This recorded verbal warning will be placed on your personal file for a period of six months during which your performance will be monitored. If your performance reaches the required standard, this warning will be retained on file but normally not considered for disciplinary purposes after this period.

Should there be no improvement, I will have no alternative but to proceed to stage 2 of the Procedure, which may result in a first written warning being issued.

If you wish to appeal against this decision you should inform me within 5 working days. I will invite you to a further hearing to discuss the appeal. You have the right to be accompanied at the hearing by (insert name), your union representative/work colleague*. The final decision will be communicated to you in writing within 5 working days of the hearing.

Yours sincerely

* (delete as necessary)

APPENDIX 14I

POOR PERFORMANCE - FIRST WRITTEN WARNING

Date _____

Dear _____

I refer to our meeting on (date) which was held under stage 2 of the Company's Performance Improvement Procedure, a copy of which has been supplied to you. You were accompanied at the meeting by (insert name), your union representative/work colleague*. The following areas of under-performance, which were originally brought to your attention on (date of first formal meeting), were discussed:

(Specify the performance problem/problems identified)

This letter is a formal first written warning that your performance does not reach the required standard, as defined in the attached action plan.

(Detail the improvement needed, a reasonable time scale for improving, a review date and any support that you will provide to help the employee to meet required standard/s)

This first written warning will be placed on your personal file for a period of twelve months during which your performance will be monitored. If your performance reaches the required standard, this warning will be retained on file but normally not considered for disciplinary purposes after this period.

Should there be no improvement, I will have no alternative but to proceed to stage 3 of the Procedure, which may result in a final written warning being issued.

If you wish to appeal against this decision you should inform me within 5 working days. I will invite you to a further hearing to discuss the appeal. You have the right to be accompanied at the meeting by (insert name), your union representative/work colleague*. The final decision will be communicated to you in writing within 5 working days of the hearing.

Yours sincerely

* (delete as necessary)

APPENDIX 14J

POOR PERFORMANCE - FINAL WRITTEN WARNING

Date _____

Dear _____

I refer to our meeting on (date) which was held under stage 3 of the Company's Performance Improvement Procedure, a copy of which has been supplied to you. You were accompanied at the meeting by (insert name), your union representative/work colleague*. The following areas of under-performance, which were originally brought to your attention on (date of first formal meeting), were discussed:

(Specify the performance problem/problems identified)

This letter is a formal final written warning that your performance does not reach the required standard, as defined in the attached action plan.

(Detail the improvement needed, a reasonable time scale for improving, a review date and any support that you will provide to help the employee to meet required standard/s)

This final written warning will be placed on your personal file for a period of twelve months during which your performance will be monitored. If your performance reaches the required standard, this warning will be retained on file but normally not considered for disciplinary purposes after this period.

Should there be no improvement, I will have no alternative but to proceed to stage 4 of the Procedure, which may result in your dismissal from your employment with the Company.

If you wish to appeal against this decision you should inform me within 5 working days. I will invite you to a further hearing to discuss the appeal. You have the right to be accompanied at the meeting by (insert name), your union representative/work colleague*. The final decision will be communicated to you in writing within 5 working days of the hearing.

Yours sincerely

* (delete as necessary)

APPENDIX 14K

POOR PERFORMANCE - DISMISSAL OR SOME OTHER DISCIPLINARY PENALTY (e.g. DISCIPLINARY TRANSFER)

Date _____

Dear _____

I refer to our meeting on (date) which was held under stage 4 of the Company's Performance Improvement Procedure, a copy of which has been supplied to you. You were accompanied at the meeting by (insert name), your union representative/work colleague*.

You were informed at that meeting that your performance was still not satisfactory and that you will *be dismissed/*have the following disciplinary action taken against you. (Specify)

*I am therefore writing to you to confirm the decision that you will be dismissed and that your last day of employment with the Company will be _____. The reasons for your dismissal are

(Specify)

*I am therefore writing to you to confirm the decision that disciplinary action will be taken against you. (Specify).

The reasons for the disciplinary action are

(Specify)

If you wish to appeal against this decision you should inform me within 5 working days. I will invite you to a further hearing to discuss the appeal. You have the right to be accompanied at the meeting by (insert name), your union representative/work colleague*. The final decision will be communicated to you in writing within 5 working days of the hearing.

Yours sincerely

* (delete as necessary)

APPENDIX 14L

PERFORMANCE IMPROVEMENT PROCEDURE - OUTCOME OF APPEAL

Date _____

Dear _____

I refer to our meeting on (date) which was held under appeal stage of the Company's Performance Improvement Procedure, a copy of which has been supplied to you. You were accompanied at the meeting by (insert name), your union representative/work colleague*.

You appealed against the decision of the Performance Improvement hearing that you should

- be given a recorded verbal warning
- be given a first written warning
- be given a final written warning
- be dismissed or subject to **other disciplinary action

I am now writing to inform you of the decision taken by _____ [Insert the name of the person] who conducted the appeal meeting, namely that the decision to be give you *a recorded verbal warning * a first written warning *a final written warning or *be dismissed or subject to other disciplinary action

*still applies

*will be revoked

You have now exercised your right of appeal under the organisation's Performance Improvement Procedure and this decision is final.

Yours sincerely

*[delete as appropriate]

Note

**Action other than a warning such as transfer or demotion (if allowed for in the employee's contract or with the employee's agreement).

APPENDIX 14M

SAMPLE TYPE 1 PERFORMANCE REVIEW FORM

NAME:

JOB TITLE:

REPORTING PERIOD:

SECTION 1 - OBJECTIVES (as agreed between Manager and Employee)

Objective 1 - Summary of achievement against objective 1

Interim Review

Final Review

Objective 2 - Summary of achievement against objective 2

Interim Review

Final Review

SAMPLE TYPE 1 PERFORMANCE REVIEW FORM CONTINUED

Objective 3 - Summary of achievement against objective 3

Interim Review

Final Review

Objective 4 - Summary of achievement against objective 4

Interim Review

Final Review

Objective 5 - Summary of achievement against objective 5

Interim Review

Final Review

SAMPLE TYPE 1 PERFORMANCE REVIEW FORM CONTINUED

SECTION 2 - COMPETENCIES

Comment briefly on your achievement against the competencies for your job

Competency	Enter level required for your job (1/2/3)	Comments
Focusing on customers		
Developing skills and knowledge		
Achieving results		
Teamwork		
Communicating effectively		
Solving problems		
Being flexible and embracing change		
Using initiative		
Knowing the business		
Being creative and innovative		
Leading others		
Planning and organising		
Making effective decisions		

SAMPLE TYPE 1 PERFORMANCE REVIEW FORM CONTINUED

SECTION 3 - PERSONAL DEVELOPMENT (to be completed by Line Manager)

This section enables people to reflect on what they are good at and what areas they would like to develop

Current strengths

Future career plans and aspirations

Summarise what you would like to be doing in the short, medium and longer term

Personal Development Plan (PDP)

This is an opportunity to maintain a focus on personal development and can form a basis for discussion between the employee and line manager

Area of development	How will this be developed	By when

SAMPLE TYPE 1 PERFORMANCE REVIEW FORM CONTINUED

SECTION 4 - INTERIM REVIEW

This section is for brief overall summary comments for the half year by the employee and line manager, together with assessment level agreed after discussion at the interim review. If agreement is not reached, a comment to this effect should be recorded by both the employee and manager in the summary section.

Employee summary comments for half year

Manager summary comments for half year

Indicative interim assessment level. This is based on performance to date against objectives and competencies and can change in line with full year performance.

Indicative interim assessment level
Satisfactory Performance
Unsatisfactory Performance

SAMPLE TYPE 1 PERFORMANCE REVIEW FORM CONTINUED

SECTION 5 - FINAL REVIEW

This section is for brief overall summary comments for the full year by the employee and line manager, together with assessment level agreed after discussion at the final review. If agreement is not reached, a comment to this effect should be recorded by both the employee and line manager in the summary section.

Date of end of year review

Employee summary comments for full year

Manager summary comments for full year

SAMPLE TYPE 1 PERFORMANCE REVIEW FORM CONTINUED

FINAL ASSESSMENT LEVEL

This is based on performance over the year against objectives and competencies

Assessment	Description
Satisfactory performance	Objectives met and competencies fully demonstrated at required levels
Unsatisfactory performance	Performance unacceptable; objectives not met and competencies not demonstrated. Corrective action underway.

SIGNATURES

Employee: _____

Line Manager: _____

Countersigning Manager: _____

Countersigning Manager's comments:

APPENDIX 14N

SAMPLE TYPE 2 PERFORMANCE REVIEW FORM

Personal Details			
Name:		Start Date:	
Job Title:		Last Review	

PAST How would you rate yourself in the following on a scale of 1 to 4?	Below Average 1	Average 2	Competent 3	Good 4
Timekeeping				
Attitude				
Team Worker				
External Customer Service				
Internal Customer Awareness				
Attention to Detail				
Meeting deadlines				

To what extent do you feel you have achieved your agreed objectives?				
--	--	--	--	--

List three aspects of your job that you have enjoyed over the last three months: _____

What has not worked for you over the last three months? _____

How have you contributed to the success of the company and the team? _____

How effective has your training, development and support been? _____

How has this improved your performance/the team/the company? _____

SAMPLE TYPE 2 PERFORMANCE REVIEW FORM CONTINUED

FUTURE

What would you like to achieve over the next three months?

How will this help you to meet the team and organisation vision and objectives?

What are your suggested areas for improvement
for you?
for the team?
for the organisation?
for me as your Manager?

What support do you need from me as your Manager?

Do you have any experience, skills or interest areas that we are not aware of?

What do you feel are your training and development needs over the next three months?

Agreed Objectives	Measure of Success
1	
2	
3	

Summary Comments:

TRAINING AND DEVELOPMENT

The relevance of training and development to business

If employees are to contribute to business success they need to have the right skills and competencies for the job. When recruiting new employees, employers will try to ensure that, as far as possible, employees already have the skills they need. However, this will not always be possible and business needs are also likely to change so that even the most skilled and qualified employee is likely to need to develop new skills or upgrade their existing skills during the course of their employment in order to meet new challenges and take on new responsibilities. Training, learning and development activities can help to improve performance, strengthen skills and motivate employees.

Regular performance reviews should provide a means to proactively identify development needs of employees. See Section 14 for more information on performance reviews. Once needs are identified, a plan should be prepared to ensure that those needs are met and that any development activities genuinely deliver results which can be measured against business objectives. The plan should ensure that all employees have access to development opportunities.

In order to make sure that time and money spent on development activities is a good investment it makes sense to follow a structured approach.

The steps involved in providing effective development for employees are outlined below.

Following these steps can help ensure that training and development plans will deliver the results that the company needs in order to meet its business objectives and priorities.

1. Identify Needs

The learning needs of your people can be defined as falling under one or more of the following:

- Company;
- Team;
- Individual.

At Company level you may identify that all employees need, for example, specific training in health and safety to meet legislative requirements and appropriate equal opportunities and anti-harassment training.

At Team level a team may need to develop knowledge or understanding of how to follow a procedure or process e.g. credit control.

At Individual level an employee may need development in supervisory skills.

All identified needs should have as their starting point a link to the company's business objectives and priorities.

When determining whether training and development needs exist it can be helpful to consider both **The Present** and **The Future**.

The Present

Consider whether there are performance shortfalls and whether the provision of training and development opportunities is the best way of addressing these. Performance reviews, staff surveys and company reviews can provide useful information on the present situation.

Identify and define the problem(s), focusing on past performance by analysing issues such as:

- quality standards;
- productivity levels;
- accident rates;
- absenteeism;
- customer complaints;
- staff turnover.

The Future

Consider the company's future direction and the implications for training and development. Focus on:

- **Business strategy:** do changes in the business strategy require new skills?
- **Manpower and succession planning:** will identified successors need training and development to become proficient in their new role?
- **New technology, products or services:** is the company planning any innovations which will require training and development?
- **New legislation (e.g. Health and Safety or legal requirements):** is the company likely to be affected by changes in legislation in relation to mandatory training?

The list of questions in Appendix 15A can be used to prompt your thinking and help identify possible training and development needs.

2. Plan how to meet the needs identified

We need to be very sure whether the need can be met with a learning and development solution (the requirement may be for resources or systems), then to set clear learning objectives and choose the most effective learning solution. It is also important to ensure that all employees have equal access to learning and development opportunities.

If it is a learning and development issue, it can be helpful to record the needs identified in a Development Plan such as that shown in Appendix 15B.

In completing the plan, whether at Company, Team or Individual levels, be very specific in defining requirements by considering the following issues.

Method/Solution

It is easy to fall into the trap of jumping to standard solutions, especially to training courses. However, there are many different ways for employees to develop new skills and knowledge and training courses may not be the most effective solution. Be aware of the wide range of development methods available, and their respective costs and benefits. While the tendency is to think of courses, either open or tailored, sometimes other development methods are more effective and do not have the same direct costs. Consideration could be given to using some or all of the following as appropriate in response to identified needs:

- job shadowing of a colleague;
- mentoring by a senior manager or a peer;
- coaching by a manager/supervisor;
- internal sessions where employees can share their expertise;
- secondment to another part of the company;
- secondments to other organisations if feasible;
- job rotation;
- reading selected material;
- training courses, including online training courses;
- sharing information and resources e.g. books, articles, useful websites;
- involvement in challenging projects;
- attending meetings;
- visits to other companies.

Responsibility for implementation

Ensure that everyone understands who is responsible for implementing the solution.

Target Group for Training Courses

If the solution is a training course, be clear about who needs the training. The benefits should outweigh the costs and this includes hidden costs such as team members' time, loss in productivity and the knock-on implications e.g. cover arrangements. So, be very specific and carefully select the individuals to be trained. Decisions on who will receive training should be fair and not based on any prohibited discrimination grounds (see Section 1 for list of grounds).

Business Outcome

Be clear about what the development activity should achieve, for individuals, teams and the company. Try to focus as much as possible on tangible results.

Costs and Resources required

Determine the costs of providing the training and development activities, rough estimates at this stage, against the budget. It may be necessary to change the preferred delivery method in the light of the costs identified.

Priority/Required by

Specifying a date will provide a focus to help ensure delivery.

3. Implement the solution

The role of Line Managers

When considering how best to implement the planned solution it is important that line managers are involved in helping to define the most appropriate development method, providing support and encouragement, measuring and managing performance and evaluating the outcomes in terms of performance improvement and lessons learnt for the future.

Training providers

If the solution is a training course, it is important to ensure that the training to be provided is an effective method of meeting the needs identified. If the course is an open course available to people from any organisation, ensure that you check the credentials of the provider and the course objectives before arranging for any employees to attend.

If a number of employees require training on a particular issue, and this cannot be provided by anyone in the company, it may be worthwhile engaging an external training provider who can deliver training either in-company or off-site.

SECTION 15

There are many providers of training services ranging from one-off training consultants, to training organisations to colleges and universities and it is important to choose the most appropriate to your company needs.

There is no simple formula for choosing providers but as a minimum:

- ask them to define the outputs/outcomes which will result from the training that you want them to provide i.e. what will people know and be able to do after the training;
- ask them to provide references from other organisations where they have delivered training;
- specify, where appropriate, that they have recognised professional and/or national qualifications;
- talk to other organisations you know have used the provider.

It is important to remember that any intervention to improve an employee's skill or knowledge is only the starting point. There is a difference between learning and knowing and a difference between knowing and doing. The ultimate objective is to improve the employee's performance on the job and so it is important to follow through and ensure that any learning is actually implemented. This is where the line manager's role is critical – although part of this role will be to encourage the employee to take responsibility for following through on what they have learnt and that they put the learning into practice as soon as possible.

4. Evaluate the development activity

Evaluating how effective training and development actions have been is critical for an organisation. For example:

- At company, team and individual levels, has the investment in time, money and resources in training produced the required performance improvement?
- Were the methods used cost effective?
- Were the providers effective (if applicable)?
- What can be learned to improve any future training activities?
- Were the right people involved in supporting the development activity? For example, was there effective support from managers?

You might want to gain some kind of understanding of the value of the training, whether it is quantitative or qualitative (or indeed both). Sometimes it will be necessary to attempt to demonstrate a tangible financial benefit or an impact on business results and at other times it will suffice to establish that the trainees benefited from it and that changes in attitude and behaviour occurred. In either case, it is essential to ensure that the evaluation process is not so cumbersome that it becomes an end in itself. The key to effective evaluation is to keep it simple.

When planning a training programme or intervention, consider carefully at the outset whether it is worth investing the time and effort in trying to pin down evidence of the benefits/outcomes at every level. Your decision should be based on the type of intervention, its intended objectives/outcomes and those people involved.

APPENDIX 15A

COMPANY TRAINING NEEDS ANALYSIS CHECKLIST

Company Background, Business Strategy and Objectives

How long has the business been established?
What are the company's strategy and objectives for the future? Short, medium and long term?
How big a threat are your competitors?
What have been your successes to date? What can be replicated?
What are the current and future key challenges / risks for the business? How will you manage any risks?
What are the opportunities for the future?
What plans do you have to maintain / increase sales over the next 3 years?
Who are the key personnel in the business? Do you have succession plans in place?

Markets, Products and Services

What are your organisation's main markets? Do you intend to enter new markets over the next 3 years?
What are your main products and services?
Are you planning to introduce new products? What are the implications and potential training requirements?
How do you develop new products/services?
Who is responsible for sales and marketing?
What are your routes to market - how do you sell?
Who are your main customers?
How is customer feedback gathered?
Do you use a Customer Relationship Management (CRM) system? Does this require any additional skills?

Operations

Are you working to full capacity?
What cost reduction areas have you identified over the next 2 years?
Do you have any bottlenecks in your company / processes?
How are suppliers managed to ensure you are getting the right level of service?
How do you manage waste / scrappage?
What technology do you use and how might this change your production / service e.g. new machinery, automated programmes?
Would changes require additional people to carry out different tasks or impact on how they are supervised or managed? Is multi-skilling required?
What financial management system do you use and is it effective?

Structure and People

What is the structure of the business? Ratio of management / direct employees?
Is communication within the company effective or is it generally on a 'need to know' basis?
Are there regular management meetings / team briefings?
Are there any vacancies or issues surrounding recruitment and/or retention of staff?
How do you measure people's performance?
Are there any individual / team performance issues?
How are managers developed?

What are the Development Needs?	Target Group	Business Outcome	Method/ Solution	Costs and Resources Required	Priority/ Required By

SUCCESSION PLANNING

What is succession planning and why is it necessary?

Succession planning is critical to ensure the future success of the business and careful planning is needed to ensure that the process of identifying and developing candidates to fill key future roles is effective. This involves identifying those positions which when left vacant or filled with an inappropriate candidate, would have a negative impact on the company, and identifying, selecting and managing people to be ready to move into key positions when necessary. Ideally this should consider all levels in the business but it is particularly important for roles at senior level where the departure of a key person (particularly the CEO or MD) can have a major impact on customer and employee confidence.

A rigorous performance management process will provide useful information on current skills of employees and help the organisation plan for changes in circumstances and new business challenges. (See section 14 for more detail on performance management.)

Although effective succession planning is key to the long term survival and performance of the business, it is an issue which is frequently neglected in the day to day pressures of managing the business. This can be due to the potential difficulties involved in identifying the right person to take over and also because of the leader's reluctance to relinquish control of a business they have spent significant time developing. Family businesses in particular involve additional emotional issues in relation to choosing between children or dealing with the fact that children may not want to join the business. Succession planning at this level can then seem to be an insurmountable task but if broken down into smaller, more manageable steps it can be achievable.

1. Consider the future needs of the business

Consider the future direction of the business and potential changes both in the business and in the business climate. Think about what this means for the type of leadership that will be required. Is the business overly reliant on a few key individuals? Are there roles that are not adequately covered?

2. Identify the skills and experience required

Take time to consider and discuss the current and future requirements of the role and seek new perspectives from others who have a stake in the business on how the current role contributes to the organisation. This will help to identify the most important skills and essential knowledge necessary for a successful transition. It is important not to simply seek a clone of the current incumbent but to consider the future needs of the business.

3. Identify and evaluate potential candidates

Once the skills and knowledge required have been identified, the next stage is to seek potential candidates either from inside or outside the company. Procedures for promotion should follow normal fair recruitment procedures. This may involve internal and external advertisement, input from line managers, use of recruitment agencies and also discussions with line managers and consideration of performance reviews to encourage all internal employees who have the potential and the desire to progress. (See section 14 on performance management.)

When evaluating possible successors, focus objectively on the requirements of the role. Candidates from inside the company have already had the opportunity to demonstrate their skills on the job and will already be familiar with many of its products/services and customers. Candidates from outside the business can bring new skills and a fresh perspective. Try to ensure that all possible candidates, including those employees who are absent from work, have an equal opportunity to be considered for the role. The process should be objective, open and transparent so that all employees understand it.

It is important that decisions are taken for the good of the company, rather than to fulfil an individual's or business unit's needs. All line managers therefore need to be bought into the process.

It also makes sense to inform the rest of the employees so that everyone understands the reason for the decision and so that the successor will have the full support of the full team.

SECTION 16

4. Plan development of potential candidates

Use all available information to create a successor's development plan. For internal successors this may include a sideways move into a different job in the short term, or involvement in particular projects. For both internal and external successors, coaching, job shadowing and off the job training may be included in the development plan.

5. Plan and manage the transition

Create a plan to gradually introduce the successor to the job and to measure progress toward readiness to take over. For internal successors this can usually extend over a longer period – although there may also be a need to fill the role the successor is leaving, either through an internal move or external recruitment. In either case, the successor can begin to take on some tasks from the senior level and attend senior-level meetings to establish relationships with key people.

Review performance regularly, providing feedback, support and encouragement.

EMPLOYEE GRIEVANCES

Summary

- Employers are required by law to provide details to employees of the person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his/her employment and how the employee should make this application.
- Employees should aim to resolve most grievances informally with their line manager but if a grievance cannot be settled informally, the employee should raise it formally with management.
- Grievances should be resolved as quickly as possible and all details should remain confidential.
- Employees have the right to be accompanied at meetings by a work colleague or trade union representative.
- Training should be provided to managers on how to manage grievances fairly and consistently.
- Written records should be kept for future reference.

Why have grievance procedures?

Grievance procedures allow employers to deal with grievances fairly, consistently and speedily. Employers must ensure that procedures are available to employees so that their grievances can be properly considered.

When drawing up grievance procedures, it is beneficial to involve everybody they affect, including managers, employees and, where appropriate, their representatives. See sample grievance procedure at Appendix 17A.

Grievance procedures should allow employees to raise issues with management and should:

- be simple and in writing;
- enable an employee's Line Manager to deal informally with a grievance, if possible;
- keep proceedings confidential; and
- allow the employee to have a companion at meetings.

Issues that may cause grievances include:

- Terms and conditions of employment;
- Health and safety;
- Work relations;
- Bullying and harassment;
- New working practices;
- Working environment;
- Organisational change;
- Equal opportunities.

Where separate procedures exist for dealing with grievances on particular issues e.g. harassment and bullying, these should be used instead of the normal grievance procedure. All such procedures should comply with the requirements of the Code of Practice on disciplinary and grievance procedures published by the Labour Relations Agency.

It is possible for the grievance procedure to form part of the contract of employment but this is not recommended. Rather, it is advisable for the grievance procedure to be separated from the contract so that if an employer fails to comply with any part of the procedure, the employee will not have grounds to claim breach of contract or to resign and claim constructive dismissal.

Employers should take reasonable steps to ensure that everyone in the organisation understands the grievance procedures and that supervisors, managers and employee representatives are trained in their use. Employees should be given a copy of the full procedures or have ready access to them, for instance on a notice board or as part of an induction process.

Dealing with grievances in the workplace

Employees should aim to resolve most grievances informally with their line manager. This has advantages for all workplaces, particularly where there might be a close personal relationship between a manager and an employee. It also allows for problems to be resolved quickly. However, it is not always possible to resolve grievances informally and circumstances, such as the serious nature of the grievance, may dictate that the formal grievance procedure is the way to proceed. If a grievance cannot be settled informally, the employee should raise it formally with management, using the formal grievance procedure.

A failure to follow the grievance procedure in those cases which a tribunal can hear, may mean that the tribunal adjusts an award upwards or downwards by a percentage of up to 50 per cent to reflect that the provisions of the Code of Practice on disciplinary and grievance procedures published by the Labour Relations Agency have not been reasonably followed by either the employer or the employee. In the case of the employer this may be a failure to offer an appeal/right of accompaniment etc. In the case of the employee an award may be reduced if the tribunal believes the employee has unreasonably failed to cooperate with the employer during the grievance process i.e. by failing to attend a scheduled grievance meeting on numerous occasions etc.

SECTION 17

Under the Disability Discrimination Act 1995 employers are required to make reasonable adjustments throughout the grievance process. This may include assisting employees to formulate a written grievance if they are unable to do so because of a disability.

Letting the employer know the nature of the grievance

If it is not possible to resolve a grievance informally the employee should raise the matter formally, and without unreasonable delay, with his/her manager. If the complaint is against his/her manager the employee should be allowed to approach that person's manager or, if that is not reasonably practicable, another manager in the organisation. Where this is not possible, the manager should hear the grievance and deal with it as impartially as possible.

The employee should raise the grievance in writing setting out the nature of the grievance and how it might be resolved. Setting out a grievance in writing might not be easy especially for those employees whose first language is not English or who have difficulty expressing themselves on paper. In these circumstances the employee should be encouraged to seek help, for example from a work colleague, a trade union or other employee representative.

Holding a meeting with the employee to discuss the grievance

Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received. Workers have a statutory right to be accompanied at any such meeting.

Employers, employees and their companions should take reasonable steps to attend the meeting and employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any further investigation that may be necessary.

Deciding on appropriate action

Following the meeting, the employer should decide on what action, if any, to take. The decision, and a full explanation of how the decision was reached, should be communicated to the employee, in writing, without unreasonable delay. Where appropriate, the decision should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they feel that their grievance has not been satisfactorily resolved.

Appeals

If the employee feels that their grievance has not been satisfactorily resolved they should have the opportunity to appeal. An appeal should be made without unreasonable delay, advising the employer in writing of their grounds for appeal. An employer should hear the appeal without unreasonable delay and at a time and place which should be notified to the employee in advance. The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case. Workers have a statutory right to be accompanied at any such appeal hearing. The outcome of the appeal should be communicated to the employee in writing without unreasonable delay.

Overlapping grievance and disciplinary issues

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. There may be situations where the employer may find it more convenient to deal with both issues concurrently.

Collective grievances

The provisions of the Labour Relations Agency Code do not apply to grievances raised on behalf of two or more employees by a representative of a recognised trade union or other appropriate workplace representative. These grievances should be handled in accordance with any collective grievance process an organisation may have.

Keeping records

It is important, and in the interests of both employer and employee, to keep written records during the grievance process for future reference. Records should include:

- **a copy of the written grievance;**
- **the employer's response;**
- **action(s) taken;**
- **the reason for action(s); and**
- **the outcome of any appeal.**

Records should be treated as confidential and kept in line with Data Protection Act 1998, which gives the right to request access to personal data. Records such as formal minutes should be given to the employee. The employer may withhold information relating to protection of a witness in some circumstances.

APPENDIX 17A

SAMPLE (Text in red to be deleted before issuing. Text on blue background to be amended as appropriate)

INDIVIDUAL GRIEVANCE PROCEDURE

The aim of this procedure is to give an employee an opportunity to raise a grievance either informally and/or formally and to discuss this with their employer with a view to having it resolved.

General Principles

- Grievances should be raised as soon as possible, to allow issues to be resolved quickly.
- Employees should be given the opportunity to explain their grievance and how they think it should be resolved.
- If the employee's grievance is against their line manager they may raise the matter with another manager in the organisation, where possible.
- The employer will ensure that the timing and location of all meetings under this procedure are reasonable.
- As far as is reasonably practicable, appeal hearings will be conducted by a manager more senior than the manager who took the decision which is being appealed. This does not apply where the most senior manager attended the hearing at which the decision being appealed was taken.
- Employees will be entitled (where reasonably requested) to be accompanied to any grievance or appeal hearing by a fellow worker or Trade Union Official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion).
- Employers, employees and their companions should take reasonable steps to attend grievance and appeal meetings.
- Records shall be kept detailing the nature of the grievance raised, the employer's response, any action taken, the reasons for it and other information relevant to the process. These records shall be kept confidential.
- There may be circumstances where the employer and employee feel it would be beneficial to involve a third party to help in resolving the issue, through for example a process of mediation. In this instance the grievance procedure may be temporarily set aside.

Mediation is a process whereby an independent third party intervenes in a workplace dispute to assist the parties to reach a satisfactory outcome.

The Labour Relations Agency can provide a mediation service to assist the parties. Further information on mediation is available on the Agency's website www.lra.org.uk or by telephoning 028 9032 1442.

Dealing with a grievance informally

If an employee has a grievance or complaint to do with their work they should, in the first instance and, wherever possible, discuss it with their line manager. They may be able to agree a solution informally.

Formal grievance

If it is not possible to resolve a grievance informally, or the employee does not feel it is appropriate to do so, they should raise the matter formally in writing to **(insert job title)**. The written grievance should contain details of the nature of the grievance and how they feel it might be resolved.

Grievance hearing

The **(insert job title)** will call the employee to a meeting to discuss their grievance. This will normally be held within 5 working days from receipt of the complaint in writing. Employees should be allowed to explain their grievance and how they think it might be resolved. The employee will be entitled to be accompanied at this meeting. Following the meeting the **(insert job title)**, (within 5 working days), will advise the employee in writing what, if any action they have decided to take along with a full explanation of how the decision was reached. The employee should be informed that they can appeal (and to whom the appeal should be made) if they feel that the grievance has not been satisfactorily resolved.

Appeal

If the employee wishes to appeal they should let **(insert job title)** know in writing stating their reason(s) for appeal. This should be done within 5 working days of the grievance hearing decision being communicated in writing to them. Within 5 working days of receipt of the appeal an appeal meeting will take place. The appeal will be conducted by **(insert job title)**. The employee will be entitled to be accompanied at this meeting.

Following the meeting **(insert job title)** will advise the employee in writing of the outcome of the appeal, no later than 5 working days from the appeal being heard. This decision is final.

APPENDIX 17B

INVITE TO INVESTIGATORY MEETING – COMPLAINT/GRIEVANCE AGAINST ANOTHER MEMBER OF STAFF - EMPLOYEE RAISING A GRIEVANCE

Date _____

Name and Address _____

Dear XXXX

RE: MEETING

I write to confirm that I have been informed of a complaint made by you in relation to [insert name of employee].

I would now like to meet with you to discuss the matter in further detail and have made arrangements to meet you in Venue on Date at Time. XXX (from Human Resources)* will accompany me to take a contemporaneous note of the interview. You may be accompanied by a trade union representative or a workplace friend / colleague.

I would like to emphasise that this matter and matters discussed in the course of the meeting are confidential. They should not be discussed with anyone other than your chosen trade union representative or accompanying workplace friend / colleague if you chose to have one accompany you.

If you have any queries regarding this letter, please do not hesitate to contact me on XXXXXXXXX.

Yours sincerely

NAME

*Delete if appropriate

NOTE – THE WORDING ABOVE SHOULD BE AMENDED AS REQUIRED

APPENDIX 17C

INVITE TO INVESTIGATORY MEETING FOLLOWING COMPLAINT - PERSON AGAINST WHOM A COMPLAINT HAS BEEN MADE

Date _____

Name and Address _____

Dear XXXX

RE: INVESTIGATORY MEETING

I am writing to confirm that a complaint has been made in relation to your alleged behaviour as a line manager to a member of staff who reported to you. *

I would now like to meet with you to discuss the matter in further detail and have made arrangements to meet you in Venue on Date at Time. XXX (from Human Resources)* will accompany me to take a contemporaneous note of the interview. You will be entitled to receive a copy of these notes. You may be accompanied by a trade union representative or a workplace friend / colleague.

You may also provide a written explanation in advance of the meeting. Any such explanation should be submitted to me by Time and Date.

The purpose of this meeting is to establish the facts to assist us to make a decision on what, if any, disciplinary penalty or alternative measures may be appropriate. I draw your attention to the company Disciplinary Procedures, also attached for further information.

I would like to emphasise that this matter and matters discussed in the course of the interview are confidential. They should not be discussed with anyone other than your trade union representative or workplace friend / colleague if you choose to have one accompany you.

Yours sincerely

NAME

*Delete as required

NOTE – THE WORDING ABOVE SHOULD BE AMENDED AS REQUIRED

DISCIPLINARY ISSUES AND DISMISSAL

Key Points

- Draw up disciplinary rules and procedures and communicate these to your employees. See sample at Appendix 18A.
- Establish the facts by carrying out a thorough investigation before taking action.
- Deal with issues as thoroughly and promptly as possible in a consistent manner.
- Maintain confidentiality.
- Follow the statutory 3-step procedure:

1. **put it in writing;**
2. **meet and discuss;**
3. **allow an appeal.**

- In rare cases of gross misconduct that are sufficiently clear-cut and serious for it to be reasonable for an employer to dismiss summarily without an investigation, a **two stage, modified procedure** may be followed:

1. **provide written reasons for the dismissal;**
2. **allow an appeal.**

- Ensure that the timing and location of meetings is reasonable.
- Allow employees to be accompanied at disciplinary and appeal meetings.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- Keep written records for future reference.

Why have disciplinary rules and procedures?

Disciplinary rules and procedures help to promote effective employment relations as well as fairness and consistency. Disciplinary rules tell employees what behaviour employers expect from them and the consequences if rules are breached.

It can be beneficial to involve management, employees and their representatives, where appropriate, when devising disciplinary rules and procedures.

It is useful to provide examples of the type of behaviour you will treat as minor, major and gross misconduct.

Procedures

How to determine what action to take when a disciplinary issue arises

When a potential disciplinary matter arises, it is important to conduct a prompt investigation to establish the facts before taking any action.

Having established the facts, you can then decide whether to drop the matter, deal with it informally or arrange for it to be handled formally.

Conduct an investigation

A full and thorough investigation should be carried out promptly to establish the facts, by a person who has not been involved in the issue if this is possible. The aim should be to ensure that this process is as impartial and objective as possible.

The investigation may require interviewing of witnesses and review of documentation and other evidence. Keep a written record of all interviews and any other information which comes to light during an investigation.

It may be necessary to interview the employee who is suspected of misconduct at this time. It should be made clear that this is an **investigatory meeting and not a disciplinary meeting**. If there is a case to answer, then a separate disciplinary meeting should be arranged. The purpose of the investigation is to establish whether there is a disciplinary case to answer. For certain **serious** offences it may be necessary to suspend an employee whilst the matter is investigated. They should continue to receive their full pay.

An employee does not have a right to be accompanied at an investigation meeting by a fellow worker or trade union official but the employer may allow this in certain circumstances such as when the employee is disabled or where English is not the employee's first language and a translator is required.

SECTION 18

Precautionary suspension

In **certain cases**, for example in cases involving gross misconduct, where relationships have broken down or there are risks to the employer's property or responsibilities to other parties, consideration may be given to a brief period of suspension with full pay whilst an unhindered investigation is conducted. Employers should also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension. An alternative to suspension might be the agreeing of a temporary transfer to other duties or another work station without loss of pay.

Any action taken, including suspension on full pay, should be reviewed frequently to ensure it is not unnecessarily protracted.

It should be made clear to the employee that such suspension is a neutral act, is not disciplinary action, and does not involve any pre-judgement.

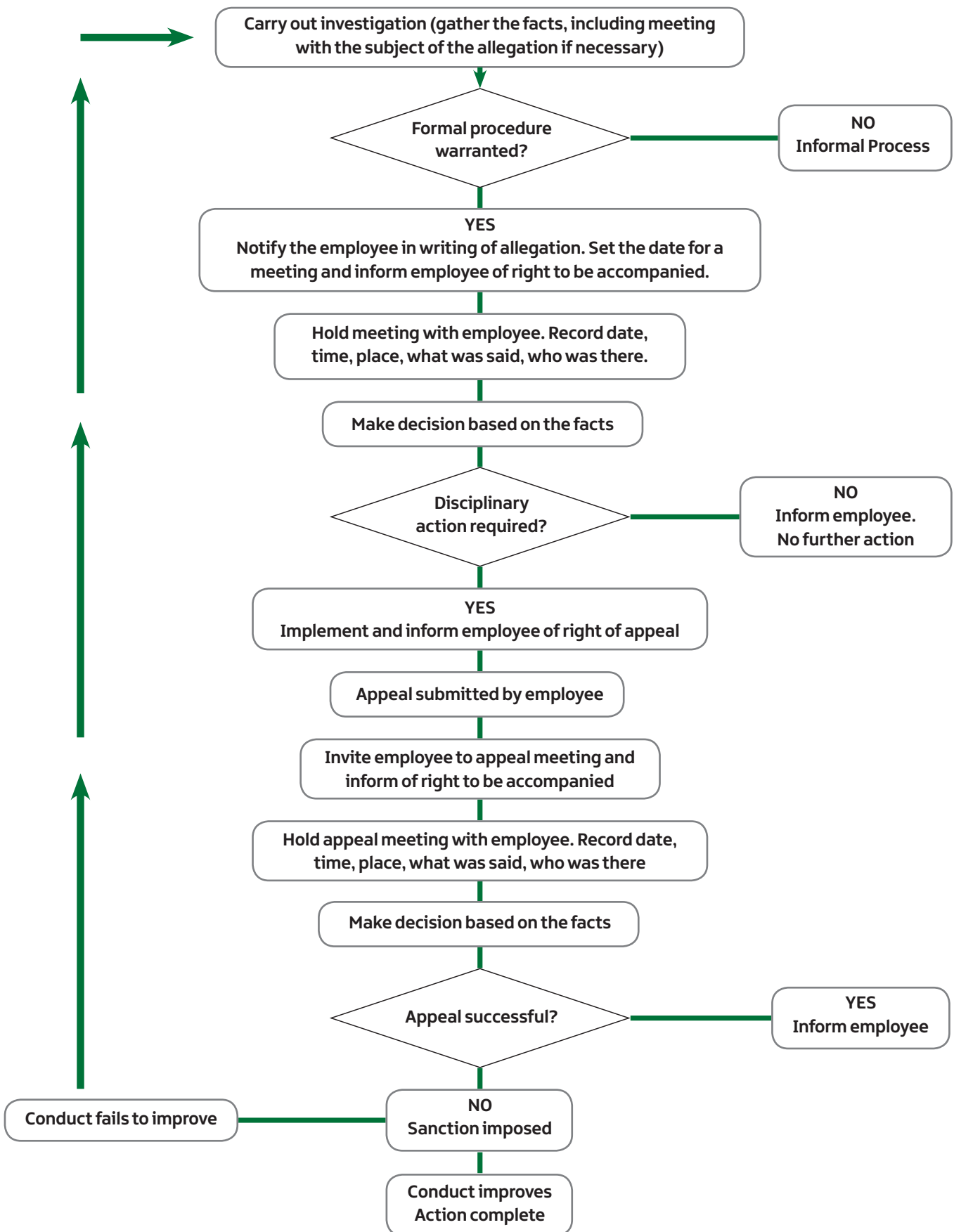
Informal Process

Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. The employee's manager should have an informal discussion with the employee as soon as the problem arises to explain the problem and agree actions with them. When dealt with promptly, a quiet word is often all that is required. If this does not bring about an improvement then formal action may be taken.

Cases of more serious misconduct should be dealt with formally from the start.

Please see the following flow chart for a summary of the process.

Summary of Formal Process



SECTION 18

The Formal Process – the details

Put it in writing

Following any relevant investigation, let the employee know in writing what it is they are alleged to have done wrong and the reasons why this is not acceptable. The letter should also invite the employee to a meeting at which the problem can be discussed, and it should inform the employee of their right to be accompanied at the meeting by a fellow worker or trade union official. The employee should be given copies of any documents that will be produced at the meeting. The employee should have enough time to review any documentation provided and to prepare for the meeting. See example letter at Appendix 18B. This letter is suitable for more minor misconduct issues.

However, if the employer is **contemplating dismissing the employee or imposing some other disciplinary penalty that is not suspension on full pay or a warning** the letter at Appendix 18F should be used in order to ensure compliance with the statutory procedure.

If the misconduct relates to behaviour towards a colleague see example letters at Appendix 17B and 17C. **Ensure that all letters are tailored to the individual circumstances.**

Hold a meeting with the Employee

Hold a meeting to discuss the problem. The meeting should be held reasonably promptly so that memories of events have not faded, but should also give the employee the opportunity to prepare for the meeting. It should be held in a private location where interruptions can be minimised. At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses. It is important that no assumptions are made before the meeting and therefore warnings should not be pre-prepared.

Note: No decisions on disciplinary action should be taken until after the meeting.

The role of the companion at the meeting

The employee is legally entitled to be accompanied at any disciplinary or appeal hearing by a fellow worker or trade union official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion).

If the employee is accompanied at the meeting the companion should be allowed to address the hearing in order to:

- put the employee's case;
- sum up the employee's case;
- respond on the employee's behalf to any view expressed at the hearing.

The companion can also confer with the employee during the hearing and may participate as fully as possible in the hearing, including being given the opportunity to raise points about any information provided by witnesses. The companion has no right to answer questions on the employee's behalf or to address the hearing if the employee does not wish it. Additionally, a companion must not act in a manner which would prevent either an employer from explaining his/her case or any other person at the hearing from making his/her contribution to it.

Sickness absence during a disciplinary procedure

If an employee goes off on sick leave during a disciplinary procedure, the employer should continue with all aspects of the investigation that can be completed in the employee's absence. If the absence is likely to be short term, the employer can wait until the employee returns to work before arranging any meetings with them. If the absence is likely to be long term, the employer should seek a medical opinion on the employee's fitness to attend from the employee's GP or a company nominated doctor. If the employee is fit to attend the meeting, then the employer should attempt to facilitate the employee by arranging meetings at a time and a place that would make it easier for the employee to attend. If an initial date and/or time is unsuitable, at least one alternative should be offered.

Employees should be made aware that, where it is reasonable to do so, decisions may be taken in their absence if they fail to attend re-arranged meetings without good reason. If the employee is **disabled**, the employer has an obligation to consider **reasonable adjustments** to ensure the employee does not suffer any detriment for a reason related to their disability.

If all other options have been exhausted, it may be acceptable to hold a disciplinary hearing in the employee's absence.

SECTION 18

Outcome

Following the meeting, and after full consideration of all information, it is necessary to decide whether disciplinary action is justified or not. Any decision taken should be fair and reasonable taking into account all the factors of the case. Where it is decided that no action is justified the employee should be informed in writing.

If disciplinary action is justified consider what form this should take. Before making any decision you should take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and whether the intended disciplinary action is reasonable.

Disciplinary action may take the form of a **warning, dismissal, and where allowed for in the contract or mutually agreed, disciplinary suspension without pay, demotion and transfer to other duties.**

Warnings

- Verbal – for cases of minor misconduct;
- First Written – for cases of misconduct or failure to correct following a verbal warning;
- Final Written – for cases of more serious misconduct or failure to correct following a verbal or first written warning.

When issuing warnings employees should be informed:

- that the action is part of the formal disciplinary procedure;
- of the level of the disciplinary action being taken;
- of the change in behaviour required;
- of the consequences of failing to correct behaviour;
- that they might appeal against the disciplinary action taken.

See sample at Appendix 18C. Ensure that warnings are tailored to reflect the individual circumstances.

When deciding what sanction to impose, the employer should take into account the factual circumstances giving rise to any previous warnings. The employer should also take into account how they have treated other employees who have committed similar offences, i.e. the employer should act consistently as this will be relevant when determining the fairness of any dismissal.

If a final disciplinary warning has been validly issued and is still current the employer is entitled to take this into account when considering whether to dismiss for a subsequent act of misconduct, even if the two acts of misconduct are for different matters. However, the employer should have regard to the degree of difference or similarity between the different matters when deciding what sanction to impose.

If an employee has been issued with a final written warning this normally means that any further misconduct within the duration of that warning may result in dismissal. In this respect, when issuing final warnings the employer should make it clear that any further acts of misconduct (of whatever nature) may result in further disciplinary action being taken.

All letters notifying employees of the outcome of disciplinary hearings should be clear and specific in relation to all allegations against the employee. If the employee is to be dismissed, the **reasons for the dismissal** must be clearly stated.

Warnings that are no longer active/valid should remain on personnel files but **must be disregarded** in deciding the outcome of future disciplinary proceedings.

Employees should be informed of their **right of appeal** against any disciplinary decision. See following page for further information on appeals.

Dismissal

If the employee's conduct still fails to improve, or if the initial offence is very serious, the company may consider dismissal or some other penalty such as demotion, disciplinary transfer, or loss of seniority/ pay (if the employee's contract allows it or it is mutually agreed).

An employee should never be dismissed for a first offence, unless the offence is very serious. The employee is entitled to **written reasons for the dismissal**. See example letter at Appendix 18G.

While it is good practice to always follow the 3-step procedure for all disciplinary action, the law specifies that this procedure must be followed if an employer is considering dismissing an employee or imposing some other disciplinary penalty that is not suspension on full pay or a warning.

To recap, the 3-step procedure requires the employer to:

1. Write to the employee notifying them of the allegations against them and the basis of the allegations and invite them to a meeting to discuss the matter. See letter at Appendix 18F.
2. Hold a meeting to discuss the allegations at which the employee has the right to be accompanied and notify the employee of the decision. See letter at Appendix 18G.
3. If the employee wishes to appeal, hold an appeal meeting at which the employee has the right to be accompanied and inform the employee of the final decision. See Appendix 18H and 18I.

SECTION 18

Notice of dismissal

Unless the dismissal is for gross misconduct, the employee will have the right to a period of notice. The legal minimum is **one week** for employees who have **at least one month's but less than two years' service** and one week for each year of service for all other employees up to a maximum of 12 weeks. However, the contract may provide for more than this. Employees dismissed for gross misconduct have no right to notice or pay in lieu of notice.

If the contract has a specific clause allowing an employer to pay the employee in lieu of notice, the contract may be terminated immediately provided the employee receives the relevant payment. If an employer is making use of this clause this should be communicated to the employee at the time of dismissal and it should be made clear that the relevant sum is paid in lieu of notice.

Summary dismissal is dismissal without notice or pay in lieu of notice. It is only applicable in cases of gross misconduct. An investigation of the facts should still be carried out before taking the decision to dismiss summarily.

The Right to Appeal

Employees who have had disciplinary action taken against them should be informed of their right to appeal, who they may appeal to and the timescales for appeal. If the employee wishes to appeal, they must inform the designated person.

Where possible, arrange for the appeal to be dealt with by a more senior manager not involved with the earlier decision. If this is not possible, a manager of the same status may hear the appeal. In some small companies this may not be possible and in this case the appeal may be heard by the same manager who should endeavour to remain as neutral and objective as possible. An alternative to this would be to engage a third party from outside the organisation.

The employee should be invited to a meeting to discuss the appeal. See letter at Appendix 18D if the disciplinary action was a warning or 18H if the disciplinary action was dismissal or some other disciplinary action other than a warning.

The employee should be advised of the right to be accompanied at the appeal.

Give the employee the final decision in writing after the meeting. See letter at Appendix 18E if the disciplinary action was a warning or 18I if the disciplinary action was dismissal or some other action.

For full guidance and further detail, read the Labour Relations Agency "Guide to Disciplinary and Grievance Procedures" on the LRA website: www.lra.org.uk

Procedures during the employee's probationary period

In Northern Ireland, employees must have a year's service with the employer before they can bring a claim for Unfair Dismissal. However, as there is no service requirement to bring a claim for wrongful dismissal or for discrimination, it is recommended that the statutory 3-step procedure is followed for all dismissals, including those during the probationary period, unless the modified procedure is applicable i.e. 1. put it in writing, 2. arrange a meeting to discuss, 3. allow an appeal.

Modified Procedure

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply. This may be when the employer believes it is reasonable in the circumstances to dismiss without notice and without having a meeting with the employee.

In this case the modified procedure will apply as follows:

1. Provide the dismissed employee with a written statement of the alleged misconduct which led to the dismissal and written particulars on the employer's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, together with a reminder of the employee's right of appeal against dismissal.
2. If the employee wishes to appeal the dismissal, hold an appeal meeting within the specified timeframe.

Unfair Dismissal claims

Certain dismissals are automatically unfair. For example, dismissal on the grounds of age, gender, sexual orientation, race, disability, religious or political belief. It is also unlawful to dismiss someone on grounds related to pregnancy and childbirth, requests for flexible working and retirement without considering a person's wish to continue working.

Failure to follow the statutory procedures may also result in a finding of automatic Unfair Dismissal.

An employee who believes s/he has been dismissed has three months from the date of termination to present a claim to an industrial tribunal. In certain circumstances this time limit may be extended.

SAMPLE: DISCIPLINARY RULES AND PROCEDURES FOR MISCONDUCT

Objective

The objective of this procedure is to give employees the opportunity to improve their conduct or performance. It identifies who has authority to take disciplinary action and aims to ensure that employees are protected against unjustifiable or inconsistent disciplinary action. It also identifies the type of offence which would result in disciplinary action being taken, what that action would be and what further action would result if there is no improvement or a recurrence takes place.

Informal Action

Cases of minor misconduct or unsatisfactory performance may be dealt with informally. The employer may have a quiet word of caution or advice and encouragement with the employee in order to improve an employee's conduct or performance. This informal approach may be used in dealing with problems quickly and confidentially. There will, however be situations where matters are more serious or where this informal approach has been tried but is not working. In these circumstances, the employer will use the formal procedure.

Investigations

The purpose of an investigation is for the employer to establish a fair and balanced view of the facts relating to any disciplinary allegations against the employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents. The employer will usually appoint an investigating officer to carry out the investigation.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. The employee does not normally have the right to bring a companion to an investigative interview. However, the employer may allow the employee to bring a companion if it helps the employee to overcome any disability, or any difficulty in understanding English.

The employee must co-operate fully and promptly in any investigation. This will include informing the employer of the names of any relevant witnesses, disclosing any relevant documents to the employer and attending investigative interviews if required.

If the employee cannot attend the investigation meeting he/she should inform the employer immediately and the employer will arrange an alternative time. The employee must make every effort to attend the meeting, and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or is persistently unable to do so (for example for health reasons), the employer may have to reach its conclusions based on the available evidence.

General Principles for the Formal Disciplinary Procedures

The employer expects all its employees to abide by the terms and conditions of their employment and the rules, regulations and standards established by the employer. The procedure for dealing with misconduct, capability and performance comprises a number of levels and the type of disciplinary action taken will depend on the severity and frequency of the misconduct as well as the general circumstances surrounding it. The employer reserves the right at its absolute discretion to invoke any stage of the procedures, depending in the seriousness of the misconduct complained of.

1. No disciplinary action shall be taken until there has been a full investigation into any alleged incident (please see above).
2. The employee has the right to receive, prior to disciplinary hearings:
 - A written statement of the alleged misconduct; and
 - Particulars on the basis for the allegation.
3. The employee has the right to reasonable opportunity, prior to disciplinary hearings, to consider their responses to the information provided on the allegation.

4. The employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or trade union official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion).
5. The employee must take all reasonable steps to attend the disciplinary and appeal hearings.
6. The employer will ensure that the disciplinary rules and procedures are applied fairly and consistently.
7. The employer will endeavour to ensure that:
 - All steps under the procedure are taken without unreasonable delay;
 - The timing and location of all hearings are reasonable;
 - Hearings are conducted in a manner which enables employees to explain their cases; and
 - Disciplinary appeal hearings will be conducted, as far as is reasonably practicable, by a more senior manager than the manager who took the disciplinary action being appealed. This does not apply where the most senior manager attended the disciplinary hearing at which the decision was made to take the disciplinary action being appealed.
8. Where a written warning has been issued a copy will be kept on file but disregarded for disciplinary purposes after a specified period, for example 12 months.
9. The employer will keep written records during the disciplinary process. These will include the complaint against the employee, notes taken during the hearings and appeals, findings and actions taken, details of the appeal and any other information relevant to the process.
10. The employer will take all reasonable steps to ensure that confidentiality is maintained throughout the process.
11. All warnings will clearly state the misconduct concerned and clearly indicate what the eventual outcome will be if there is no improvement on the employee's part or a recurrence takes place. Warnings normally relate to the same or similar misconduct and are not generally transferable between different types of misconduct. However, where a number of warnings are called for in respect of different types of misconduct this will entitle management to review the employee's overall suitability for continued employment and if necessary to issue a final general warning irrespective of the offence.
12. If a final disciplinary warning has been validly issued and is still current, the employer is entitled to take this into account when considering whether to dismiss for a subsequent act of misconduct, even if the two acts of misconduct are for different matters. The employer will take into account the degree of difference or similarity between the different matters when deciding what sanction to impose.
13. When deciding what sanction to impose, the employer will take into account the factual circumstances giving rise to any previous warnings.
14. If an employee has been issued with a final written warning this normally means that **any** further misconduct within the duration of that warning may result in dismissal.
15. Precautionary Suspension: In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to the employer's property or responsibilities to other parties, consideration will be given to a brief period of suspension **with full pay** whilst an unhindered investigation is conducted. The employer will also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension e.g. agreeing to a temporary transfer to other duties or another work station without loss of pay or the taking of annual holidays to which the employee is entitled. Any action taken will be reviewed to ensure it is not unnecessarily protracted. It will be made clear that any action taken is not considered a disciplinary action.
16. If the employee has difficulty at any stage of the procedure because of a disability, he/she should discuss the situation with their line manager as soon as possible.

Types of misconduct

The following list shows examples of the type of rules/offences which the employer has categorised for each level of misconduct. This is not an exhaustive list and management reserves the right to decide how any other misconduct shall be categorised:

(The following examples are provided for guidance purposes only and should be amended to suit your organisation. You should therefore delete any which are not applicable to your organisation. Employer Guidance - remove before issuing.)

A MINOR MISCONDUCT

- Absenteeism
- Poor timekeeping /lateness
- Failure to comply with Absence Notification and Certification Procedure
- Careless work and poor effort at work
- Minor breach of safety/hygiene/security rules
- Extended tea and meal breaks
- Failure to maintain a tidy and safe working environment
- Misuse of telephone/Misuse of personal mobile phone
- Excessive time away from the job
- Failure to wear any protective clothing/equipment provided
- Failure to wear uniform
- Wearing unacceptable or inappropriate clothing
- Failure to complete time/stock or work sheets as instructed
- Breach of IT Policy

B MAJOR MISCONDUCT

- Excessive absenteeism
- Failure to comply with the Holiday Request Procedure
- Workmanship or performance of duties below an acceptable standard
- Constant misuse of the telephone
- Failure to adhere to Rules and Procedures
- Failure to report any loss or damage to company property
- Serious breach of IT Policy
- Dangerous physical horseplay
- Neglect causing damage to or loss of employer's, customer's or other employee's property/ equipment/tools
- Serious neglect of safety/hygiene/security rules
- Smoking in the workplace
- Consuming intoxicants during working hours or bringing intoxicants into the premises without permission
- Entry into any unauthorised areas
- Wilful or excessive wastage of material
- Unsatisfactory attitude to customers
- Use of foul language
- Gambling on the premises
- Insubordination

C GROSS MISCONDUCT

Gross Misconduct by an employee entitles the employer to summarily dismiss without notice or payment in lieu of notice and without entitlement to any accrued holiday pay. The following matters will be deemed by the employer to constitute gross misconduct. Such matters are by way of example only and are not exhaustive.

- Acts of theft, fraud and other dishonesty whether committed in the course of the employee's duties or not
- Unauthorised removal or possession of property belonging to the employer, its clients or any person with whom the employer has dealings
- Breach of professional confidence or disclosure of confidential information
- Violent, wilful or reckless behaviour which does, or could, result in damage to the person or property of the employer, its employees, clients or other persons with whom it has dealings
- Possession of, or being under the influence of, alcohol or drugs on Company premises save for any drugs prescribed by a qualified medical practitioner
- Acts of indecency, sexual harassment or other similar misconduct with or towards another employee, client or person with whom the employer has dealings
- Persistent or unexplained absence from work
- Serious neglect of the employee's duties resulting in actual or likely loss, damage or injury

- Use of threatening, abusive or insulting language to other employees, clients or persons with whom the employer has dealings
- Breach of the employers Equal Opportunities policy
- Breach of any statute, regulation, code of practice or other relevant provision governing the range of services provided by the employer.
- Breach of the Health and Safety At Work (NI) Order 1978 or serious infringement of Health and Safety rules
- Submission of false references
- Failure to disclose any criminal convictions
- Actions likely to result in damage to the employer's image or reputation in the community or to the employee's image or reputation
- Refusal to carry out reasonable work instructions
- Wilful damage to or gross neglect of employer's, client's or other employee's property
- Undertaking work in competition
- Falsification of records
- Leaving the employer's premises or site without consent
- Unauthorised use of employer's vehicle
- Gross misuse of the company's internet/email system
- Serious act of insubordination
- Harassment or bullying

NOTE: Any allegation of bullying in the workplace or any allegation of discrimination, victimisation or harassment linked to anti-discrimination legislation including gender, gender reassignment, sexual orientation, marriage, civil partnership, disability, race, age, religious beliefs or political opinions will be thoroughly investigated and where appropriate will be dealt with under the disciplinary procedure. The disciplinary response will depend upon the nature and seriousness of the incident and may result in summary dismissal.

Formal Procedure

When taking formal disciplinary action, the employer will comply with the Statutory Procedures by ensuring that the following steps are taken at all stages of the formal disciplinary process.

Step 1

Statement of grounds for action and invitation to meeting

The employer will provide to the employee a written statement of the alleged misconduct which has led to the consideration of formal disciplinary action or dismissal. The employer will also inform the employee what the likely range of consequences will be if the employer decides after the hearing that the allegations are true. The employer will invite the employee to a hearing to discuss the issue.

Step 2

Meeting

Prior to the hearing the employee will be informed what the basis was for including in the correspondence under Step 1 the ground or grounds given in it. The employee will be given reasonable opportunity to consider his/her response to that information before any hearing takes place.

An appropriate manager of the employer will be appointed to deal with the disciplinary matter and another member of the employer may also be present to take notes. At the disciplinary hearing the employer will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any evidence of their own. The employer may adjourn the disciplinary hearing if it needs to carry out any further investigations such as re-interviewing witnesses in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

After the meeting the employer will inform the employee in writing of the decision and offer the right to appeal.

Step 3

Appeal

If the employee wishes to appeal the employer's decision he or she will inform the employer within 5 working days of being informed of the disciplinary sanction. Where an appeal is requested, the employee will be invited to an appeal hearing. The appeal hearing will usually be held within 5 working days of the request for an appeal.

If the employee raises any new matters in their appeal, the employer may need to carry out further investigations (as well as adjourning the appeal hearing). If any new information comes to light the employer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

After the appeal hearing the employee will be informed in writing of the employer's final decision usually within 5 working days. There will be no further right of appeal.

Minor Misconduct

If the alleged breach falls within the minor misconduct category the employer will follow the formal procedure outlined above and the following action will be taken if the employer is satisfied that an offence has occurred:

Stage 1

You will be given a **verbal warning**. It will be recorded and retained on your personal file but will not be considered for disciplinary purposes after 6 months, provided your conduct improves.

Stage 2

If there is a repetition of the misconduct or breach or in the case of more serious misconduct or breach within 6 months you will be given a **first written warning**. It will be recorded and retained on your personal file but will not be considered for disciplinary purposes after 12 months, provided your conduct improves.

Stage 3

In the case of continued misconduct or breach, or very serious misconduct or breach, within 12 months you will be given a **final written warning**. This will contain a clear notice that any other offence within 12 months may result in dismissal.

Stage 4

In the event of further misconduct or breach within 12 months you may be **dismissed**.

Major Misconduct

If the alleged breach falls within the major misconduct category the employer will follow the formal procedure as outlined earlier. If the employer is satisfied that an offence has occurred you will receive a final written warning which will contain clear notice that any other offence within 12 months may result in dismissal.

Gross Misconduct

If the alleged breach falls within the gross misconduct category the employer will follow the formal procedure as outlined earlier. If the employer is satisfied that an offence has occurred you may be **dismissed** summarily i.e. without notice and without pay-in-lieu of notice.

Alternatives to dismissal

As an alternative to dismissal, the following sanctions may be considered: **a final written warning, and if allowed for in the contract or mutually agreed, disciplinary suspension without pay, demotion, transfer to other duties.**

Disciplinary Authority

In the event of a breach of the employer's rules disciplinary hearings and appeals will be conducted by the appropriate disciplinary authority as follows:

Stage	Disciplinary Hearing	Appeal
Stage 1 (Recorded Verbal)	(Insert job title)	(Insert job title)
Stage 2 (First written)	(Insert job title)	(Insert job title)
Stage 3 (Final written)	(Insert job title)	(Insert job title)
Stage 4 (Dismissal)	(Insert job title)	(Insert job title)

THE RIGHT TO BE ACCOMPANIED

As detailed above the employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or trade union official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion). The employee must tell the employer who their chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

See the Labour Relations Agency Code of Practice in relation to the right to be accompanied.

STATUTORY MODIFIED DISMISSAL AND DISCIPLINARY PROCEDURE

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply. These situations will be where:

- dismissal is without notice and occurs at the time when the employer became aware of the misconduct or immediately thereafter;
- the employer is entitled, in the circumstances, to dismiss by reason of the misconduct without notice and without pay in lieu of notice; and
- the employer believed that it was reasonable, in the circumstances, to dismiss before enquiring into the circumstances in which the misconduct took place.

In these **very exceptional situations** the following **modified procedure** will apply:

Step 1

Statement of grounds for action

The employer will provide the dismissed employee with:

- a written statement of the alleged misconduct which led to the dismissal, and
- written particulars on the employer's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, and
- a written confirmation of his/her right of appeal against the dismissal.

Step 2

Appeal

- If the employee wishes to appeal he/she must inform the employer within 5 working days.
- All appeal requests must be made to **(insert job title)**.
- Appeal hearing usually shall be heard within 5 working days of receipt of the request.
- The employee must take all reasonable steps to attend the hearing.
- The employee has the right to be accompanied at the appeal hearing.
- The result of the appeal hearing shall be notified to the employee usually within 5 working days of the appeal hearing.

APPENDIX 18B

NOTICE OF THE DISCIPLINARY MEETING

Date _____

Dear _____

I am writing to inform you that you are required to attend a disciplinary meeting on _____ at _____ am/pm, which is to be held in _____.

At this meeting, we will discuss the possibility of disciplinary action against you, in line with the organisation's disciplinary procedure, in relation to: [SET OUT ALLEGATION]

The basis for this allegation is that [GIVE SUMMARY OF INFORMATION OBTAINED AS A RESULT OF INVESTIGATIONS INTO THE ALLEGATION].

[I enclose an investigation report, which sets out further detail of the allegations.] If there are any [further] documents you wish to be considered at the hearing, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained. *delete if not appropriate

The hearing will be held in accordance with the disciplinary procedure which is attached. If you are found guilty of misconduct we may decide to [issue you with a written warning or a final written warning OR dismiss you with notice or pay in lieu of notice]. If you are found guilty of gross misconduct, you may be dismissed without notice or pay in lieu of notice.

The hearing will be conducted by [NAME] and the following people will also be present: [GIVE NAMES OR JOB ROLES OF PARTICIPANTS]. You are entitled to be accompanied by another work colleague or trade union representative. If you wish to bring a colleague or trade union representative, please let me know their name as soon as possible.

[Your suspension on full pay will continue pending the outcome of the disciplinary hearing.]

Please confirm that you have received this letter and that you will attend at the time stated above. If for any unavoidable reason you or your companion cannot attend at that time please contact me as soon as possible. Please note that under our disciplinary procedure we expect you to make your best efforts to attend this meeting. If your companion is not available on the date suggested, we expect you to propose a further date within 5 working days of the date suggested. If you are not available on the date suggested, we will arrange another meeting with you within a reasonable period.

If you have any specific needs at the hearing as a result of a disability, or if you have any other questions, please also contact me as soon as possible.

Yours sincerely

_____ Manager

APPENDIX 18C

NOTICE OF THE RECORDED VERBAL WARNING, FIRST WRITTEN WARNING OR FINAL WRITTEN WARNING

Date _____

Dear _____

You attended a disciplinary hearing on _____

I am writing to confirm the decision made that you will receive a *recorded verbal warning/*first written warning/*final written warning under the organisation's disciplinary procedure.

This warning will be placed in your personnel file but will not be considered for disciplinary purposes after _____ months, as long as your conduct improves or performance reaches a satisfactory level.

- a) The nature of the unsatisfactory conduct or performance was:
- b) The conduct improvement expected is:
- c) The timescale within which the improvement must be made is:
- d) The likely consequence of further misconduct or not enough improvement is a first written warning*/a final written warning*/dismissal.

You have the right to appeal against this decision (in writing) to _____ within _____ days of receiving this disciplinary decision.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18D

NOTICE OF THE APPEAL MEETING AGAINST THE WARNING

Date _____

Dear _____

You have appealed against the recorded verbal warning* / first written warning* / final written warning* confirmed to you in writing on _____.

I am writing to request your attendance at an appeal hearing which will be heard by _____ in _____ on _____ at _____.

[INSERT NAME] may also be in attendance at the meeting to take notes.

You are entitled to be accompanied by a work colleague or trade union representative. If you wish to bring a work colleague or trade union representative please inform me of their name as soon as possible.

[I enclose copies of relevant documentation for use at the appeal.] If there are any [further] documents you wish to be considered at the appeal, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.

Please confirm that you have received this letter and that you will attend at the time and place stated above. If for any unavoidable reason you [or your companion] will be unavailable [or you wish to suggest an alternative time or place] please contact me as soon as possible. Please note that under our disciplinary procedure we expect you to make your best efforts to attend this meeting. If your companion is not available on the date suggested, we expect you to propose a further date within 5 working days of the date suggested. If you are not available on the date suggested, we will arrange another meeting with you within a reasonable period.

If you have any specific needs at the hearing as a result of a disability, or if you have any other questions, please speak to me as soon as possible.

The decision of this appeal hearing is final and there is no further right of appeal under the disciplinary procedure.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18E

NOTICE OF THE RESULT OF THE APPEAL AGAINST THE WARNING

Date _____

Dear _____

You appealed against the decision of the disciplinary hearing that you be given a warning in accordance with the organisation's disciplinary procedure. The appeal hearing was held on _____.

I am now writing to confirm that the decision made by the manager who carried out the appeal hearing, **still applies* / will be withdrawn*** [say if no disciplinary action is being taken or what the new disciplinary action is].

You have now used your right of appeal under the organisation's disciplinary procedure, and this decision is final. There is no further right of appeal under the disciplinary procedure.

If you have any further questions please do not hesitate to contact me.

Yours sincerely

_____ Manager

**The wording should be amended as appropriate*

APPENDIX 18F

LETTER TO BE SENT BY THE EMPLOYER, SETTING OUT THE REASONS FOR THE PROPOSED DISMISSAL OR ACTION OTHER THAN DISMISSAL AND ARRANGING THE MEETING (FOR THE STATUTORY PROCEDURE)

Date _____

Dear _____

I am writing to invite you to attend a disciplinary meeting on _____ at _____ am/pm which is to be held in _____.

_____ [insert organisation's name] is considering dismissing you or taking disciplinary action [enter proposed action] against you.

This action is being considered in the following circumstances. [SET OUT THE BASIS OF THE ALLEGATION AND A SUMMARY OF INFORMATION OBTAINED AS A RESULT OF INVESTIGATIONS INTO THE ALLEGATION]

[I enclose an investigation report, which sets out further detail of the allegations.] If there are any further documents you wish to be considered at the hearing, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.

The hearing will be held in accordance with the disciplinary procedure which is attached. If you are found guilty of misconduct we may decide to [issue you with a written warning or a final written warning OR dismiss you with notice or pay in lieu of notice]. [If you are found guilty of gross misconduct, you may be dismissed without notice or pay in lieu of notice.]

The hearing will be conducted by [NAME] and the following people will also be present: [GIVE NAMES OR JOB ROLES OF PARTICIPANTS]. You are entitled to be accompanied by a work colleague or trade union representative. If you wish to bring a colleague or trade union representative, please let me know their name as soon as possible.

[Your suspension on full pay will continue pending the outcome of the disciplinary hearing.]

Please confirm that you have received this letter and that you will attend at the time stated above. If for any unavoidable reason you or your companion cannot attend at that time please contact me as soon as possible. Please note that under our disciplinary procedure we expect you to make your best efforts to attend this meeting.

If your companion is not available on the date suggested, we expect you to propose a further date within 5 working days of the date suggested. If you are not available on the date suggested, we will arrange another meeting with you within a reasonable period.

If you have any specific needs at the hearing as a result of a disability, or if you have any other questions, please also contact me as soon as possible.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18G

LETTER TO BE SENT BY THE EMPLOYER AFTER THE DISCIPLINARY MEETING (FOR THE STATUTORY PROCEDURE)

Date _____

Dear _____

On _____ we told you that [insert organisation's name] was considering dismissing you or taking disciplinary action [enter the proposed action] against you.

This was discussed in a meeting on _____.

At this meeting, it was decided that [*delete as appropriate]

*your conduct or performance was still not satisfactory and that you be dismissed.

*your conduct or performance was still not satisfactory and that the following disciplinary action would be taken against you.

*no further action would be taken against you.

*The reasons for your dismissal are as follows.

*I am writing to you to confirm the decision that you will be dismissed and that your last day of employment with the organisation will be _____.

*I am writing to you to confirm the decision that disciplinary action will be taken against you. The action will be _____ . The reasons for this disciplinary action are as follows.

You have the right to appeal against this decision. If you wish to appeal this decision please write to _____ within _____ days of receiving this disciplinary decision.

[SET OUT THE ARRANGEMENTS FOR THE TERMINATION OF EMPLOYMENT SUCH AS:

- Date the dismissal takes effect
- Entitlement to notice
- Holiday entitlement outstanding
- The return of company property
- The date final salary will be paid
- Whether there are any clauses in the employee's contract that will remain in force such as confidentiality and restrictive covenants]

If you have any questions please do not hesitate to contact me.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18H

NOTICE OF THE APPEAL MEETING AGAINST THE DISMISSAL OR RELEVANT DISCIPLINARY ACTION (FOR THE STATUTORY PROCEDURE)

Date _____

Dear _____

You have appealed against *your dismissal / *disciplinary action on _____ which was confirmed to you in writing on _____

I am writing to request your attendance at an appeal hearing which will be heard by _____ in _____ on _____ at _____. [INSERT NAME] may also be in attendance at the meeting to take notes.

You are entitled to be accompanied by a work colleague or trade union representative. If you wish to bring a work colleague or trade union representative please inform me of their name as soon as possible.

[I enclose copies of relevant documentation for use at the appeal.] If there are any [further] documents you wish to be considered at the appeal, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.

Please confirm that you have received this letter and that you will attend at the time and place stated above. If for any unavoidable reason you [or your companion] will be unavailable [or you wish to suggest an alternative time or place] please contact me as soon as possible. Please note that under our disciplinary procedure we expect you to make your best efforts to attend this meeting. If your companion is not available on the date suggested, we expect you to propose a further date within 5 working days of the date suggested. If you are not available on the date suggested, we will arrange another meeting with you within a reasonable period.

If you have any specific needs at the hearing as a result of a disability, or if you have any other questions, please speak to me as soon as possible.

The decision of this appeal hearing is final and you cannot ask for a review.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18I

NOTICE OF THE RESULT OF THE APPEAL AGAINST THE DISMISSAL OR RELEVANT DISCIPLINARY ACTION (FOR THE STATUTORY PROCEDURE)

Date _____

Dear _____

You appealed against the decision of the disciplinary hearing that *you should be dismissed/*other disciplinary action should be taken against you. The appeal meeting was held on _____.

I am now writing to confirm that the decision made by _____ [enter the name of the manager] who carried out the appeal meeting *still applies / *will be withdrawn [say if no disciplinary action is being taken or what the new disciplinary action is].

You have now used your right of appeal under the organisation's disciplinary procedure. This decision is final. There is no further right of appeal under the disciplinary procedure.

The arrangements for dismissal set out in our letter of [DATE] are [revoked OR varied as follows]
[INSERT NEW ARRANGEMENTS INCLUDING EFFECT ON EMPLOYMENT TERMS AND SALARY]

If you have any further questions please do not hesitate to contact me.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

MANAGING ABSENCE

Introduction

Absence causes difficulties both for the person who is absent and for the organisation. For small organisations in particular, where there are limited resources to cover and cope with the direct and indirect costs of an absence, it can be very disruptive. Absence places extra strain on the people who are present and can lead to mistakes and delays, lower productivity, increased costs and impact on service. It can cause stress for the manager and for other members of the team. If the absence is seen as being unjustified it can cause resentment amongst other staff and a loss of respect for a manager who is seen to be tolerating it.

For the person who is absent it can lead to a sense of isolation, contributing to depression and lack of self-esteem. In some cases, it can cause loss of income.

Key points

- Tackle absence problems before they get out of hand.
- Record and monitor absence rates – identify patterns of absence and gather information on common causes.
- Address causes where possible.
- Have an absence management policy and ensure that it is widely understood and applied.
- Set and communicate trigger mechanisms for review of attendance.
- Establish reporting procedures and ensure these are adhered to.
- Always hold return-to-work interviews and discuss reasons for absence.
- Treat absence relating to an underlying medical condition differently from absence not related to an underlying medical condition.
- Keep in touch with employees who are off work for any length of time.
- Manage non-genuine absence through the disciplinary procedure.
- Remember that it is possible to dismiss for genuine absence, provided all relevant factors are taken into account and appropriate procedures are followed.
- Be aware of specific legal requirements in relation to pregnant employees and those with disabilities.
- Ensure that managers are aware of their responsibilities in relation to managing absence and that they have the necessary support and training to manage absence effectively.
- While policies and procedures are important, a positive and supportive work environment with effective health and safety management is also an important factor in preventing excessive absence.

Recording and monitoring absence rates

Monitoring and measuring absence is a key part of managing it. This allows the company to identify any trends, such as a higher than average number of sick days, or particular causes for absences and to target any actions appropriately.

Ensure that:

- absence is being fully and accurately captured and recorded;
- absence is categorised appropriately so that information is available on different types of absence, such as agreed absence, short-term and long-term;
- absence can be analysed according to cause e.g. stress, cold and flu, bad back; and
- absence is managed consistently and there are consistent triggers in place which prompt action.

Patterns of absence

Effective measuring and monitoring of absence rates should highlight any particular patterns both across the organisation and in relation to specific individuals.

The type(s) of illness that someone complains of and the **reasons provided for absence** should be monitored in order to uncover whether there is a link between the absences. Bear in mind that a number of absences due to an underlying illness may be due to a disability which would legally require reasonable adjustments (see the later paragraphs on disability).

Employers should also monitor **when employees are absent**, particularly if there is a **recurring absence issue**. Those who take off Fridays may be starting the weekend early while those who take off on a Monday may be recovering after the weekend. If the behaviour is persistent it should be investigated via the Company's disciplinary policy and addressed accordingly (see the later paragraph on non-genuine absence).

Causes of absence

Employees may be absent from work for a variety of reasons, including genuine health problems, caring responsibilities or personal problems and lack of motivation.

Health problems can be physical or mental and can result in both short and long-term absence.

Minor illnesses (such as colds, flu, stomach upsets, headaches and migraines) are by far the most common cause of **short-term absence**. Musculoskeletal injuries, back pain and stress are the next most common causes of short-term absence. The most common causes of **long-term absence** are stress, acute medical conditions (for example stroke, heart attack and cancer), mental ill-health, musculoskeletal injuries and back pain.

SECTION 19

Musculoskeletal injuries and back pain are particularly common for manual workers while stress is more common for non-manual workers.

Stress-related illness is certainly rising in the UK with a large number of organisations reporting a rise in mental health problems such as anxiety and depression among employees. Job related factors such as rising workloads, organisational changes and job insecurity all contribute to increased levels of stress. Non-work factors such as family and relationship problems, and financial issues also have an impact on stress levels.

With excessive stress linked to the development of mental health issues, it is important to recognise when mild stress, which can have a positive effect on performance, becomes a problem which may lead to time off work.

Recurring medical conditions such as asthma, angina and allergies are one of the top causes of short-term absence, but can also lead to longer periods off.

Home and family responsibilities remain among the top causes of short-term absence for many employers. With demographic changes leading to an older workforce that also includes more women, there is an increasing proportion of employees with caring responsibilities for both children and older relatives. Often this absence is masked as sick leave since many employees see it as more acceptable to take time off 'sick' than request time off for family reasons. For the employer, this simply means that it is more difficult to plan for people's absences effectively.

Lack of motivation to come to work is usually characterised by an above average number of short-term absences with a range of temporary causes.

Where common causes are identified, take action to address them. For example, appropriate and flexible working arrangements can help to reduce stress and also 'illegitimate absence'.

Access to counselling services and employee assistance programmes can also help reduce stress.

Health screening, promoting and encouraging healthy eating and exercise can be cost effective measures to improve employee health, wellbeing and morale.

Dealing with absence

All employers should have an up to date **Absence Management Policy**, which should provide for:

- confirmation in respect of contact on the first day of sickness;
- the procedure for self-certification;
- the requirement for Fit Notes and what is expected of employees in this regard;
- procedures for keeping in touch with employees who are absent;
- any entitlement to enhanced sickness pay which is over and above current statutory provisions;
- how the organisation may assist in co-ordinating and facilitating an employee's return to work following periods of longer absence;
- managing absence as a capability issue (i.e. for dealing with absences caused by an underlying medical condition);
- managing absence as a conduct issue (i.e. for dealing with absences not related to an underlying medical condition); and
- a reference to the disciplinary procedure, should it need to be invoked.

The policy may also outline trigger points when attendance will be reviewed. In any case it is considered good practice to make employees aware of the level of absence which will require further investigation.

Trigger mechanisms to review attendance

In order to control absence it is important to set a standard in relation to the level of absence regarded as acceptable. This might be the average number of days lost per employee per year or it might be a measure such as the Bradford Factor.

SECTION 19

The Lost Time Rate is the percentage of total work time available which has been lost to absence.

Calculated as;

Total absence (hours or days)
in the period measured

Possible total hours or days that
could be worked in the period

Examples: 12 days' absence in a possible
260 work day period X 100 = 4.61%

or

75 days' absence in a possible
260 work day period X 100 = 28.85%

The Bradford Factor is based on the following formula:

$BF = S * S * D$ (S = number of instances of absence;
D = number of days absent)

The scores are generally calculated over a 52 week period. Higher scores can be a reason for concern and further investigation. Higher scores are generally representative of a number of short-term absences.

Example: An employee who was absent 12 times for a total of 13 days would be calculated as: $12 * 12 * 13 = 1872$;
Two absences of 5 days and 6 days would look like:
 $2 * 2 * 11 = 44$

It is important to communicate to people that action will be taken once absence reaches a certain level.

However, it is also important to be sensitive to individual circumstances. The trigger should be used as a prompt to discuss the issue with the employee and to investigate the reasons for a particular pattern of absence rather than automatically leading into a disciplinary process. This is particularly important where the employee may have an underlying medical condition. If the employee has an underlying medical condition, which has caused the absences, the employer must carefully consider whether or not the employee may be 'disabled' for the purposes of the Disability Discrimination Act 1995. Unless disability is very obvious, medical evidence will often be required. If the employee is disabled, the employer will need to tread carefully. Just because a non-disabled employee would be dismissed for the same level of sick leave, does not mean that the disabled employee can also be dismissed. The employer must show that the dismissal is justified for a material and substantial reason.

Justifying such a dismissal will involve taking medical advice as to whether the absences are likely to continue or improve, and considering what reasonable adjustments could be made to the job or the working environment to enable the employee to continue working.

Reporting procedures

It is important that people adhere to the organisation's absence reporting procedures. This means that the employee needs to call personally and speak directly to their manager. The manager needs to know why the person is absent and how they should deal with absence. If the employee does not call themselves, the manager should call them at the first opportunity to find out why they are absent. This applies even if something serious such as a bereavement has occurred. It is appropriate in this case for the manager to call to offer support and to tell the employee not to worry about work.

If the absence is not genuine, communicating with the employee while they are absent helps to reinforce the fact that the absence has been noticed and that the employer is monitoring the situation. The same approach should be adopted regardless of whether the employer thinks the absence is genuine or not. The manager should simply ask about the reason for the absence and the likely date of return, taking care not to accuse the employee of anything or give the impression that they suspect the absence is not genuine.

Employers should ensure they hold records for sickness absence separate from those relating to non sickness absence i.e. dependant's leave, maternity leave, etc.

See a sample Sickness Absence Notification and Sick Pay Procedure in Annex A of the sample contract in Section 3 (Appendix 3A).

Statement of Fitness for Work – 'Fit Notes'

Employees absent for more than seven days should provide their employer with a Statement of Fitness for Work certificate, often referred to as a Fit Note. The Fit Note will state whether someone is **unfit for work** or whether they **may be fit for work**.

Fit Notes can be handwritten or printed, but must always be signed by a doctor. If they are printed, the barcode can be scanned, using a 2D matrix scanner so that it can be added to your sickness records. This also confirms that the Fit Note is genuine.

The employee's Fit Note will say how long they will not be fit for work, and whether the doctor needs to assess fitness again at the end of the specified period.

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Doctors cannot issue Fit Notes during the first seven calendar days of sickness absence. Employees can self-certify for this time. There is a template self-certification form available on the forms section of the HMRC website.

If the person is **unfit for work**, the Fit Note will state this and will also state whether the employee is expected to be fit for work at the end of their Fit Note or whether he or she is likely to need a new Fit Note when their current one expires i.e. whether they will require assessment again at the end of the specified period.

The employee can come back to work at any time, even if this is before their Fit Note expires. They do not need to go back to their doctor first. The Fit Note should be used as evidence for Sick Pay Procedures.

The advice in the Fit Note is about the employee's fitness for work in general, and not specifically about their current job. If a Fit Note states that an employee **may be fit for work**, this means that they may be fit for some work but not necessarily their current job. This is because, while the employee may not be 100% fit for the full range of duties, they may be able to undertake some work, perhaps with some adjustments to help their return. The Fit Note will not tell the employer what changes to make, but will provide advice about how the employee's health affects what they can do at work and may also provide suggestions about how they may benefit, for example by agreeing a phased return to work, or amended duties etc. The benefit to the employee is that appropriate work can support their recovery and help them maintain their wellbeing. For the employer, supporting someone with a health condition to come back to work can save money and minimise disruption. Often, a few simple and / or low-cost changes are all that are required to help someone with a health condition come back to work earlier. Bear in mind that Access to Work (NI) can help employees with a disability or health condition. This includes paying towards equipment or support. Possible changes or adjustments include:

- A phased return to work: a gradual increase in work duties or hours;
- Altered hours: changing their work times or total hours;
- Amended duties: changing their work duties;
- Workplace adaptations: changing aspects of the work;
- Changing to a different job or location;
- Changes to work equipment;
- Reduced or flexible hours;
- Adjustments to work premises;
- Giving some of their tasks to somebody else;
- Providing training or additional supervision;
- Providing a reader or interpreter;
- Working from home;

- Voice-activated software;
- Arranging a mentor or work buddy;
- Working in a team instead of by themselves (or vice versa).

The employer should discuss the Fit Note with the employee to see if it is possible to agree any changes to help them come back to work. The employer is not obliged to make any changes.

It may be helpful to put any changes you agree down in writing, so that everyone is clear on what has been agreed. In general, any changes should last at least until the Fit Note expires – although this will depend on the advice in the Fit Note and discussions with the employee.

If the Fit Note states that the employee may be fit for work but changes can't be agreed, the Fit Note should be used as evidence for sick pay procedures.

The Fit Note belongs to the employee and they should keep the original. The employer should take a copy for their records.

If the employee's doctor thinks they are fit for work, they will not be issued with a Fit Note i.e. a signing off line is not required.

Sick pay

All employees are eligible for Statutory Sick Pay (SSP) if they have been ill for at least four days in a row, including non-working days, and earn above the specified weekly threshold.

Many employers provide occupational sick pay in addition to SSP. Some provide this benefit to all employees, others to some employees depending on their level in the organisation or the nature of their role.

There is considerable variation in how long organisations provide occupational sick pay to an employee who is on long-term sick leave.

This ranges from paying the full rate for one to three weeks to paying full pay to employees on long-term sick leave up to 30 weeks. Some then continue to pay a reduced rate for a further number of weeks. Further information on Sick Pay is available on the NI Business Info and HMRC websites.

Short-term absence

Short-term absence is generally categorised as up to four weeks. This kind of absence can be particularly disruptive for business since it is usually unplanned and it can be difficult to arrange cover at short notice.

Many employees will have an occasional day off when they are ill but when an employee is off frequently the reasons for the absence need to be investigated.

In order to deal with short-term absence:

1. Hold a return-to-work interview to reassess/discuss each specific absence (see later information on return-to-work interviews).
2. Hold an absence review meeting to discuss the overall pattern of attendance, establish the cause and agree action (see later information on absence review meetings).
3. Seek a medical opinion if there is an underlying medical problem. The employee will need to give their consent to this (see later information on medical reports).
4. Absence in relation to disability will be carefully considered and if required, a reasonable adjustment may be made. This may mean providing special equipment or changes to hours or job content. Where reasonable adjustments can be made, or should have been made previously, they should be made before taking disciplinary action against a disabled employee. Employers should seek further advice on their legal obligations in relation to disabled employees.
5. Determine appropriate action, based on all information available. This may mean implementing procedures to dismiss an employee on the grounds of capability (health) if the information suggests that the employee is unlikely to be able to meet the requirements of the business to attend regularly. It may also mean a dismissal on the grounds of misconduct, if there is no underlying health issue. In this case, the process should include warnings, the opportunity to improve attendance, written notification of meetings in advance and the right to be accompanied at meetings. The employee should also be notified of their right of appeal.

Long-term absence

Any absence which exceeds 28 days or 4 weeks is generally considered long-term.

For small businesses an absence of even a couple of weeks can have a major impact, particularly if the individual is in a key role. It is important to balance the needs of the business with support for the individual, to plan for cover during the absence and to consider the options if the employee is unable to return.

In the first instance, employers should work with employees to help them return to work. By doing so you will:

- Retain valued staff and avoid unnecessary recruitment and training costs;
- Reduce unnecessary overheads (ie. sick pay costs);
- Avoid discriminating against disabled employees;
- Improve and maintain good employee relations.

In order to manage long-term absence an employer should take the steps outlined below.

1. Regularly communicate and consult with the employee

Regular communication with the person who is absent is critical. This should continue for the duration of the absence. This lets the person know that their contribution at work is important and that they are missed and this can help to avoid feelings of isolation and depression which can cause the absence to last longer than it otherwise would.

The employer and employee should agree how and when to communicate during the course of the absence. The employee should keep the employer informed during these discussions as to their current prognosis and when they may be able to return to work. With this information, the employer will best be able to decide on a return-to-work plan and on whether they need additional medical information to proceed. The employer should assess the situation regularly throughout the course of the absence, by getting all the facts and keeping the person informed of his or her position. However, employers should avoid overbearing or intrusive contact, or any other conduct that could cause distress such as to amount to harassment. It can be helpful to agree the nature and frequency of contact with the employee.

2. Seek a detailed medical opinion

To get a true and full picture of the employee's state of health and possible return dates, the employer should get a detailed medical opinion as to whether the employee is able to carry out the duties of the contract of employment. This should be from the employee's own doctor first, and then if necessary (e.g. if the original report is vague or unhelpful) from a company doctor or an independent occupational health specialist.

Where reports conflict and an employer relies on one, there should be good reasons for doing so. If the employee is seeing a specialist consultant, the opinion may be extremely important. There may be times when it would be advisable for the employee to see a specialist, for example, where a doctor's report suggests this course of action.

SECTION 19

Before contacting a medical practitioner for an opinion, employers should carefully consider the type of relevant information they are likely to need and what the practitioner needs to know to be able to provide a meaningful response. See the section below on medical assessment and consent and Appendices 19B, C and D.

3. Consider how to help the employee return to work

The ultimate goal of long-term absence intervention is to help the employee return to the workplace. The optimum timescale for encouraging an employee back to work (and avoiding many compounding health problems) is four to six weeks.

For employees a return to work can be very beneficial since it can increase self-respect, self-esteem, mental wellbeing and social inclusion as well as financial stability and independence, provided it is timely and well planned. Line managers play a crucial part in the return-to-work process and in the health and wellbeing of their employees, so it is vitally important that they be helped to manage the return-to-work process effectively.

The return-to-work plan may involve moving the employee to another (less strenuous) job where possible or making reasonable adjustments to the employee's workplace or work day. The doctor may suggest some of these adjustments, including a phased return to work. Employers need to be aware of any obligations under the Disability Discrimination Act when deciding on return-to-work strategies.

Some examples of reasonable adjustments might be:

- a phased return to work starting with part-time working and building up;
- changing the individual's working hours;
- assistance with transport to and from work;
- looking at aspects of the job that the person finds particularly stressful and rearranging responsibilities;
- allocating some of an employee's duties to another colleague and adjusting the content of the job;
- allowing the employee greater control over how they plan and manage their time and workload;
- offering the option of working at home for some of the time;
- allowing time off for attending therapeutic sessions, treatment, assessment and/or rehabilitation;
- changing shift patterns or exploring different work options such as part-time, job-share, flexible working;

- review and implementation of adjustments to the physical work environment e.g. moving away from a busy corridor, allowing a person to use headphones to block out distracting noises; and
- identifying training needs and providing support to develop required skills.

Most adjustments are simple, inexpensive and need only be temporary. Some mental health conditions can be episodic and so it may be better to agree adjustments when they are needed rather than agreeing one or more specific adjustments that will apply all the time. Remember:

- do not make promises that cannot be kept - be realistic;
- if you not sure what will help someone - just ask them; and
- review the adjustments regularly.

Employers who are considering making changes to an employee's work may seek advice from Access to Work, a government scheme that works with disabled people and employers to work out what changes are needed so the disabled person can do their job. They may also be able to provide some money to pay for the changes. Access to Work may be able to provide an assessment of the employee's needs at work, and help with things like equipment, adapting premises or a support worker. Access to Work may be accessed through your local Job Centre.

In any case, it is important to plan the return to work to ensure that the employee has as much support as possible to enable a smooth transition.

4. Redeployment/Dismissal

There may be cases when a doctor is unable to state when an employee might be able to return to work or when there is little possibility of a return in the short-term. An employer is not required to keep an employee's position open indefinitely if he or she is no longer fully capable, competent or available to undertake the duties attached to the role.

Once the employer knows an employee's medical position, the employer must decide how long it is possible to wait for the person to return to work and to assess options as to how he or she can meet the needs of the business.

The employer is not expected to approach the problem as a medical one. The decision as to what to do is based on the organisation's needs. However, any decision must always be reasonable and the employer should treat the ill employee sensitively at all times.

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The employee should be given fair notice that his or her dismissal for capability is being considered and the employer should engage/consult with the employee to consider what reasonable adjustments could be taken and what alternative roles could be offered to facilitate the employee's return prior to any decision being made. Even if the employee is not suffering from a disability it is best practice to consider this to help avoid an unfair dismissal claim.

The decision to dismiss should be a last resort once all other options have been considered. Before reaching this decision the employer should consider:

- The medical opinion of the employee's own GP, or a GP appointed by the employer or of an occupational health specialist;
- The real effects of the absence on the business, for example, the difficulty in completing work or the amount of disruption caused by the absence;
- The length of time the company can wait for the employee to return without the absence having a major effect on the business;
- The nature of the illness;
- Alternatives to dismissal and any 'reasonable adjustments' which could be expected under the Disability Discrimination Act 1995, if relevant and appropriate;
- Any measures which could help the person return to work;
- How long the employee has worked for the organisation; and
- The availability of a replacement worker.

If it is not possible to make reasonable adjustments in the individual case, and the business cannot sustain the absence the employer should proceed to implement procedures to dismiss the employee on grounds of capability, adhering to the statutory dismissal procedures. Failing to follow a fair procedure before dismissing the employee could lead to an unfair dismissal claim.

The employer should arrange an initial formal meeting either at home or at a mutually agreeable location with the employee, by writing to them in advance and informing the employee of their right to be accompanied. Any relevant documents such as absence summary information, any medical reports already received should be supplied to the employee in advance. This meeting should focus on the employee's current state of health, the likely date of return and any possible reasonable adjustments. If appropriate, the employee should be made aware at this stage of the possible consequence of continued absence. Notes should be kept of the meeting and a letter should be sent confirming the issues discussed and any agreed actions.

If absence continues and the decision to dismiss is confirmed, the employer needs to ensure that the statutory 3 step procedure is followed:

1. The employer must write to the employee to inform them that dismissal is being considered, and to arrange a meeting to discuss the issue.
2. At this meeting, the employee should be given the opportunity to present his or her case. This could include the following:
 - The employee's current state of health (and, in particular, whether the employee has a 'disability' as defined by the Disability Discrimination Act);
 - The chances of recovery in the short, medium and long-term;
 - Possible return dates and any help or adjustment the employer could provide.

The employee has the right to be accompanied at this meeting.

After the meeting, the employer must inform the employee of their decision and notify the employee of the right to appeal against the decision if they are not satisfied with it.

3. The employee should be informed of their right of appeal. If the employee informs the employer of their wish to appeal, the employer must invite the employee to attend a further meeting. After the appeal meeting, the employer must inform the employee of their final decision.

Any dismissal should also be with the relevant notice. (See Section 18 for further details on dismissal.)

When following any procedure in relation to employee incapacity, it is essential to ensure that accurate and legible records are kept of all meetings and correspondence.

Alternatives to Dismissal

In certain circumstances, an employee may be entitled to early retirement on grounds of ill health. This will depend on the terms of any company occupational pension scheme. They may also be entitled to state benefits.

Use of the Disciplinary Procedure to deal with absence as a conduct issue

Where there is no underlying medical condition causing the absence due to illness the employer will use the disciplinary procedure to deal with the matter as a conduct issue.

SECTION 19

Likewise, if there is evidence that the employee has reported sick when they were not actually sick, this evidence may be used as part of an investigation into alleged misconduct. However, the employer should be careful to ensure that any response is appropriate to the evidence provided and that the approach is consistent with other similar incidents within the company.

It can often be difficult to prove that an employee was not genuinely ill and therefore it is important for employers to carry out a thorough investigation to ascertain the facts and gather as much evidence as possible. For example, employers should obtain statements from other employees, or copies of any incriminating posts recorded on social networking sites. If there is a pattern of suspicious absences, the employer could ask the employee to see an Occupational Health Professional or request consent for their GP to provide a medical report.

Upon their return to work, an investigation meeting between the employer and employee should be held in order to discuss the reason for their absence and also to give them the opportunity to explain their actions. Employers need to be aware of any long-term conditions that an employee may suffer from and give consideration to the possibility that the employee was genuinely unable to attend work but was not prevented from carrying out other activities.

For example if an employee suffers from depression and was seen out shopping as he or she felt this helped them to deal with their illness, but genuinely felt unable to attend work, it may not be appropriate to take any formal action. To discipline in these circumstances, could expose the employer to a claim of disability discrimination.

Following a full and thorough investigation, should the employer feel that there is a case to answer, consideration needs to be given as to how best to deal with the situation. This will often depend on the individual circumstances and the employee response to the situation.

Where an employee has self-certificated and has taken sufficient time off work to qualify for sick pay, and the employer has proof that they were not genuinely sick and entitled to it, this may amount to an act of gross misconduct for fraudulently claiming sick pay. In this case, the disciplinary procedure should be followed. This will include carrying out a full and thorough investigation, giving the employee the opportunity to respond to any allegations and to be accompanied at any disciplinary meetings. It is also preferable that the person who carried out the investigation does not chair the disciplinary hearing, if this is possible. (See Section 18 for further information.)

Pregnancy Related Illness

Employment legislation makes it automatically unfair to dismiss or discriminate against an employee if the reason for the dismissal/discrimination is related to pregnancy. This can include pregnancy related illnesses such as morning sickness, backache, miscarriage and post-natal illnesses. Pregnancy related illnesses should be held as a separate record and should never, for example, be included in the count for the purpose of meeting trigger points etc. Employers must be aware that dismissal or detrimental treatment are illegal during the period from conception to the end of statutory maternity leave - otherwise known as the 'protected period'. Employers who are considering dismissing a pregnant employee may wish to take legal advice or consult the Labour Relations Agency.

Disability Discrimination Legislation

The Disability Discrimination Act 1995 bans disability discrimination against disabled job seekers and employees. It is crucial to keep it in mind when managing disability-related absences.

A person is disabled if they have:

- cancer, multiple sclerosis or HIV infection; or
- any other physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

Disability discrimination can arise in a number of ways but the ones that are most likely to occur when managing an employee's disability-related absences are:

- failing to comply with the reasonable adjustment duty (see previous guidance in this section); and
- handling the procedure without enough sensitivity so that it might give rise to disability-related harassment e.g. making insensitive comments like 'pull yourself together' to an employee with a mental health illness.

The most important consideration will always be the reasonable adjustment duty. For further guidance on this, contact the Equality Commission who produce a 'Disability Code of Practice for Employers'. www.equalityni.org

When employers are deciding whether an adjustment is reasonable they can take into account several things, including the cost of making an adjustment and the size of their business. If an employer is considering adjustments for someone who is already in the job, they can also take into account the employee's skills and experience and the length of time they have worked there.

Stress/mental health

Stress and mental health problems are common causes of sickness absence particularly long-term sickness. Mental ill-health can range from feeling 'a bit down' to common disorders such as anxiety and depression and, in limited cases, to severe mental illnesses such as bipolar disorder or schizophrenia.

Research shows an increase in mental health issues in recent years and in fact suggests that it is likely that one in four of us will suffer mental health problems during our lives. However, despite this fact, very few employers have preventative measures in place and many do not know how to deal with mental health issues effectively. Due to the perceived stigma around mental illness many employees are also reluctant to admit to mental health problems.

For these and other reasons mental health problems can be very difficult to diagnose. They may be caused by stress, by bullying or by depression brought on by a combination of factors affecting an employee at work and at home. Employers should ensure that steps have been taken to assess and act upon any stress related risks to employee's health. Managers should be alert to any possible signs of mental ill-health such as:

- an increase in unexplained absences or sick leave;
- an uncharacteristic drop in the quality of someone's work;
- starting to turn up to work late;
- failing to cope with the volume of work;
- stopping taking part in work social occasions;
- claiming lack of energy and tiredness;
- poor performance or timekeeping;
- poor decision-making; or
- losing their temper easily when asked to do something, uncommunicative or moody behaviour.

The best initial approach is to have a quiet word with the employee. It may be that something at home is troubling them and some understanding and patience are all that is required.

Some other practical measures will include monitoring workloads, making changes to the physical environment and helping the employee to access a suitable counselling service.

Ensuring an open, supportive culture where employees can talk about issues freely can help prevent problems and also help with early identification of any issues which do arise.

If the employee is absent or returning from sickness absence, follow the same procedures as with any absence:

- keep in touch while they are away;
- hold a return-to-work interview on their first day back; and
- check on how they are coping and monitor their behaviour and performance, offering support when necessary.

Mental ill-health, if an employee experiences it, or is likely to experience it, for sufficiently long enough (i.e. at least 12 months) and if it is sufficiently severe, can be deemed to be a disability for the purposes of the Disability Discrimination Act. Many conditions are likely to satisfy this test, including depression, anxiety, schizophrenia and bipolar disorder.

As such, any employee who is disabled as a result of mental illness will have rights under the act, including the right to have reasonable adjustment made for them. (See previous guidance.)

Recent case law also makes it clear that employers are expected to take a proactive role in dealing with **work-related stress** and must consider the appropriate response in relation to the individual employee. Giving the employee paid leave and seeking a medical report is recommended as a minimum. Employers should act upon the recommendation of any report even if it means reducing hours, providing flexible working, providing counselling or authorising extended leave. It is important that employees' personnel records are accurate and up to date otherwise the employer may not appreciate the severity or multitude of an employee's complaints of work related stress.

Sources of support

The HSENI (www.hseni.gov.uk) and charities such as Action Mental Health, Inspire and Mindwise can provide advice and support to help local employers manage mental health at work and raise awareness of mental illnesses. The ACAS Advisory booklet 'Promoting Positive Mental Health at Work' also provides very useful advice (www.acas.org.uk). Signing up to the Equality Commission's Mental Health Charter will provide a framework and guidance to help you promote good mental health in your workplace (www.equalityni.org/mentalhealthcharter).

The Public Health Agency provides employers with hands-on support and guidance in managing health and wellbeing at work. See their guide for further information (www.publichealth.hscni.net/publications/health-and-wellbeing-work-resource-guide). Employers can request funded workplace health and wellbeing support from the following providers;

- Derry Healthy Cities at www.healthatworkni.com (Western Trust Area);
- Health Matters NI at www.healthmattersni.com (Belfast, Southern and South Eastern Trust Area); or
- NI Chest Heart and Stroke, Well at Work Team at www.nichs.org.uk (Northern Trust Area).

Procedures to assist in the management of absence

The Return-to-Work Interview

Return-to-Work interviews are generally acknowledged to be one of the most effective means of managing absence. They provide a mechanism to show support for people who have been ill and plan for a smooth return to work and also help to deter non-genuine absences. They also help to identify any underlying health issues which are causing absences and enable managers to put measures in place to help workers avoid taking time off in the future.

A Return-to-Work Interview should take place for every person after every absence, regardless of the length of the absence. Consistent adherence to the procedures will help to avoid any claim of discrimination or unfairness.

The Return-to-Work Interview should take place in private within an hour or so of the return to work.

The interview should take the following format:

1. Welcome the employee back

Welcome them back, tell them they were missed and check that they are well enough to be at work, update them on any news or events which occurred while they were absent.

2. Discuss the absence

Ask about the reasons for the absence and listen to what the person has to say, asking questions, if necessary, to clarify understanding.

Avoid challenging the reasons for the absence but ensure that the reason for the absence is clear and that all relevant information has been provided.

If the employee has been absent for less than seven days, you could also give the employee an 'Employee's statement of sickness' form to complete at this stage.

Let the person know how their work has been handled in their absence and that they were missed, without trying to make them feel guilty.

3. Discuss the attendance record

Inform the employee of the number of days and number of occasions they have been absent and how this compares to the company target or benchmark. The purpose of this discussion is not to make the employee feel bad but rather to discuss objective information about their attendance.

Again, individual circumstances should be taken into account in order to avoid causing undue stress to an employee who may have had one instance of illness or bad luck.

However, if absence levels are above the target and this is a cause for concern then it may be appropriate to have a separate Absence Review Meeting. See below.

The rest of the Return-to-Work Interview should focus on what is required for a smooth return to work.

Notes should be kept of the Return-to-Work Interview meeting.

A format for recording the Return-to-Work Interview is attached at Appendix 19A.

The Absence Review Meeting

This is a separate informal meeting to review the individual's **overall attendance record** when the overall level of absence is giving cause for concern.

This meeting should be held a day or so after the last Return-to-Work Interview to ensure that it is clear that this is not about one particular absence but about the overall level of attendance. This should be stated at the beginning of the meeting.

In the case of genuine reasons for absence the causes will be clear and the meeting can focus on discussing ways in which they can be overcome or accommodated. If the cause is not genuine illness, the interest taken by the manager in the absences will cause the individual concerned to think carefully before taking more time off.

The aim of the meeting is to discuss the fact that this individual has a higher level of absence than other people and to explore the possible reasons for this and take action to address these.

It is useful to ask the individual for their thoughts on why their absence level is higher than that of others and to ask any follow up questions to ensure a clear understanding of the reasons for the absence.

Once the reason is clear, then it may be possible to take action to address this. There may be factors at work which are contributing to illness and it may be possible to make changes to address these. For example, if a manager's behaviour is causing stress to the employee, training could be provided for the manager. The employee may have caring responsibilities which require staying at home to look after a child or an elderly relative and it may be possible to agree a flexible working arrangement to facilitate this.

SECTION 19

On the other hand, the needs of the business may mean that this is not possible on a permanent basis but could be considered on a temporary basis. However if this also is not possible then the employee will need to take responsibility for resolving the issue.

If there is no clear reason for the absence it may be worth informing the person that you will need to seek further medical information to determine whether there is an underlying cause. See further information below.

Depending on the level of absence, the reason and whether there has been a previous absence review meeting, it may be appropriate at this stage to make the person aware that if attendance does not improve, it may be necessary to move to more formal handling, which could include action under the disciplinary procedure i.e. where absence has been identified as a conduct issue which could ultimately lead to dismissal. See Section 18 for further information on dismissal.

Medical assessment and consent

When deciding what action to take when absence levels are causing concern, it is useful to obtain a professional medical opinion. This can be achieved by seeking a report from the individual's GP or by referring the person to a company nominated doctor. In difficult or sensitive cases (e.g. where an employee is suffering from work related stress or during a grievance / disciplinary process) an Occupational Health Professional may be well placed to provide an objective view of the situation and recommend an effective solution which is satisfactory for both the employee and the employer.

When seeking consent from the employee the employer should ensure that it explains the nature, purpose and extent of the medical examination required. A sample letter to an employee seeking consent and a consent form and summary of the employee's rights to send with the letter are attached at Appendices 19B, C and D respectively.

If the company contract of employment contains a clause stating that the company reserves the right to refer the individual to a company nominated doctor or Occupational Health Specialist, the company can proceed to arrange this. If the individual refuses to comply in this case they would be in breach of contract. This would be grounds for disciplinary action.

If the contract does not contain such a clause, the company will need to obtain the permission of the individual and he or she does not have to give this.

Similarly, the employer must obtain the permission of the individual in writing in order to see a report from the individual's GP and he or she does not have to give this. If permission is refused the employer should ensure that the individual is made aware of the possible consequences of refusal. This may include disciplinary proceedings if there is evidence that the absence is not genuine, or proceedings to dismiss the employee on grounds of capability. If an employer has done all it reasonably can to obtain available medical information and if the individual continues to withhold consent for either an examination or information to be provided the employer may make a decision on the best way to proceed based on the information available.

An employee can provide limited consent if they are concerned that a report might reveal information about past illnesses which are not relevant to their current condition. However, even limited information may still help the employer to make a decision on the likelihood of the employee achieving satisfactory attendance in the future.

If provided, the written permission must then be passed to the relevant doctor. Legislation specifies that the individual has up to 21 days to see any report from the GP and to make representations to the doctor about any aspect of it with which the individual disagrees. This can mean a delay in the process.

When requesting a medical opinion, it is vital that all relevant information is provided and that the reason for the request is clear. The information should contain any **factual** information about the employee's absence to date, the Company process to date, minutes from meetings or impressions from individuals within the Company. A full and accurate job description is also important. This is particularly relevant if the employee has to lift weights, (it is important to know the amount of weights lifted, frequency), whether they have to climb, drive a forklift truck, etc. Describe the job and what is involved, rather than just stating the job title. Ask the medical practitioner to recommend any adjustments which might help the individual return to work. Include the original Access to Medical Reports consent form with the employee's signature. Ask specific questions and give full information. Also remember that letters to occupational health consultants are discloseable in any proceedings.

A sample letter to a GP is provided at Appendix 19E and a letter to an Occupational Health Specialist is provided at Appendix 19F.

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The GP, or Occupational Health Specialist will be able to independently review the condition, treatment, the likely duration of absence and the long-term effect on capability in relation to job performance and attendance at work.

The medical practitioner may recommend one of the following:

- The individual is, in their opinion, fit to return to work.
- There is the potential to offer alternative employment or reduced hours if this would enable the employee to return to work and meets the operational needs of the business.
- The employee is not fit to return to work.

If the GP's report is vague or unsatisfactory, it is quite acceptable to contact the GP to ask for further clarification.

Accrual of annual leave during sickness absence and carry over to the next holiday year

The current legal position in relation to accrual of annual leave during sickness absence is as follows:

- Employees can request holiday whilst on sick leave;
- The entitlement to statutory holiday leave accrues during all periods of sickness absence, even where the employee has been absent for the whole holiday year;
- Employees who had been absent for the entirety of that holiday year can carry forward holiday entitlement into the next year;
- The statutory right for employees who have been unable to take annual leave as a result of sickness to carry forward the unused holiday to the next holiday year is restricted to the 4 weeks of annual leave prescribed by the EU Working Time Directive and under current EU case law this must be used within 18 months of the leave year in which it accrued. This means that employers are free to specify their own contractual rules governing employees' holiday entitlements beyond the first 4 weeks as regards how these interact with periods of sickness absence;
- Employees whose employment is terminated must be paid for untaken leave even if they have been on sick leave for the entire year.

Sickness that prevents an employee from taking holiday

Where an employee falls sick (or is injured) shortly before a period of planned holiday, the employer must permit the employee, on request, to reschedule the holiday to another time once he or she has recovered.

Sickness during annual leave

Where a worker becomes incapacitated during a period of paid annual leave, he or she will be entitled subsequently to take paid annual leave equivalent to the period of sickness.

Further information on managing absence may also be found on the websites of the following organisations:

The Labour Relations Agency: www.lra.org.uk

The Health and Safety Executive for Northern Ireland: www.hseni.gov.uk/

The Equality Commission for Northern Ireland: www.equalityni.org

NI Business Info: www.nibusinessinfo.co.uk

The CIPD: www.cipd.co.uk

RETURN-TO-WORK INTERVIEW FORMAT

Interview to be conducted in private, on the day of return to work

1. In advance of the interview, check the following information:

- Length of employee's absence;
- First date of employee's absence;
- Date of employee's return to work;
- Reason employee gave for absence;
- Notification procedures followed?;
- GP consulted?;
- Any recommendations from GP on a "Fit Note" as to a phased return to work or potential changes to the employee's hours, duties or to the working environment?;
- Any indication that factors at work may have caused or contributed to the absence?

2. Welcome the employee back.

3. Ask how they are and let them know their contribution was missed.

4. Ask about the cause of the absence and ensure any relevant documentation is provided by the employee, e.g. a self-certified form or a Fit Note from the GP. Do not question the validity of the absence unless there is clear evidence that the individual was not sick.

5. Listen to the responses. Ask for more detail if necessary.

6. Discuss how the work was handled in the employee's absence.

7. Inform the employee if there is an **issue with their general attendance record** and schedule an Absence Review Meeting if necessary.

8. Give the employee the opportunity to raise any issues which may be causing him/her concern.

9. Check whether the employee has any disability which may require particular consideration under the Disability Discrimination Act.

10. Offer help and support if necessary.

11. Take a note of any agreed actions and follow up on these after the meeting.

APPENDIX 19B

EXAMPLE LETTER TO EMPLOYEE SEEKING CONSENT FOR A MEDICAL REPORT FROM EMPLOYEE'S GP

Employer name

Address

Employee name

Address

Medical practitioner address

Date

Dear _____

*(a) Thank you for replying to my letter dated _____.

*(b) I was disappointed that you did not reply to my letter dated _____.

*(c) As agreed at our meeting on _____ I need to obtain certain information regarding your current medical condition.

In order to assess your current medical condition I need to seek information from your own Doctor. In accordance with Part III of the Access to Personal Files and Medical Reports (NI) Order 1991 I cannot ask your Doctor to supply a report on your state of health without your written consent.

I am also required to inform you of your rights under the Order before you give your consent. A statement of your rights under the Order is attached.

I would be grateful if you would give consent to me to approach your Doctor for a medical report by completing the consent form attached.

Yours sincerely

(Employer/Manager name)

*Delete as appropriate

Employers Guidance - Enclose the consent form (appendix 19C) and the 'Statement of Rights' (appendix 19D).

APPENDIX 19C

CONSENT FORM FOR ACCESS TO MEDICAL REPORTS

Name in full _____ Date of Birth _____

Address _____

Name and Address of GP

I have received a statement of my rights under Part III of the Access to Personal Files and Medical Reports (NI) Order 1991 and I hereby consent to _____ (Employer/Manager) obtaining a report on my state of health and fitness for employment from the medical practitioner named above.

I *do/*do not require access to the report before it is sent to _____ (Employer/Manager)

*(delete as necessary)

Signed _____ (Employee) _____ Date

SUMMARY OF YOUR RIGHTS UNDER THE ORDER

1. A report cannot be obtained from your GP unless you consent in writing.
2. You may when giving your consent in writing ask to have access to the report before it is sent to your employer by your GP.
3. If you elect to have access to the report you must contact the GP with 21 days of the report being requested, to make arrangements for access. If you fail to do this you will not have a right to see the report before it is sent to the employer. However you will still have the right to see the report on written request to your GP within 6 months after it is sent.
4. You should make contact with the GP in writing. You can either ask to see the report at the GP's surgery or ask to be sent a copy of it. If you ask for a copy the GP may charge a reasonable fee.
5. Even if you do not ask for access to the report at the time you give your consent to the report being obtained, you can request access (in writing at any time within 21 days after the report is requested by the employer). You must address your request to your GP.
6. If you exercise your right to access to the report before it is sent your employer, you have the following additional rights:
 - a) You can request that the report be amended (but the GP is not obliged to agree to this request).
 - b) You can require a statement of your views to be attached to the report (if your amendments are not agreed).
 - c) You can withdraw consent to the report being sent. In the latter case the GP will simply inform the employer that your consent has been withdrawn.

You must exercise your rights under paragraph 6 in writing within 21 days of seeing the report. If you fail to do so, the GP will assume you do not object to the report being sent to the employer.

NOTE: The GP is not obliged to show you any parts of the report which he/she considers might cause serious harm to your physical or mental health or that of others, or which would reveal information about a third party, or the identity of a third party who has supplied information to your GP about your health, unless the third party agrees. The GP will inform you if any of these restrictions applies.

APPENDIX 19E

REQUEST TO EMPLOYEE'S GP FOR MEDICAL ASSESSMENT

Doctor's Name _____
Address _____

Date _____

PLEASE ACKNOWLEDGE RECEIPT OF THIS LETTER IF THERE IS LIKELY TO BE ANY DELAY IN REPLYING

Dear _____

Re:
Name in full _____ Date of birth _____
Address _____

To administer Statutory Sick Pay, and the Company's Sick Pay Scheme, and plan the work in the department, it would be helpful to have a report on your patient, who is our employee.

His/her work as a _____ has the following major features:

- *Management responsibility for _____
- *Seated/standing/mobile _____
- *Light/medium/heavy effort required _____
- *Day/shift/night work _____
- *Clerical/secretarial duties _____
- *HGV/medium/private driver _____
- *Other _____

* Delete as appropriate

The attendance record for the past year is summarised as:

Total days _____
This month _____
Previous months _____

I have your patient's permission to enquire:

- What is the likely date of return to work?
- Will there be any disability at that time?
- How long is it likely to last?
- Is there any underlying medical reason for this attendance record?
- Is he/she likely to be able to render regular and efficient service in the future?

In accordance with Part III of the Access to Personal Files and Medical Reports (NI) Order 1991 your patient has been advised of his/her rights under the Order and has consented in writing to you supplying a report. A copy of the consent supplied by him/her is enclosed and this indicates that he/she does*/does not* require access to your report before it is submitted to us.

Is there any specific recommendation you wish to make about him/her which would help in finding him/her an alternative job, if that is necessary, and if there is an opportunity for redeployment or any reasonable adjustment that we could make to enable him/her to do his/her job?

Thank you for your assistance in this matter.

Yours sincerely

APPENDIX 19F

SAMPLE LETTER TO AN OCCUPATIONAL HEALTH DOCTOR REQUESTING OPINION ON FITNESS FOR WORK

Name

Address

Date

Dear _____

Thank you for agreeing to meet with our employee _____ on _____ at _____.

Mr/Mrs/Miss/ Ms _____ is employed as (include details of employee's position, and employment/attendance history, medical history and present health).

As an employer, our employee's health is our priority and we would wish to receive your views on the following:

For clarity the position of _____ entails _____

For clarity the position of _____ entails _____ (if an alternative exists)

1. Do you consider that _____ is fit to return to work?
2. If so, in the capacity of _____ or _____ or neither?
3. If not, do you consider that _____ has a disability under the Disability Discrimination Act 1995?
4. Are reasonable adjustments necessary for any return to work?
5. How long do you envisage _____ will be off work?

If you require anything further, please do not hesitate to contact me.

Please find attached the employee's _____ medical records/GP report.

Yours sincerely

DRUGS AND ALCOHOL ISSUES

Introduction

It is a fact that alcohol and drug use in the UK has been rising for some years. An employer should be concerned if the level of use has an impact on individuals' attendance or performance or if it could increase the risks of accidents at work or have an impact on the health and safety of the general public.

Health and safety legislation is another reason why companies should take the issue of alcohol and drug misuse at work seriously. The Health and Safety at Work (NI) Order 1978 requires both employers and employees to maintain a safe working environment and the employer, the employee or both could be liable if an alcohol or drug related accident occurs at work.

When dealing with alcohol or drug misuse at work, employers have to strike a balance between using the disciplinary procedure for conduct-related incidents and providing support where individuals have acknowledged they have a problem.

Developing a policy

Developing a policy on drug and alcohol misuse can provide a framework to enable companies to:

- improve health and safety standards;
- reduce employee absence levels;
- enhance productivity;
- retain key people.

It is important for each company to identify its own particular needs and to reflect these in the policy. For example a company that operates in a safety-critical industrial sector e.g. construction, chemicals, nuclear energy etc, will probably require a more complex and punitive policy with strict and specific rules than a company that operates in the leisure and tourism sector.

What needs to be communicated?

Three main issues need to be communicated:

- the reasons why alcohol and drugs should not be brought into the workplace, and the potential adverse effects on employees, customers and the public;
- the existence and the operation of the company's policy;
- the advantages of seeking help and gaining access to support and treatment.

Training

Directors, senior managers, line managers, supervisors and union employee representatives would all benefit from training, which could include:

- information on the effects of drug and alcohol misuse at work;
- help and support available for staff;
- basic interviewing and advisory skills.

Sample Policy

See Appendix 20A for a Sample Workplace Alcohol and Drug Policy.

Support or discipline?

Drug and alcohol misuse can trigger a number of different issues for managers and supervisors to deal with, including misconduct, performance, health and safety, and dishonesty.

Employers will need to review the specifics of each case and consider what action is most appropriate. Employers should be mindful of their duties under disability legislation and seek further advice where necessary.

It is good practice to approach these issues from a supportive standpoint where appropriate – unless the facts allow for an obvious and immediate assessment of inappropriate behaviour.

A disciplinary approach would be appropriate in instances of serious drunkenness at work or an employee taking, storing or dealing drugs on the premises.

Issues relating to illegal drugs and the articles associated with them on the premises come under the Misuse of Drugs Act 1971 and must be immediately reported to the police.

Where disciplinary measures are taken, they need to be proportionate and be seen by employees to be fairly applied.

Once a performance issue has been defined, the causes of the problem can be considered. However, whether or not an answer is available at this point in the process, it is possible to follow usual performance management procedures, that is to set targets, offer training to the employee if needed and monitor for a specific period. See section 14 – Managing Employee Performance.

SECTION 20

During this process, and particularly if it moves towards the possibility of dismissal, the person may eventually admit they have an alcohol or drugs problem.

Different types of problem and diverse jobs will lead to different performance issues which will require different approaches, for instance:

- safety-critical work;
- alcohol;
- illegal drugs taken during leisure time;
- illegal drugs brought onto company premises for own use or to deal;
- prescription medicines;
- solvents (issues include young people at work, health and safety procedures for solvent storage/use);
- one-off incident;
- a pattern of incidents;
- dependency;
- repeat problems or a relapse.

Conduct and Performance

Conduct and performance issues can be addressed whether the person acknowledges alcohol or drugs as the cause of a performance problem or not.

Recognising this enables managers and supervisors to take these issues forward with more confidence.

Employers should carry out a thorough investigation into any allegations about drug or alcohol misuse.

A key issue will be whether the incident suggests that the employee suffers from an addiction, or whether the misuse is occasional.

If it is occasional, it is more likely that it should be treated as misconduct.

The misconduct can manifest itself in different ways, for example:

- breach of a specific term in the contract or policy (for example a provision requiring staff not to attend work while under the influence of alcohol or drugs);
- unauthorised absence;
- erratic behaviour, fighting or insubordination;
- inability to perform duties;
- bringing the employer into disrepute.

Alcohol and drug misuse impairs judgement, concentration and co-ordination (among other problems). The following indicators are signs of possible alcohol or drug misuse (it is important to note that these can also be caused by other factors, such as stress, physical illness, mental health problems or the effects of prescription drugs; each case should be considered on its merits):

- repeated patterns of depression, or fatigue from sleeplessness, which last two to three days;
- erratic performance;
- unusual irritability or aggression;
- overconfidence;
- inappropriate behaviour;
- sudden mood changes from extreme happiness to severe depression;
- reduced response times;
- a tendency to become confused;
- reduced productivity;
- absenteeism;
- poor timekeeping;
- lack of discipline;
- deterioration in relationships with colleagues, customers or management;
- dishonesty and theft;
- financial irregularities.

The initial performance interview

When a performance or conduct issue is raised there should be an initial meeting between the line manager and the employee to discuss the performance issue and the actions that need to be taken by all parties to rectify the situation.

A record should be kept of all meetings with the time, date, those present and the actions agreed upon.

It is important that the approach taken at this initial meeting is supportive rather than confrontational to leave open the possibility for the employee to request assistance in the future.

The performance or conduct issue(s) that have been occurring should be defined and possible reasons or causes discussed (not assumed).

The company's policy on health support, once a problem is declared, should be made clear and the employee reassured of confidentiality, job security and that help will be offered within certain parameters.

The actions that could be taken by all parties should be discussed. For example training or counselling can be offered to the employee.

SECTION 20

A plan should be agreed and put into place and targets should be set for improvement in the performance problems. The arrangements and performance are then monitored for an agreed period.

Where there is no improvement over the agreed time period refer to section 14 – Managing Employee Performance and section 18 – Disciplinary Issues and Dismissal, as appropriate, for further guidance.

Disciplinary action

Unacceptable conduct, which may be alcohol or drug related, should be subject to normal disciplinary procedures.

If the person rejects help and support for the performance issues, disciplinary procedures can be instigated. Dismissal should be a last resort.

There is always the option to suspend disciplinary action at any time if the person admits to the cause of the problem and asks for help.

Best practice would then, in the majority of cases, be to offer them help and support, but with the provision that the disciplinary proceedings will be reinstated if the agreed course of treatment is not completed, or the problems reoccur.

Health and safety

Employers have legal duties to both employees and third parties in relation to health and safety. If an employee might place colleagues in danger by their behaviour, the employer has a responsibility to remove that danger. This may mean increasing the level of supervision or, in extreme cases, proceeding to a suspension or dismissal (preceded, of course, by any appropriate warnings).

An employer will have an equivalent duty to ensure the safety of the employee themselves, so may need to take steps to remove them from the working environment, either temporarily or permanently, if their behaviour persistently results in them being a danger to themselves.

Employees have an individual legal responsibility in relation to their own health and safety and that of their colleagues. In theory, they could be sued for negligence if they fail to carry out their work with reasonable care due to the influence of drink or drugs and cause damage or injury as a result.

In safety-critical working environments e.g. construction, chemicals, nuclear energy etc, employers need to be extra vigilant.

Treatment considerations

Treatment options for substance misuse are diverse. They can take place in a mixture of in-patient and out-patient settings. Medical advice should be sought with probable onward referral to supportive counselling and treatment.

NICAS (The Northern Ireland Alcohol and Drug Treatment Charity) offer a confidential, professional counselling service to those who have developed a problem with alcohol, drugs or both and can provide the following services for employers (at a cost):

- Alcohol and drug awareness training;
- Assistance with policy development for dealing with alcohol and drug misuse in the workplace;
- Treatment programmes for individual employees who are dependent on alcohol or drugs;
- Written progress reports in confidence to your company designated person (person with responsibility for overseeing your Alcohol and Drug Policy);
- Contributing to health and lifestyle events in the workplace by using screening tools designed to identify risk of alcohol and/or drug misuse.

Testing for drug and alcohol abuse at work

Employers should think carefully before introducing a policy for testing for drug and alcohol misuse at work.

Companies that introduce testing regimes that are not proportionate to the risks to health and safety or to the business that they are trying to manage could find themselves falling foul of the law.

The Data Protection Act 1998 sets out rules to make sure any personal information on employees held by employers is managed properly. This includes any information on employees from drug and alcohol testing.

Key points

- Testing must be justified and appropriate for the nature of the business;
- Personal information obtained through testing should be kept to a minimum;
- Random testing should be limited to workers in safety-critical roles;
- Policies on testing must be clearly communicated to all workers.

When can you test?

Pre-employment

When a job offer is made contingent on a satisfactory medical examination that includes a drug test.

Pre-promotion

As in the applicant situation. However, unlike an applicant, the employee who is being considered for promotion has proven to be a good employee. Accordingly it would behave an employer to assist an employee who had a positive test result during the vetting process. How the employer would assist the employee would depend on the particular facts, but at a minimum the employee should be afforded the opportunity to receive treatment, with continued employment contingent on successfully completing the recovery programme.

Routine Testing

Testing is carried out at specific times, e.g., during periodic medical examinations.

Reasonable Cause

After the testing of applicants, testing based on reasonable cause is the most common time when an employer would test. It is also, perhaps, the easiest to defend because an employee under the influence of drugs or alcohol would be a threat to safety.

Random

Using coded employee identification system, a random number generator computer program selects employees for testing. The specimen to be tested is collected just as the employee starts work or just before the end of the work day. This is the most vigorously resisted method of selecting employees for testing.

Treatment Follow-up Tests

Periodic testing on an unpredictable random basis may be absolutely necessary in order to encourage and ensure recovery programme compliance. Consent to testing during the recovery period is not usually a problem because continued employment should be contingent on successful completion of the treatment programme.

Confidentiality

It is, of course, vital that any information about an employee's health is kept in strictest confidence. The Data Protection Act 1998 requires employees to give explicit consent to the processing of any 'sensitive personal data' by their employer.

Further information sources

The Health and Safety Executive for Northern Ireland (www.hseni.gov.uk)

The Northern Ireland Community Addiction Service (www.nicas.info)

The Chartered Institute for Personnel and Development (www.cipd.co.uk)

NI Business Info (www.nibusinessinfo.co.uk)

Alcohol and Drug Policy

1. Introduction

(Insert company name) has adopted this positive policy designed to encourage early identification of alcohol and drug related problems and so provide (Insert company name) with a constructive and preventative strategy regarding alcohol and drug problems amongst its employees.

Alcohol and drug problems can affect an individual's health and wellbeing and cause a wide range of social problems. This policy is concerned primarily with the effects of alcohol and drug problems on the job performance and career prospects of (Insert company name) employees.

The Alcohol and Drug Policy has four main objectives:

- To **retain** employees;
- To **encourage** employees with alcohol and/or drug problems to seek help;
- To **refer** employees for help;
- To **restore** health and productivity.

The Policy is intended to:

- Reduce and help prevent the incidence of alcohol and/or drug related work impairment; and
- Reduce the personal suffering of employees with alcohol and/or drug related problems and also the consequential effects on colleagues.

2. (Insert Company Name) POLICY

(Insert company name) recognises that alcohol and drug related problems are primarily health and social concerns and therefore, employees with such problems require help and treatment.

Alcohol and drug related problems in the context of this policy are defined as any misuse of these substances, either intermittent or continual, which interferes with an employee's work performance in the areas of efficiency, productivity, safety or attendance at work.

When it becomes evident that an employee has an alcohol and/or drug problem affecting conduct at work or work performance, that employee will be asked to discuss the matter with the person designated by the company. The employee concerned will have the right to be accompanied by a trade union representative or colleague.

When discussing these problems with employees the desire of (Insert company name) to assist the employee will, at all times, be uppermost in the mind of the designated person. As a result of this discussion the designated person will offer the employee the opportunity to seek an outside assessment of the problem and, if necessary, treatment from an appropriate agency. The designated person will make clear to the employee that during any period of treatment all benefits and rights laid down in the contract of employment will be safeguarded. When the employee is judged fit to resume working it will normally be in that person's original post. If for some reason that is not possible, every effort will be made to find that employee suitable alternative employment in the company. Should the employee be unsatisfied with the arrangements being offered, the matter will be referred to the Grievance Procedure.

The procedure established by this agreement for assisting an employee with alcohol and/or drug related problems is quite distinct from the Disciplinary Procedure. An employee with an identified problem, which affects conduct at work or which prevents the achievement of a satisfactory level of work performance and who refuses the opportunity to receive help, may have the matter referred to the Disciplinary Procedure. Equally, if an employee denies the existence of an alcohol and/or drug related problem or discontinues a course of treatment and then reverts to the previous unsatisfactory levels of conduct or performance, the matter may be referred to the Disciplinary Procedure.

An employee who accepts the opportunity to receive help, but whose conduct or work performance afterwards reverts to the problem level, will have the new situation considered on its merits. If appropriate a further opportunity to accept and co-operate with help and treatment will be offered.

The application of this policy is limited to those instances of alcohol and/or drug related problems which affect the health and/or work performance or conduct of the employee. The policy does not apply to employees who, because of indulgence in alcohol and/or drugs on random occasions, behave in a manner contrary to the standard of safety and conduct required by (Insert company name). Such instances will be dealt with in accordance with the normal recognised Disciplinary Procedures.

3. Confidentiality

All discussions with an employee in connection with this policy will be strictly confidential. This will equally be the case with any counselling or other treatment undertaken by the employee. While appropriate personnel records will be kept it is accepted that any record of treatment will be the property of the person administering that treatment. No discussion about the employee will take place with another party without the permission of that employee.

4. Training

All employees will be given a copy of the agreed alcohol and drug policy.

Specific training will be given to those with special responsibility for implementing the policy. Depending on the level of responsibility and the knowledge and skills considered necessary, training programmes will cover, as appropriate, the following:

- (i) Basic understanding of alcohol and drugs and the rationale and procedures of the policy;
- (ii) The nature of problem alcohol and/or drug misuse, its possible causes and effects;
- (iii) The relationship between alcohol and/or drugs misuse, problems, occupation, behaviour, efficiency, safety and general work performance; and
- (iv) The kind of help available, such as counselling, from local agencies.

SOCIAL MEDIA, EMAIL AND INTERNET USE

Introduction

The increasing use of social media, email and the internet at work by employees, has created new challenges and risks in the workplace, especially regarding discipline and the legal liability of an employer for the acts of its employees.

Potential risks to employers

Problems associated with social media and misuse of email and the internet in the workplace can include:

- A negative impact on **performance** if employees are distracted or are spending a large amount of time online or sending personal emails;
- **Breaches of confidentiality** if employees are sharing commercial information, private information about customers, or other sensitive information;
- **Damage to the company's reputation** if an employee makes derogatory comments about the company online;
- Risk of a **bullying or harassment** claim if one employee posts comments about another or sends any kind of offensive message to another employee.

It is important to remember that an employer is open to various risks of being held legally liable for the actions of its employees.

Another threat that employers are open to is computer viruses. The primary source of computer viruses is the downloading of certain types of files from the internet or attached to emails. Employees may often unwittingly open emails which contain a virus. In order to protect their interests, employers need to take steps to ensure that employees are exercising caution when using email.

Have a clear policy

In order to manage the potential risks, it is essential to have a clear and **well communicated policy on acceptable use** and to ensure that all employees are aware of this. Such a policy should be clear, concise, remove any expectation of privacy which might exist in the mind of employees, provide for the right of an employer to monitor employees' use of social media, the internet and email and specify that any information obtained through monitoring may be used in disciplinary proceedings.

Having an acceptable use policy can help to avoid problems by making it clear to employees what is and what is not acceptable in terms of use of social media and electronic communications. This may include the amount of time spent, when it is acceptable to use such media and what kinds of site are acceptable. The existence of a policy will also make it easier to deal with any problems which do arise, for example taking disciplinary action when an employee has used social media to make defamatory remarks about the company.

The policy should not be so prescriptive (for example, about certain sites) that it goes out of date quickly. It should specify who is authorised to use social media to communicate on behalf of the company and should also inform employees whether the use of social media will be monitored. Note that any monitoring should comply with the Employment Practices Code issued by the Information Commissioner.

The policy will also need to **link to other organisational policies** such as the disciplinary policy, any bullying and harassment policy etc. It may also be useful to include a clause in **employee contracts** specifying the employee's obligations in relation to **confidential information** and ensuring that this clause refers to social media.

When preparing a policy it is important to **consult a wide section of employees** from different functions in the organisation in order to determine the current extent of social media usage and to ensure that the policy fits with the culture of the organisation.

Once the policy has been finalised, ensure that it is properly communicated both to existing employees and to new employees. It should form part of the contractual documentation given to all employees on joining and be distributed to existing employees with the instruction that it forms part of their terms and conditions and must be read carefully.

Technology is evolving rapidly and this is likely to continue. There have also been several important legal cases which can provide guidance for employers. It is important, therefore, that employers keep up to date with both technological and legal developments and that policies are regularly reviewed and updated to ensure they remain current.

SECTION 21

Monitoring staff

Monitoring employees' use of social media, the internet and email is covered in the Data Protection Act 1998 (DPA). The Information Commissioner is responsible for overseeing compliance and has produced 'The Employment Practices Code' which includes guidance on an employer's rights to monitor staff. The Code protects staff from covert monitoring except in exceptional circumstances, such as when there are grounds for suspecting criminal or equivalent malpractice. It can be accessed on the Information Commissioner's website: www.ico.org.uk

The Code allows companies to check staff email accounts in their absence if they have been informed that this will happen. However, employees' privacy must be respected if they clearly mark that an email is personal, unless their employer has a valid and defined reason to examine the content.

Using the internet

The company policy must state any restrictions on using the internet and whether access is allowed for business use only or for private use as well. A problem with browsing, even for business use, is that it can become unfocused and time-consuming. This wastes employees' time and, even when done in their own time, it ties up resources. The policy must also warn about the risks of obtaining and using unsubstantiated information for business use.

The policy should make clear what is acceptable in terms of time spent downloading material.

The policy must state unequivocally that downloading offensive, obscene or indecent material is forbidden and will be subject to disciplinary action.

Policies should also make it clear that the downloading or transmission of certain images is a criminal offence and that the police will be informed where there is any evidence of such activity.

Much of what appears on the web is, or claims to be, protected by copyright. Any reuse of downloaded information without permission is prohibited. Many companies enforce rigorous policies on photocopying and a similar policy must be applied to copying from the internet. Copyright law applies not only to documents but also to software.

Social Media

Online diaries, or blogs, have become increasingly popular as sources of information. Social networks such as Instagram, Facebook and Twitter are also increasingly popular as a means for people to stay in touch and make new contacts.

It is not just time lost which is of potential concern to employers, it is also the content which is posted.

However, involving at least some employees in appropriate use of social media for work-related activities can have important benefits for the employer. Employees may carry out research, promote the company's products and develop important contacts and connections.

Corporate social networking can also be a useful way for employers to communicate and engage their employees. Some businesses are using social networking forums to increase awareness of their activities, to bring staff together from different locations or to introduce energy and 'buzz' into internal communications. If employers set up corporate social networks, a clear distinction needs to be made between corporate social networking which is useful to the business and social networking for personal use.

Employers should decide what approach they want to take to managing the use of blogs and social networks and ensure this is covered in their policy. They should set out whether there are any limits on use, for example, whether access to social networking sites is allowed at lunchtimes or whether there is a total ban.

The policy should also make it very clear that defamatory statements about the company will be treated as a disciplinary offence and emphasise that confidential matters should not be discussed in such forums.

Problems can sometimes arise because employees are naive about the accessibility of content posted on social media and the potential audience. It is easy to forget that even information shared in a closed group or protected by privacy settings can be passed on. **Education** about the potential risks is therefore important to remind employees to behave responsibly online.

Employees are more likely to use social media to voice grievances against the company if they feel they have no alternative outlet. Having clear and fair mechanisms in place for employees to raise grievances and an open culture when managers listen and respond when problems are raised can help to prevent this.

For further information on social media in the workplace see the LRA Guidance on Social Media and the Employment Relationship on their website www.lra.org.uk

SECTION 21

Using email

Although email communication has the same speed and apparent informality as using the telephone, it also has the permanence of written communications and, as such, must be controlled to ensure that it meets the same standards as other published documents.

The policy should state whether the email service is to be used for business purposes only or is permitted for personal communication also. If the telephone may be used for personal communications, then it could be difficult to forbid a similar use of email, although there are clearly greater security implications in the widespread use of email.

Some guidelines on email protocol and effective use may be useful. For example, employees should be encouraged to limit group emails, to ensure that all those copied really need to receive the email, that emails are checked periodically and are filed once dealt with.

The policy should make it clear that the same laws apply to email as to any other written document and that employees should avoid making any inaccurate or defamatory statements and that sending offensive emails will not be tolerated.

The sender of a message which causes offence must be subject to normal disciplinary procedures, but in this respect email is no different from any other interpersonal dispute (and has the advantage that, unlike purely verbal communications, it is possible to supply evidence to support a complaint).

For external email it is possible to include a disclaimer but the policy should still emphasise the need to act responsibly when writing email, and to seek advice before sending a message if there is any doubt about its contents.

In spite of the benefits of email, excessive use can mean loss of productivity. The policy should make clear the importance of only sending relevant emails and avoiding the automatic forwarding of all messages to long circulation lists.

The policy should also set out a procedure to cover wrong delivery. For example, it should state that a wrongly delivered message should be redirected to the correct person.

Dealing with breaches of the policy

A response to a disciplinary matter arising from inappropriate use of social media should be dealt with in accordance with the Disciplinary Procedure (see section 18). A full investigation should be conducted before any decision is made and any sanction should be fair and reasonable considering all the circumstances.

See Appendix 21A for a list of key issues which should be addressed in developing your Social Media, Internet and Email Policy and Guidelines. Note that the list is not exhaustive.

See Appendix 21B for Sample Internet and Email Security Policy Guidelines.

For further information on social media in the workplace see the LRA Guidance on Social Media and the Employment Relationship on their website: www.lra.org.uk

APPENDIX 21A

POLICY CONTENTS CHECKLIST

TOPIC	ISSUES
ACCESS	<ul style="list-style-type: none"> • Who is entitled to use email? In most companies, it would be difficult to justify denying any particular groups access to this valuable communication tool. • How to get access to email? • Who is entitled to access the web and when? • How to get access to the web?
PASSWORDS	<ul style="list-style-type: none"> • Rules for choosing a password. • Rules for changing a password. • Warning on disclosing passwords. • Rules on password-access to other companies' websites.
WEB	<ul style="list-style-type: none"> • Prohibition on access to certain websites. • Limitations on browsing the web for non-business purposes. • Rules for adding information to the company website. • Guidelines for responding to website enquiries.
DOWNLOADING	<ul style="list-style-type: none"> • Prohibition on downloading offensive material. • Information on the implications of copyright laws. • Guidance on the use of unverified information.
EMAIL	<ul style="list-style-type: none"> • Limitations on private use of email. • Restrictions on content of email. • Rules for email distribution. • Rules on disclosing email addresses. • Legal position regarding defamation and inappropriate advice.
MONITORING	<ul style="list-style-type: none"> • Notification that website access may be monitored. • Notification that email may be intercepted and read.
DISCLAIMERS	<ul style="list-style-type: none"> • Wording to use in disclaimer. • Documents which require disclaimers.
DISCIPLINARY PROCEDURES	<ul style="list-style-type: none"> • Sanctions which will be imposed for breaching the policy.

SAMPLE INTERNET AND EMAIL SECURITY POLICY GUIDELINES

1. Who is covered by the policy?

This policy applies to all [name of Company] staff including its directors or officers, contractors, home-workers, part-time and fixed-term employees, secondees, temporary staff, casual staff, agency staff and volunteers. This policy does not form part of your terms and conditions of employment and [name of Company] reserves a right to amend the policy at any time.

2. Purpose of the policy

The policy is intended to help employees of [name of company] make appropriate decisions about the use of internet, email and social media such as Twitter, Facebook, Google+, LinkedIn, Wikipedia, Whisper, Instagram, Tumblr and all other social networking sites to include (but not limited to) internet, video, picture and audio postings and blogging.

The policy applies to use of social media for business purposes as well as personal use that affects our business in any way.

This policy outlines the standards [name of company] requires staff to observe when using the internet, email and social media, the circumstances in which [name of company] will monitor your use of these media and the action that will be taken in respect of breaches of this policy. The principles of this policy apply to use of these media regardless of the method used to access it and covers static and mobile IT/computer equipment, as well as work and/or personal smartphones etc.

3. Personnel responsible for implementing the policy

The board of directors of [name of company] OR [POSITION] has overall responsibility for the effective operation of this policy, but has delegated day-to-day responsibility for its operation to [POSITION].

Responsibility for monitoring and reviewing the operation of this policy and making recommendations for change to minimise risks lies with [POSITION] who will review this policy on an [ANNUAL] basis to ensure that it meets legal requirements and reflects best practice.

Managers have a specific responsibility for operating within the boundaries of this policy, ensuring that all staff understand the standards of behaviour expected of them and taking action when behaviour falls below its requirements.

All staff are responsible for the success of this policy and should ensure that they take the time to read and understand it. Any misuse of social media should be reported to [POSITION]. Questions regarding the content or application of this policy should be directed to [POSITION].

4. Using work-related social media

Only the [position of relevant persons/team] is/are permitted to post material on a social media website in the company's name and behalf. Anyone who breaches this restriction will be subject to the company's disciplinary procedure.

Approved social media websites for [name of company] are [insert list of sites e.g. Facebook, Twitter etc]. This list may be updated by [position of relevant person].

Before using work-related social media you must:

- have read and understood this policy and [refer to any other relevant policies and guidelines]; and
- have sought and gained prior written approval to do so from [position of relevant person].

The roles and functions which will be needed moving forward have been identified as follows:

[insert functions and people responsible as applicable such as:

- tweeting corporate news – Marketing Manager
- advertising promotions on Facebook – Sales Manager].

Any employee involved in the organisation's social media activities must remember that they are representing the organisation, use the same precautions as they would with any other communication and adhere to the following rules:

- Ensure that the purpose and benefit for the organisation is clear;
- Obtain permission from a manager before using social media; and
- Ensure the content is checked before it is published.

5. Personal use of social media

Personal use of social media in the workplace is permitted, subject to certain conditions, as detailed below;

- It must not be abused or overused and the company reserves the right to withdraw permission at any time.
- It must not involve unprofessional or inappropriate content.
- It should not interfere with your employment responsibilities or productivity.
- Its use must be minimal and take place substantially outside of normal working hours, for example, breaks, lunchtime [specify appropriate hours].
- It should comply with the terms of this policy and all other policies which might be relevant (to include but not limited to) the [name of company]'s Equal Opportunities Policy, the Anti-Harassment Policy, the Data Protection Policy and Disciplinary Procedure.

You are also personally responsible for what you communicate on social media sites **outside the workplace**, for example at home, in your own time, using your own equipment. You must always be mindful of your contributions and what you disclose about the company. For further details, see Point 6, 'General rules for social media use' below.

6. General rules for social media use

Whenever you are permitted to use social media in accordance with this policy, you must adhere to the following general rules. The same rules would also apply when using social media outside of work:

- Do not post or forward a link to any abusive, discriminatory, harassing, derogatory, defamatory or inappropriate content. This includes potentially offensive or derogatory remarks about any other individual.
- A member of staff who feels that they have been harassed or bullied, or are offended by material posted by a colleague onto a social media website should inform [insert position of relevant person].
- Never disclose commercially sensitive, anti-competitive, private or confidential information. If you are unsure whether the information you wish to share falls within one of these categories, you should discuss this with [insert position of relevant person].
- Do not post material in breach of copyright or other intellectual property rights.
- Be honest and open, but be mindful of the impact your contribution might make to people's perceptions of the company.
- You are personally responsible for content you publish. Be aware that it will be public for many years.
- When using social media for personal use, use a disclaimer, for example 'The views expressed are my own and don't reflect the views of my employer'. Be aware though that even if you make it clear that your views on such topics do not represent those of the organisation, your comments could still damage our reputation.
- The employee's online profile must not contain the company name.
- You should avoid social media communications that might be misconstrued in a way that could damage our business reputation, even indirectly.
- Do not post anything that your colleagues or our customers, clients, business partners, suppliers or vendors would find offensive, insulting, obscene and/or discriminatory.
- Do use privacy settings where appropriate but bear in mind that even comments in a restricted forum may be passed on.
- If you have disclosed your affiliation as an employee of our organisation you must ensure that your profile and any content you post are consistent with the professional image you present to client and colleagues.

If you are concerned or uncertain about the appropriateness of any statement or posting, refrain from posting it until you have discussed it with your manager.

If you see social media content that disparages or reflects poorly on us, you should contact [your manager or department]

7. Use of the internet and email

Limited personal use of the internet and of email at work is acceptable provided it does not interfere with or impede your normal duties. Such use should take place substantially outside of normal working hours, for example, breaks, lunchtime [specify appropriate hours].

Users may access non-business related sites, but are personally responsible for what they view.

You should not engage in any activity which is illegal, offensive or likely to have negative repercussions for the company.

[Name of Company] employs software to block some non-business related and offensive websites.

You must not use company equipment to access the internet either from within or from outside the company network using a 3rd party dial up ISP on your company computer (e.g. Freeserve, AOL).

Always ensure that [Name of Company] is neither embarrassed nor liable in any way by your use of the internet.

You may not upload, download, use, retain, distribute or disseminate any images, text, materials or software which:

- Are or might be considered to be indecent, obscene or contain profanity;
- Are or might be offensive or abusive in that the context is or can be considered to be a personal attack, rude or personally critical, sexist, racist, or generally distasteful;
- Encourage or promote activities which make unproductive use of your time;
- Encourage or promote activities which would, if conducted, be illegal or unlawful;
- Involve activities outside the scope of your responsibilities, for example the unauthorised selling/advertising of goods and services;
- Might affect or have the potential to affect the performance of, damage or overload [Name of Company] system, network and/or external communications in any way; or
- Might be defamatory or incur liability on the part of [Name of Company] or adversely impact on the image of [Name of Company].

You must not include anything in an email which you cannot or are not prepared to account for.

You must not make any statements on your own behalf or on behalf of [Name of Company] which do or may defame or damage the reputation of any person.

Care should be taken when adding attachments to your Outlook email. It is company policy that no attachment should exceed 25Mb in size.

The auto-forwarding facility within the corporate email system should not be used to forward work emails to private accounts (e.g. Hotmail or Yahoo).

Attachments to emails should only be used when strictly necessary. When hyperlinks are available these should be used. Large files should be compressed and key information from small files may be cut and pasted into the email itself.

Remember that a phone call or face to face discussion may often be more appropriate than an email, bearing in mind that an email may be misinterpreted or lead to a chain reaction. Also, consider carefully who really needs to be copied on emails. Unnecessary email can be a major distraction.

Access to all email internet sites (e.g. Hotmail, Yahoo mail etc.) is restricted to your 'own time' as defined above.

You must not download any software, executable files or potentially offensive graphic image files (GIFs and JPGs) unless you have obtained prior permission from [Name of Company].

The following activities are expressly prohibited:

- The introduction of network monitoring or password detecting software on any [Name of Company] user machine or part of the network;
- Seeking to gain access to restricted areas of the network;
- The introduction of any form of computer virus;
- Other hacking activities;
- Knowingly seeking to access data which you know, or ought to know, to be confidential and therefore would constitute unauthorised access.

8. Monitoring use of social media, email and the internet

Staff should be aware that emails and any use of the internet and social media websites (whether or not accessed for work purposes) may be monitored and, where breaches of this policy are found, action may be taken under the company's Disciplinary Procedure.

The company reserves the right to restrict or prevent access to certain internet sites including social media websites if personal use is considered to be excessive. Monitoring is only carried out to the extent permitted or as required by law and as necessary and justifiable for business purposes.

Misuse of social media and other websites can, in certain circumstances, constitute a criminal offence or otherwise give rise to legal liability against you and the company.

If you notice any use of social media by other members of staff in breach of this policy please report it to [position of relevant person such as line manager].

9. Recruitment

[Name of Company] may use internet searches to perform due diligence on candidates in the course of recruitment. Where we do this, [Name of Company] will act in accordance with its data protection and equal opportunities obligations.

10. Breaches of policy

Where it is believed that an employee has failed to comply with this policy, they will be subject to the company's disciplinary procedure. If the employee is found to have breached the policy, they may face a disciplinary penalty ranging from a verbal warning to dismissal.

The penalty applied will depend on factors such as the seriousness of the breach; the nature of the posting; the impact it has had on the organisation or the individual concerned; whether the comments cause problems given the employee's role; whether the employer can be identified by the postings; other mitigating factors such as the employee's disciplinary record etc.

Any member of staff suspected of committing a breach of this policy will be required to co-operate with [Name of Company]'s investigation, which may involve handing over relevant passwords and login details.

You may be required to remove any social media content that [Name of Company] consider to constitute a breach of this policy. Failure to comply with such a request may in itself result in disciplinary action.

REDUNDANCY PROCEDURE

What is redundancy?

A redundancy situation arises in the following circumstances:

- the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was so employed; or
- the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- the requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish; or
- the requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish.

As soon as you become aware of a possible redundancy situation, consideration should be given to the likely number of affected employees, the impact on the business going forward and possible ways of avoiding the redundancies, including short-time working and temporary working (see section 23). If there is a trade union or other employee representative group, they should be consulted about this.

Following the right procedure when making employees redundant is critical as an employee with at least one year's continuous employment has the right not to be unfairly dismissed. Although redundancy is a potentially fair reason for dismissal, dismissals for this reason can still be unfair, either on the basis of the selection of employees to be made redundant, on account of the procedure by which the dismissals are carried out, or failure to consult affected employees. The entire process should be planned and communicated carefully and comprehensive records maintained at each stage. A tick list of required actions can help.

Redundancy can be a distressing experience for employees and it is advisable that employers develop strategies for managing staff in order to minimise disruption to company performance, the impact on employee morale and to ease the process of change.

It is important to remember that it is the job that is redundant, **not a particular individual**. If an individual is not performing in the role and the company wishes to dismiss that person to replace them with a more effective performer, the reason for dismissal is not redundancy and the procedure for managing poor performance should be followed (see section 14).

If several employees are doing a similar role and it has been decided to reduce the number of people carrying out that role without eliminating it altogether, the implementation of a redundancy exercise should start with proper consideration of how employees will be selected for redundancy. In other cases, a decision will be taken to remove an entire function and in this case selection may not be an issue.

Individual consultation

If the employee is not being consulted under a collective procedure, the statutory dismissal procedure must be carried out. This includes writing to the employee to invite him/her to a meeting, stating the purpose of the meeting in the letter, holding a meeting and allowing an appeal.

Failure to do this will lead to a finding of automatic unfair dismissal and an increase in compensation awarded of between 10% and 50%.

Case law suggests that, even if collective consultation has taken place, individuals should be fully consulted.

The purpose of consultation is to:

- Inform the employee about the **possibility** of redundancy;
- Verify the basis for selection;
- Allow the employee to comment on his/her selection for redundancy;
- Discuss ways of avoiding the redundancy and mitigating the consequences of the redundancy, including any suitable alternative employment within the company.

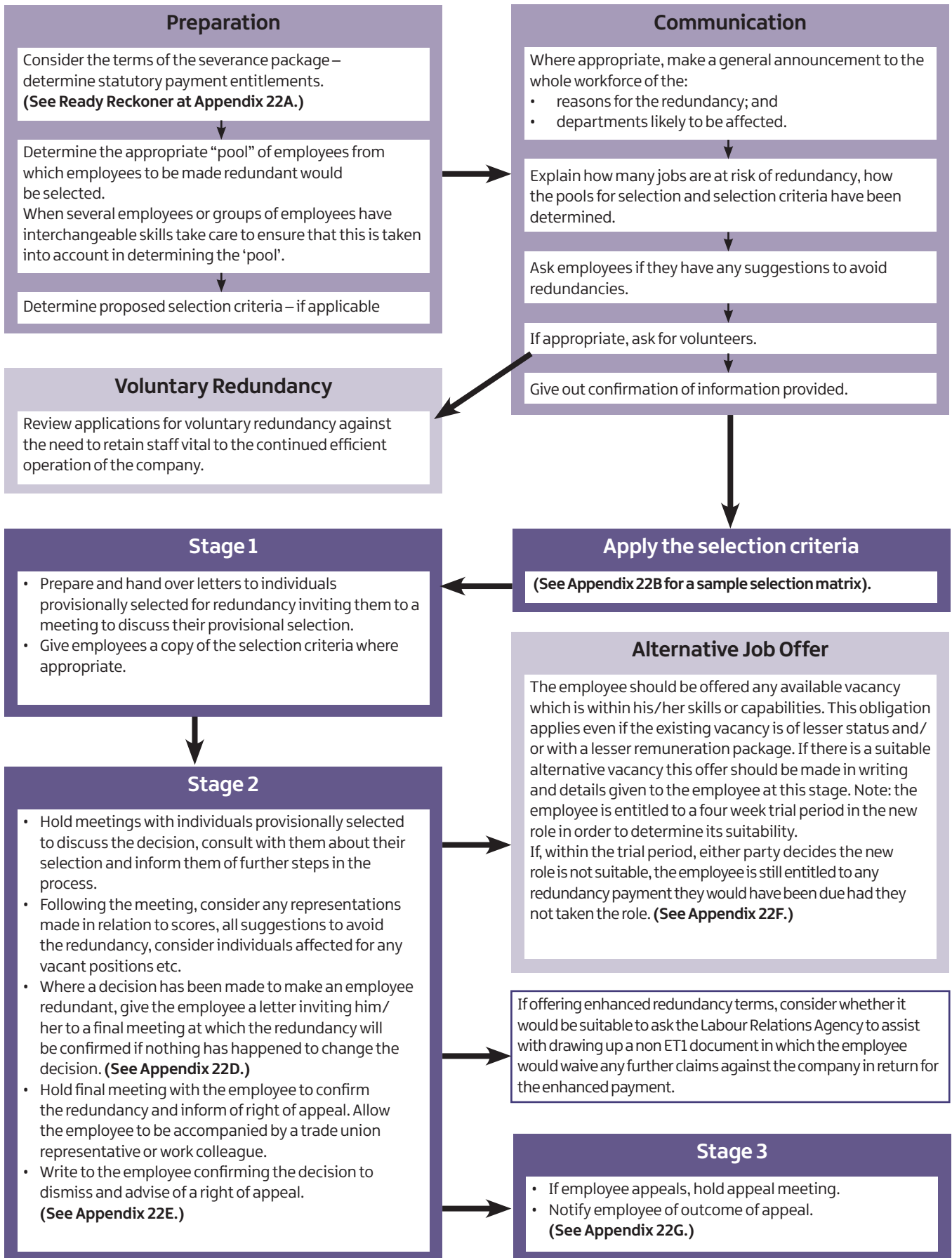
The redundancy process **when less than 20 employees are being made redundant is summarised overleaf.**

Further details on each of the stages are provided on the following pages.

In a **collective redundancy** situation where **20 or more are being made redundant** separate provisions apply. See the information on collective redundancy at the end of this section.

SECTION 22

REDUNDANCY FLOWCHART (20 or less employees being made redundant)



Detail of process

Preparation

1. Consider the terms of the severance package which will be offered to those employees made redundant. Will enhanced redundancy payments be made? Will outplacement services be made available? If so, what are these? If the employee has more than two years' service, s/he will be entitled to a statutory redundancy payment. The amount of redundancy pay is calculated as follows:

- 0.5 week's pay for each full year of service where age during the year is less than 22;
- 1 week's pay for each full year of service where age during the year is 22 or above but less than 41; and
- 1.5 weeks' pay for each full year of service where age during the year is 41+.

There is a statutory limit on a week's pay which is updated in line with economic conditions. The maximum number of years which can be counted for statutory redundancy payments' purposes is 20. Length of service is counted back from the date on which the notice ends.

Details of statutory redundancy payment entitlements are available in Appendix 22A with further information on the NI Business Info website.

Bear in mind when calculating costs of redundancy that employees with over two years' service will also be entitled to a week's notice for every year of service up to a maximum of 12 weeks. Depending on the contract, they may be entitled to more notice.

2. If it is decided that redundancies are inevitable, the manager will need to **identify the jobs/ functions which have to be made redundant.**

There may be some cases where only one individual is carrying out a particular function and it has been decided that this role is not required. In other circumstances, all employees carrying out a particular function may be made redundant. In both these situations there may be no requirement for selection.

In a case where not all employees of a particular kind are to be made redundant the manager should identify the names of the individuals in the **"pool" of employees** who are carrying out those jobs/ functions. This may be by reference to department, job category or job content.

Note that not all those in the "pool" will necessarily be made redundant. However, the manager must identify the pool of employees affected in order to then "select" the employees for redundancy according to the selection criteria and procedure mentioned below.

For example there may be a "pool" of 5 employees doing the same job function but only 2 are surplus to requirements. All of the 5 employees will come within the redundancy pool and will need to be considered in the selection process although only 2 will then be provisionally selected for redundancy.

It is important to ensure that employees are placed in the correct pool. For example, it may be appropriate to have shop floor employees in one pool, managers in another and administrative staff in another. **If contracts of employment are flexible and job skills are inter-changeable then all employees in interchangeable roles should be included in the pool.** The pool should also include all employees who are on secondment, sick leave, maternity leave or any other absence. The fact that employees are based at different sites does not prevent them from being placed in one pool.

3. Determine the **selection criteria.** Selection criteria should take into account the future needs of the business and should also comply with the following standards:
 - they must be as objective as possible; and
 - they must be fair and reasonable.

Make sure your selection criteria are capable of being objectively justified. Reasons such as being a "good team player" and "popular with clients" are too subjective to stand up in a tribunal as they are often based simply on the personal views of line managers.

Selection decisions should be based on legitimate factors and not on prohibited discrimination grounds, like sex, religion, race, sexual orientation or disability (See section 1) Particular care should be taken with length of service as a selection criterion. Criteria such as Last In First Out ("LIFO") or those based on length of service are likely to be age discriminatory and may also amount to discrimination on the grounds of gender. It will be up to employers to establish a defence of justification in such case.

SECTION 22

Common redundancy criteria are as follows:

- those persons who have the skills and experience necessary to carry out the remaining jobs after the redundancy exercise has been completed – ensure that any assessment of skills can be objectively justified;
- attendance record – ensuring that records are accurate and not discriminatory e.g. be sure to ignore any sickness absences for pregnant women that occurred during the 'protected period' i.e. from the time they conceive to the end of statutory maternity leave. Also under the reasonable adjustment duty it may be necessary to ignore a disabled employee's disability-related absences. You should seek further advice.
- work performance – using objective evidence to support this e.g. performance review forms. Take care to ensure that there are no conflicts between ratings given during appraisals and those given for the purposes of redundancy selection. Criteria based on subjective opinions such as "attitude" should be avoided;
- disciplinary record i.e. any current warnings; and
- work experience and qualifications.

Employees must not be selected on one of the following grounds which would give rise to a claim of automatically unfair selection for redundancy:

- reason(s) relating to pregnancy or maternity leave;
- membership/non-membership of a trade union, or participation in union activities;
- reason(s) relating to an employee's role as an employee representative, or candidate for such;
- reason(s) relating to accompanying an employee to a disciplinary or grievance hearing, or relating to the exercise of the statutory right to be accompanied to such a hearing; and
- reason(s) relating to the exercise of the statutory right to parental leave, shared parental leave, or time off to deal with domestic incidents.

It is useful to define scores for each of the criteria to ensure clarity and also to weight the criteria if appropriate. See a sample selection matrix at Appendix 22B.

4. Make a **general announcement** of the reasons for redundancy and affected departments. It can be useful to read this announcement from a pre-prepared script to ensure that all information is covered, particularly since making such an announcement is likely to be an emotive experience. It can also be useful to provide a Q&A document for employees to take away since they are unlikely to be able to retain all the detail from a verbal announcement.

5. Consideration should be given to asking for voluntary redundancies but taking care to reserve the right to refuse an application from employees with key skills and experience. Volunteers may be requested from particular "pools" of employees only. Enhanced redundancy payments may be necessary to encourage volunteers. Also, applications from volunteers can be difficult to manage. For example, there may be too many applications or applications may come from the most skilled or experienced employees. Volunteers should be given a fixed period of time to apply, e.g. one week.
6. If applicable, **apply the redundancy selection criteria** fairly and objectively to the appropriate "pool" of employees and decide who should be "provisionally" selected for redundancy. This means that the manager must be able to demonstrate how, by applying the selection criteria fairly and consistently, they have arrived at the redundancy selections they have made.

Note: this selection must always be considered as "provisional" until the end of the consultation process when the redundancy is confirmed.

Ensure that the timetable has enough flexibility to allow employees to come back for more meetings where there are issues to discuss, or where extra information is needed. Failure to allow enough time can lead to allegations that the process was a sham, and that decisions had been made in advance.

During this time check contracts for details of bonuses etc which may be due.

Stage 1

1. Once selection decisions have been made, **prepare letters to the provisionally selected employees** in any affected departments notifying them that they are "at risk", explaining the commercial reasons for the potential redundancy, and invite them to a meeting to discuss the matter (Appendix 22C). The letter should also inform them of their right to be accompanied by a trade union representative (even if the company does not recognise any particular trade union), or a colleague. Any trade union representative should be certified in writing as competent to act as a representative by their union.

These letters should ideally be handed to the relevant employees in person and in private with a brief explanation of their content, i.e. that the letter is an invitation to a meeting to discuss provisional selection for redundancy. Further discussion should be avoided at this stage and care should be taken to handle this stage sensitively.

SECTION 22

2. **Consider the suitability of the employees for other open positions within the company.** If an employee may be suited to an alternative role with a small amount of training, the employee should be offered that role.

If several employees would be eligible for a particular vacancy it is best to hold interviews to determine who will fill the vacancy.

Employees on maternity leave have priority over other employees for any alternative vacancies.

Stage 2

1. A few days later, **hold meetings with the affected individual employees** to discuss the potential redundancy and consult with the individuals about their provisional selection.

Meetings in relation to possible redundancy are likely to be stressful for both parties. Managers holding the meetings should prepare carefully in advance, anticipating any likely questions and issues and also anticipating and preparing for any possible emotional reactions.

Careful consideration should be given to sensitive timing of the meeting. Avoid the end of the working day, Fridays, pre-holidays and significant dates such as birthdays or anniversaries.

The meeting should be held away from the individual's working area where privacy can be assured and where there are not likely to be interruptions. Consider having tea, coffee or water available and a box of tissues (out of sight).

It is important to approach the meeting on the basis that you are willing to consider other alternatives not involving redundancy and that no decision has yet been reached concerning the employee's redundancy. At this stage any selection is provisional.

The meeting should cover the following points:

- (i) the reason for redundancy in appropriate detail;
- (ii) the basis of provisional selection, i.e. the selection criteria used;
- (iii) the basis upon which the employee has been provisionally selected should be checked with the employee and his/her comments sought. Individual scores from any selection process should be provided. This gives the individual an opportunity to challenge any data upon which the manager is relying;

- (iv) the employee should be asked if he/she has any suggestions to avoid redundancy;
- (v) the employee should be given details of the severance terms (i.e. how their payment would be calculated) in the event the redundancy is confirmed. If outplacement services are to be made available this should also be confirmed;
- (vi) the employee should be offered any available vacancy which is within his/her skills or capabilities. This obligation applies even if the existing vacancy is of lesser status and/or with a lesser remuneration package. If there is a suitable vacancy this offer should be made in writing and details given to the employee at this stage.
Note: the employee is entitled to a four week trial period in the new role in order to determine its suitability. If, at the end of the trial period, either party decides the new role is not suitable, the employee is still entitled to any redundancy payment they would have been due had they not taken the role (see Appendix 22F);
- (vii) the employee should be informed that this meeting represents the beginning of a consultation period which will last for a fixed period;
- (viii) if so decided, the employee should be told he/she can remain at home or that it would be better if they remain at home with full pay for the consultation period. The employee may prefer to remain at work and should have that choice;
- (ix) the employee has the right to appeal the decision, they should be informed of how long they have to lodge an appeal and who to lodge it with. The appeal should be in writing.

The employee has the right to be accompanied at this meeting. The person accompanying them may advise them during the meeting.

During the meeting:

- Display empathy and show you care;
- Be firm and honest but allow the employee to have their say;
- Do not engage in small talk, blame others or talk about your own feelings or problems;
- Take the time to answer any questions that arise but avoid lengthy justification of the decision unless the employee is requesting it. The meeting should ideally last between 10 and 15 minutes. A longer meeting is generally one that makes matters worse, not better.

SECTION 22

Notes should be kept during the meeting. A list of issues to cover with space for notes can be useful. All relevant comments should be recorded along with details of any other issues raised. All those attending the meeting should sign the form as a true record of the meeting.

2. Following the meeting, **time should be allowed for the employee to absorb the information given and to make any suggestions for avoiding the redundancy.** Take whatever time is necessary to consider any suggestions or check other issues which arise during the meeting and to decide if the employee is suitable for any alternative roles. Notes and records should be kept to show why the company has not accepted any suggestions.

The employee is entitled to time off to look for new work or for re-training during this period. If they take the time off the employee is only legally entitled to be paid two fifths of a week's pay, no matter how much time off they take.

If the employer is proposing to offer an enhanced redundancy package in addition to any statutory entitlement, it is sensible to make such payments conditional upon entering into a binding agreement which would preclude any further claims against the company. This can either be done through a compromise agreement which would require the redundant employees to obtain legal advice or through a non ET1 agreement with the assistance of the Labour Relations Agency.

3. After a few days, if nothing has emerged to change the decision to make the employee redundant, prepare a letter inviting the employee to a second meeting (see Appendix 22D). The employee has the right to be accompanied to this meeting.

Calculate and check the details of redundancy and notice payments if applicable. Up to £30,000 of redundancy pay is tax free. Any non-cash benefits that form part of the redundancy package, such as a company car or computer, will be given a cash value and added to the redundancy pay for tax purposes. This may then take it over the £30,000 limit.

Once consultation is complete, consider making an announcement to other departments to allay their fears.

4. Following this **second meeting give the employee a letter confirming the redundancy and the severance terms and the date employment will end.** This must take into account any relevant notice period. If the contract allows for payment in lieu of notice, employment can end immediately provided payment is made for the notice period. The letter should also inform the employee of the right of appeal. See Appendix 22E.

Stage 3

1. If the employee wishes to appeal **hold an appeal meeting** at which the employee has the right to be accompanied and inform the employee of the final decision after this meeting. See appendix 22G.

Notes should be kept of all meetings, emails and telephone conversations throughout the process and copies of all correspondence should be retained.

Note: Failure to follow the statutory dismissal procedure (writing to the employee to set out the issue and invite him/her to a meeting, holding a meeting at which the employee can be accompanied, informing the employee of the right of appeal and holding an appeal hearing if requested) could lead to a claim for unfair dismissal.

Following any redundancy exercise it is natural for remaining staff to feel anxious, possibly shocked or angry and as a result, productivity may suffer. It is worthwhile to arrange meetings with all employees to explain the plans for the future and to help the company to move forward. It is particularly important at such times that leaders are visible and available to employees to answer their queries and to address their concerns.

SECTION 22

COLLECTIVE REDUNDANCY PROCEDURE

Applicable when proposing to make 20 or more employees redundant at one establishment within a period of 90 days or less.

In these circumstances, employers have a duty to consult with appropriate representatives prior to making selection for redundancy. Representatives can be either trade union representatives or employee representatives who have been specially elected for the purposes of a redundancy consultation. The election of employee representatives must satisfy specific obligations on the employer, for instance to ensure that the election is fair and that no affected employee should be unreasonably excluded from standing in the election.

To ensure a fair procedure, it is advisable to consult with any recognised union as to the selection criteria and their application. Compliance with this duty is a further factor to be taken into account when assessing the reasonableness of any dismissal. Compliance with collective consultation obligations does not make individual consultation unnecessary and the collective consultation obligation is independent of, and in addition to, the individual consultation obligation.

The duty to consult is triggered when an employer proposes to dismiss. Employee representatives should therefore be given the opportunity to understand the proposals, and employers should give proper consideration to any counter-proposals before reaching a final decision on the redundancies, although the employer will not be in breach of its duty if agreement is not actually reached.

If between 20 and 99 employees are likely to be affected, consultation should start at least 30 days before the first dismissal takes place. If more than 100 employees are likely to be affected consultation should start at least 90 days before the first dismissal takes place. The total number of redundancies proposed by an employer may be unimportant, as the obligation to consult depends on the number of redundancies at one establishment. There is no statutory definition of establishment and so tribunals have taken a practical approach when deciding whether to add together the number of employees to be made redundant in a business which has several sites. There are a number of factors that will influence a tribunal's view on this question and it is advisable that employers take legal advice as appropriate.

During the collective consultation process the employer must provide information to the representatives on the following:

- The reason for the proposals;
- The numbers and descriptions of employees proposed to be made redundant;
- The proposed method of selecting employees to be made redundant;
- The proposed method of carrying out the redundancies, including the timing;
- The proposed method of calculating any redundancy payments – beyond the statutory minimum payments required.

An employer who proposes to dismiss 20 or more employees as redundant at one establishment within a period of 90 days or less has a statutory duty to notify the relevant government department before any of the redundancies are made. This is so that government departments and agencies and the Jobs and Benefits offices can be alerted and prepared to take any appropriate measures to assist or retrain the employees in question.

A notification must be made a specified minimum time before the first dismissal takes effect.

The minimum times are:

- if between 20 and 99 employees may be dismissed as redundant at one establishment within a period of 90 days or less - at least 30 days and in any event, before giving notice to terminate an employee's contract; or
- if 100 or more employees may be dismissed as redundant at one establishment within a period of 90 days or less - at least 90 days and in any event, before giving notice to terminate an employee's contract.

See the relevant Advance Notification Form HR1 form for this notification at Appendix 22H. Search www.economy-ni.gov.uk for further advice on completing the form.

APPENDIX 22A

READY RECKONER TABLE

Service (Years)	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
Age (Years)																				
18*[1]	1	1½																		
19	1	1½	2																	
20	1	1½	2	2½																
21	1	1½	2	2½	3															
22	1	1½	2	2½	3	3½														
23	1½	2	2½	3	3½	4	4½													
24	2	2½	3	3½	4	4½	5	5½												
25	2	3	3½	4	4½	5	5½	6	6½											
26	2	3	4	4½	5	5½	6	6½	7	7½										
27	2	3	4	5	5½	6	6½	7	7½	8	8½									
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½								
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10½							
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11	11½						
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12	12½					
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13	13½				
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14	14½			
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15	15½		
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16	16½	17
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17	
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½	18
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18	
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½	
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19	
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½	
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24	
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½	
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25	
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½	
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26	
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½	
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27	
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½	
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28	
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½	
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29	
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½	
61*[2]	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30	

18*[1] - It is possible that an individual could start to build up continuous service before age 16, but this is likely to be rare, and therefore we have started the table at age 18.

61*[2] - The same figures should be used when calculating the redundancy payment for a person aged 61 and above.

SAMPLE REDUNDANCY SELECTION MATRIX

See over for scoring definitions

Note - this sample is intended as a guide only and should be adapted to your company's circumstances

	Attendance Record	weighting	Timekeeping Record	weighting	Disciplinary Record	weighting	Performance in present job	weighting	Flexibility/ Adaptability	weighting	Skills/ Competencies	weighting	Total
Employee name 1													
Employee name 2													
Employee name 3													
Employee name 4													
Employee name 5													
Employee name 6													
Employee name 7													
Employee name 8													

APPENDIX 22B continued

Attendance	0	very high number of days absence
	1	high number of absences/unexplained absence/regular short periods of absence
	2	some absence
	3	very few absences - with substantiated reasons
	4	minimal absence - substantiated reason always provided
Timekeeping	0	very poor timekeeping
	1	frequent lateness
	2	some examples of lateness
	3	few examples of lateness and reasonable explanation provided
	4	excellent timekeeping
Disciplinary	0	final written warning
	1	first written warning
	2	verbal warning
	3	informal disciplinary discussion
	4	no disciplinary record
Performance	0	unsatisfactory
	1	performance fails to meet objectives
	2	performance meets most of the objectives
	3	performance meets all of the objectives of the role
	4	performance consistently exceeds the required standard
Flexibility/ Adaptability	0	no competence beyond immediate role
	1	limited competence beyond immediate role
	2	able to provide some assistance in other areas
	3	multi-skilled and able to provide regular support beyond own role
	4	fully competent, multi-skilled and able to take on a range of different roles
Skills/ Competencies	0	poor skills in current role - unable to perform effectively and close supervision required
	1	limited skills in current role and unable to operate without close supervision
	2	competent in most aspects of current role but requires some supervision
	3	fully skilled in current role and able to operate without supervision
	4	fully skilled in current role, role model and source of advice for others

APPENDIX 22C

LETTER – PROVISIONAL SELECTION FOR REDUNDANCY

Date _____

STRICTLY PRIVATE & CONFIDENTIAL

Dear _____

Insert background and reasons for provisional selection for redundancy.

Unfortunately, this has resulted in your provisional selection for redundancy.

The Company will now enter a period of consultation with you to ensure that we have fairly applied the selection for redundancy process, and to look at any alternatives to making you redundant.

In the meantime, I am sure that you will want to take time to consider your options. *The following to be used only if applicable:*
We will give you the time and opportunity to consider any suitable alternative opportunities both within the Company and externally, and to enable you to consider any points you wish to raise with the Company concerning your provisional redundancy. You will, of course, continue to receive your full pay and contractual benefits during this period.

I also attach a sheet setting out your entitlements on termination of your employment, in the event that your provisional redundancy is confirmed, and you are not offered, or you do not take up, an alternative position within the Company.

I propose to meet with you at _____ on _____ when we can discuss further your views and comments in relation to the contents of this letter and, in particular, whether we can take the issue of looking for alternative employment for you in the Company any further. You have the right to be accompanied at this meeting by a colleague or a trade union representative.

Please do not hesitate to call me if you have any further questions about the contents of this letter.

Yours sincerely

We confirm that your final payments would be as follows: *Optional*

Calculation of Severance Payments	£
*Redundancy payment – inclusive of any statutory redundancy entitlement	_____
_____ weeks pay in lieu of notice	_____
Payment for pension during notice period	_____
Payment for car allowance during notice period	_____

*This payment assumes that the last day of service would be _____

In addition to the payments above you would also be entitled to payment for any holidays accrued but not taken.

The Compensation for your notice period will be subject to deductions for tax and national insurance contributions. We believe a redundancy payment of less than £30,000 is not taxable but you are advised to seek further guidance from HMRC for your specific circumstances.

APPENDIX 22D

LETTER – INVITATION TO FINAL CONSULTATION

Date _____

Dear _____

REDUNDANCY CONSULTATION

Further to my letter of _____ and our recent meeting/s on _____, I can confirm that we have agreed to pay you _____ (*e.g. bonus or other benefit payments*).

You have indicated that you have had no additional questions or alternatives to propose, nor have we any alternative role for you at this time. In light of this there are no changes to the proposal to make you redundant, I am therefore inviting you to attend a meeting on dd/mm/yyyy at [insert time] at [insert location] where we will confirm your redundancy in absence of any alternatives arising between now and then.

You have the right to be accompanied at this meeting. You may choose to be accompanied by either a work colleague or a trade union representative.

Please do not hesitate to contact me should you have any questions.

Yours sincerely

APPENDIX 22F

LETTER – OFFER OF ALTERNATIVE ROLE

Date _____

Dear _____

OFFER OF ALTERNATIVE POSITION OF EMPLOYMENT

We are pleased to conclude our recent discussions and formally offer you the position of **JOB TITLE** reporting to **MANAGER NAME AND TITLE.**

The offer of this position is subject to a four week trial period on both sides from the date of commencement, which will be upon written acceptance of this offer. Should either party decide at the end of this period that you are not suitable for this position you will be entitled to a full redundancy package as stated in my letter of **DATE.**

As we discussed, this role is within the _____ and as such you are eligible for the _____ bonus plan, plan terms are attached. In addition there may be a requirement to carry out some on-call duties, an outline of responsibilities is attached.

All other terms and conditions remain as set out in your contract of employment.

I hope very much that you will accept this offer. To accept this position, please sign and date one copy of this letter and return to me, retaining the other for your records.

In the meantime should you have any questions regarding this offer please contact me or **MANAGER NAME.**

Yours sincerely

I accept the transfer and terms stated in this letter:

Signed: _____

Date: _____

APPENDIX 22G

LETTER - RESULT OF APPEAL

Date _____

Dear _____

I refer to our meeting on (date) which was held under appeal stage of the Company's Redundancy Procedure. You were accompanied at the meeting by (name), your union representative/work colleague*.

You appealed against the decision to terminate your employment by reason of redundancy.

I am now writing to inform you of the decision taken by _____ [Insert the name of the person] who conducted the appeal meeting, namely that the decision to terminate your employment

*still applies.

*will be revoked.

Delete as appropriate.

You have now exercised your right of appeal under the Company's Redundancy Procedure and this decision is final.

Yours sincerely

APPENDIX 22H

EMPLOYMENT RIGHTS (NORTHERN IRELAND) ORDER 1996 (AMENDED 8 OCTOBER 2006)

Advance notification of redundancies

What you are required to do

As an employer, you are required by law from 8th October 2006 to notify of a proposal to make **20 or more** employees redundant

- a) before giving notice to terminate an employee's contract of employment in respect of any of these dismissals and
- b) within a 90 day period as follows:

- If 20 to 99 redundancies may occur at one establishment, you must notify us at least 30 days before the first dismissal.
- If 100 or more redundancies may occur at one establishment, you must notify us at least 90 days before the first dismissal.
- We will treat the date on which we receive your completed form as the date of notification.

How to complete this form

- Please type or write your answers in CAPITAL letters and tick boxes where appropriate.
- If there is not enough space for your answers, please use a separate sheet of paper and attach it to this form.
- You must send a copy of this notification to the representatives of the employees being consulted.
- If the circumstances outlined in this form change, please notify us immediately.

1. Employer's details

Name Tel no

Address Fax no.....

..... Postcode

Total Workforce of the organisation in Northern Ireland.

2. Employer's contact

Name Tel no (if different from that given at 1).....

Address (if different from that given at 1)

.....

Postcode..... Email.....

Address.....

3. Site(s) Where Redundancies Proposed

Section 3(A)				*Delete as appropriate
Postal Address of Site(s)	Postcode	Current Workforce	Proposed Redundancies	Closure of Site
1.				Yes/No*
2.				Yes/No*
3.				Yes/No*
4.				Yes/No*
Totals				

4. Reasons for redundancies

Reduced demand for products or services	<input type="checkbox"/>	Changes in work methods or organisation	<input type="checkbox"/>
Transfer of work to another establishment	<input type="checkbox"/>	New plant, equipment or new technology	<input type="checkbox"/>

• If other reason(s) please give details...
.....
.....

5. Timing of redundancies

Date of first proposed redundancy Date of last proposed redundancy

6. Consultation

Are any of the groups of employees who may be made redundant represented by a recognised trade union?

Yes No

List trade unions below
.....
.....

	Yes	No	Start date
Have you consulted any of the trade unions above?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/> <input type="text"/> <input type="text"/>
Have you consulted elected representatives of the employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/> <input type="text"/> <input type="text"/>

Declaration

I certify that the information given on this form is, to the best of my knowledge, correct and complete.

Name/Signature..... Date.....

Position

Please return completed form to:
Department for the Economy
c/o Economic & Labour Market Statistics Branch
NISRA, (Department of Finance)
Room 115 Netherleigh
Massey Avenue
Belfast BT4 2JP.

Email: redundancies@finance-ni.gov.uk Tel: 028 9052 9412 Fax: 028 90529658

Website address: www.economy-ni.gov.uk

Acting on behalf of the Department for the Economy for the collection and dissemination of redundancy information.

LAY-OFF AND SHORT TIME WORKING (ALTERNATIVES TO REDUNDANCY)

Meaning of temporary lay-off and short time working

If a company is experiencing a temporary shortage of work and does not wish to make employees redundant, short time working or temporary lay-off may be a suitable alternative.

A **lay-off** occurs when an employee is not provided with work and may therefore not be entitled to pay for that period.

Short time working occurs when there is a reduction in the work provided for an employee in that week to the extent that their wage for that week is less than half a week's pay.

It is wise to keep the period of lay-off/short time working as short as possible depending on business needs. If the employee is on short time working or laid off for: **4 continuous weeks or 6 weeks in total (with no more than 3 of the weeks being consecutive) out of 13 weeks** they may be able to claim a redundancy payment, provided they have been employed for two years or more. If they are earning more than half a week's pay the employee does not have the right to claim redundancy.

The right to implement short time working or temporary lay-off

There is a general right at common law to tell most employees not to turn up for work but no automatic right not to pay them. Ideally, in order to implement such a measure, the contract of employment should contain a specific clause permitting lay-off or short time working without pay. An employer might also have an implied right if clear evidence exists to show that this right has been established over a long period by custom or practice. Where it is imposed by an employer without a contractual right to do so, employees could pursue claims to a civil court and/or to an Industrial Tribunal. It is advisable therefore to include such a clause in contracts of employment for any new employees.

If the contract does not permit lay-off or short time working, the best option is to seek employees' agreement to implementing these measures. It is helpful to provide as clear and accurate information as possible about the reasons for this action. Many employees may prefer short time working or lay-off to the alternative of redundancy and be content to agree. If some employees do not agree however the employer has a dilemma. One solution is to terminate the contracts for these employees and re-engage them on new terms including the right to lay-off without pay.

Employers should be aware however that following this course does carry a risk of an Unfair Dismissal claim and should seek specific legal advice before following this course. The employer should be able to demonstrate that they have looked at all options and be able to show the impact on the business of not implementing the lay-off.

Right to guarantee payment

When employees are laid off/placed on short time working, they might be entitled to a statutory guarantee payment from the employer, limited to a maximum of 5 days in any period of 3 months. Where an employee is contracted to work less than 5 days a week, the limit is that number of days. So, for example, if an employee normally works 4 days a week, the guarantee payment will be for 4 days. Where the number of working days varies from week to week, an average is taken over the 12 complete weeks preceding the week in which the lay-off occurred.

The daily amount is subject to an upper limit which is reviewed annually. The current rate can be obtained from the NI Business Info or the Labour Relations Agency websites. On days when a guarantee payment is not payable, employees might be able to claim Jobseekers Allowance and should contact their local Jobcentre office about eligibility.

Claim for redundancy

If an employee wishes to make a claim for redundancy, he/she must give the employer **written notice** stating that this is what he/she intends to do. The employer may serve a **counter notice** to the employee if there is a reasonable prospect that normal working will be resumed **within 4 weeks for at least a 13 week period**. If the employer wishes to do this the counter notice must be in writing, must state that a claim for redundancy will be contested and must be issued within 7 days of service of the notice to claim for redundancy. The counter notice should also state that normal working is likely to resume within 4 weeks. If the employer has served counter notice to a claim for redundancy, the employee will have no right to a redundancy payment unless they apply to an industrial tribunal.

Further sources of information:

The Labour Relations Agency website: www.lra.org.uk

NI Business Info: www.nibusinessinfo.co.uk

BIBLIOGRAPHY

WEBSITES:

www.nibusinessinfo.co.uk

The primary website for business advice and guidance in Northern Ireland.

www.lra.org.uk

The Labour Relations Agency is the lead body for employment related issues in Northern Ireland. Free Helpline: 028 9032 1442

www.equalityni.org

The Equality Commission for Northern Ireland is the lead body for equality related issues in Northern Ireland. Telephone: 028 9050 0600

www.hseni.gov.uk

The Health and Safety Executive for Northern Ireland is the lead body responsible for the promotion and enforcement of health and safety at work standards in Northern Ireland. Telephone: 0800 0320 121

www.hmrc.gov.uk

HM Revenue and Customs: Guidance on tax and paying employees.

www.accessni.gov.uk

Criminal records checking service for Northern Ireland.

www.ukba.homeoffice.gov.uk

UK Visa and Immigrations guidance.

www.niacro.co.uk

Northern Ireland charity providing training on the benefits of having fair recruitment practices in relation to people with criminal records.

www.acas.org.uk

The Advisory, Conciliation and Arbitration Service (Acas) provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. It is important to note that there may be differences in NI and GB employment legislation.

www.gov.uk

The websites of all government departments and many other agencies and public bodies have been merged into GOV.UK.

www.cipd.co.uk

The Chartered Institute of Personnel & Development's website has resources, publications, reports and current thinking on Human Resources and people development issues.

www.nidirect.gov.uk

Northern Ireland focused government website with advice on all aspects of living in Northern Ireland.

www.addictionni.com/about/employer-services/

Northern Ireland based independent charity who can support employers and employees with tailored advice, training and progress reports in dealing with the impact of drugs and alcohol addiction in the workplace.

www.communities-ni.gov.uk

Northern Ireland government website with links to information on pensions, job centres and government support in finding staff.

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If you require this document in an alternative format (including Braille, audio disk, large print or in minority languages to meet the needs of those whose first language is not English) then please contact:

Invest NI Equality

Tel: 028 9069 8273

Text Relay Number: 18001 028 9069 8273

Email: equality@investni.com

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Bedford Square
Bedford Street
Belfast BT2 7ES

T: 028 9069 8000

F: 028 9043 6536

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