RIGHTS OF EMPLOYEES DURING THEIR EMPLOYMENT

1) CONTRACTS

Introduction

Everyone who is an employee works under a contract of service or employment. This contract may be written or verbal, or a mixture of both, but the important thing about a contract is that it is a willing agreement entered into by two parties and any changes or additions must be agreed to by both parties, i.e. one party cannot alter it without the consent of the other. The law imposes some conditions which cannot be altered by the employer to the disadvantage of the employee. Apart from these, the two parties, employer and employee, are free to negotiate whatever terms they wish.

Individual employees will find it difficult to negotiate different terms for themselves and will normally have to accept the terms on which other employees at his or her place of employment are working, and they will usually find that when they are offered a job it is on certain conditions which they are bound by if they accept the job. But once these conditions have been accepted and the job started, they cannot be altered by the employer without the consent of the employee.

A contract of employment is made as soon as a job is offered and offer is accepted. The details of the job are known as the conditions of service. Some details will have been dealt with before the job is offered, e.g. in the advertisement for the job and at the interview. Others are implied by law, e.g. because of custom in a particular trade. Employers may give written contracts setting out all the terms, or there may be a written collective agreement with a union. If there is no contract in writing given then an employee can go to a tribunal in certain circumstances to have the terms decided. Most contracts of employment are verbal or a mixture of verbal and written. The terms are equally binding whether they are in writing or not.

What is a Contract of Employment ?

So a contract of employment will be made up of:

(i) Terms expressly agreed - these should be put in writing under the Employment Protection (Consolidation) Act 1978.

(ii) Terms in collective agreements.

(iii) Terms included because of a Wages Council Order.

(iv) Works rules.

(v) Terms implied by trade custom.

(vi) General common law obligations.

(i) Expressly agreed terms

These (hopefully) will have been discussed by both employer and employee and both sides will know what they are.

An employer is now obliged under the Employment Protection (Consolidation) Act 1978 to give certain employees a list of the main terms of the contract of employment. Employees who are entitled are all employees who work sixteen hours per week or more (or more than eight hours per week if they are employed for more than five years) with a few exceptions, e.g. dockers, seamen, overseas workers.

The written statement setting out the main terms must be given within thirteen weeks of starting work, otherwise the employee can take the matter to a tribunal for a decision as to what the terms are.

The written statement must include:

(a) The identity of the employer and employee.

(b) The date the employment began and whether any previous employment counts as continuous employment and if so when it began.

(c) Job title.

(d) The rate of remuneration or the method of calculating it, e.g. the local authority scale.

(e) Whether the employee is paid weekly, monthly, etc. and whether s/he works a week or a month in hand.

(f) The hours of work and the normal working hours.

(g) Annual, public and other holidays, rights to holiday pay and to accrued holiday pay on termination.

(h) Provision for sickness and injury, and rights to sick pay.

(i) Pension rights.

(j) The amount of notice the employee must give and is entitled to receive.

(k) Disciplinary rules.

(l) Disciplinary and grievance procedure.

(m) Whether the employee is contracted out of the Social Security Pensions Scheme.

(n) If the contract is for a fixed period, the date it expires.

An example of a written statement is included at

The list of terms is not the contract itself, and it is possible to argue that the list is wrong. Also, the list only contains the minimum terms; it is always possible to add to it.

If the terms are changed by mutual agreement (or following a collective agreement with the union) then the employer must give the employee a written note of the change.

(ii) Collective agreements

Parts of collective agreements are included in contracts if the employee agrees to this, e.g. as to wages, hours, holidays. The employee will invariably agree when s/he joins a union which is recognized by the employer.

(iii) Wages Councils

Wages Councils make orders for particular rates of pay, holidays etc., for certain types of employment. These cannot be reduced by the employer. A list of types of employment covered can be obtained from your local Wages Inspectorate.

(iv) Work rules

These will be part of a contract of employment, if the employee signs them

or if they are posted in notices in the workplace where the employee can see them.

(v) Custom and practice

Customs in a particular trade will be binding on both parties if they are universally followed and everyone knows about them, if they are reasonable, and if they are specific.

(vi) General legal obligations

Employers are obliged:

(a) To pay wages.
(b) Not to make unauthorised deductions from pay.
(c) To provide to workers whose pay varies according to their work and attendance, i.e. piece rate workers.
(d) To provide a safe system of work.
(e) To obey the law.
(f) To allow time off for public duties.

There is no obligation to provide holidays or holiday pay, sick pay (other than statutory sick pay) or references.

Employees are obliged:

(a) To work and co-operate.
(b) To obey orders as long as it does not involve breaking the law.
(c) To take reasonable care.
(d) To be trustworthy.
(e) To be loyal.

Both employer and employee - trust, co-operation and reasonableness.

(vii) Imposed conditions

The law gives employees certain basic rights which employers cannot cut down. These are to do with notice, pay statements, redundancy pay, maternity leave and pay, discrimination, and trade union membership. The last four will be dealt with later.

1. Notice

The employer and employee may agree longer periods of notice which will then be binding on both parties, but here are the legal minima:

Employer

(a) Less than four weeks continuous employment - not specified.

(b) Between four weeks and two years - one week.

(c) Between two years and twelve years - one week for each year of employment.

(d) Twelve years or more - twelve weeks.

Employee

One week

These terms can be extended by agreement. If either party ends the contract without the proper notice then the aggrieved party is entitled to payment in lieu of notice.

2. Itemised Pay Statement

Workers who work more than sixteen hours a week (or more than eight hours for five years or more) have the right to an itemised pay statement every time they are paid. The statement must include:

(a) Gross wages.

(b) Fixed deductions.

(c) Variable deductions.

(d) Net wages.

(e) Method and rates of payment.

If an employee does not receive a pay statement or thinks it is wrong, then he or she can apply to a tribunal for a declaration of what particulars should have been given. This must be done within three months of the time when s/he should have received it.

FIXED TERM CONTRACTS

Although those responsible for the management of voluntary sector projects are not normally very well versed in employment law, it is very important for them to take proper advice before giving staff fixed term contracts, and also to find out about the law involved.

It is a fairly common practice to-day whereby voluntary organisations take on staff for particular projects of limited duration - often with grant support which will cease at the end of the relevant period. In these circumstances there is a natural tendency to engage staff for the precise duration of the project, and to give them fixed term contacts which guarantees employment for a fixed time as opposed to ordinary contracts, which last for an indefinite period.

However, much can occur during the project which may not be foreseen at its commencement, but which may cause the employing organisation, for perfectly sound reasons, to wish to dismiss the employee before the project ends. Inevitably, the organisation will have to take a gamble on the particular person selected for the job; if the gamble does not come off and the employee turns out to be unsatisfactory, the consequences, as will be seen, can be very expensive for the organisation.

The relevant law may be summarized as follows:-

(1) Almost every employee who has been employed for at least a year now has the right (a) to complain to an Industrial Tribunal if he/she considers has been "unfairly" dismissed and (b), if successful in his/her complaint, to be compensated by his/her employer. Moreover, although there are a number of defences open to an employer in these circumstances, the expiry of a fixed term contract without its being renewed is a legitimate ground on which a complaint of "unfair dismissal" may be made.

(2) The Court of Appeal has recently confirmed that a Contract for a specific period is a fixed term contract in law even if it also contains provision for giving notice to end it.

(3) Although, as indicated above, the expiration (without renewal) of a fixed term contract contstitutes "unfair dismissal", the legislation allows an employee to contract out of his/her rights relating to both unfair dismissal and redundancy if (a) his/her contract is for a fixed term of one year or more, (b) the dismissal consists only of the expiry of the term without its being renewed and (c) he/she has agreed in writing before the expiry of the term to exclude those rights.

Fixed term contracts have certain drawbacks from the employer's point of view. An employer who terminates a fixed term contract at any time during its life (whether or not the employee has agreed to waive his/her statutory rights in the event of non-renewal) for any reason short of very serious misconduct by the employee justifying instant dismissal (theft, for example) runs the risk of being sued for breach of contract on the grounds of "wrongful dismissal". This is because giving a fixed term contract guarantees employment for a period of time, e.g. 5 years, whereas an ordinary contract does not guarantee anything. It is, moreover, conceivable that a claim for damages on the grounds of "wrongful dismissal" could succeed in the appropriate court when, on precisely the same facts, an application to an Industrial Tribunal for compensation under the legislation for "unfair dismissal" would not. (see later explanation of "wrongful dismissal").

A fixed term contract containing provision for early termination possesses one advantage for the employer over an "ordinary" contract. The employee is permitted by the law to contract out of his/her statutory rights relating to unfair dismissal and redundancy, with the result that the expiry of the contract will not constitute a dismissal under the legislation if the contract is not renewed. However, if the employer gives the employee notice before the end of the contract, the employee will be entitled to claim compensation in accordance with the basic rule.

What, then, is the most prudent course for an organisation wishing to employ someone for a specific period? Clearly no problems will arise where the employee's conduct justified instant dismissal. In such a case the dismissal cannot, by definition, be either "wrongful" or "unfair". Where the contract is for a fixed term of one year or more, it will theoretically be open to the employer to attempt to persuade the employee - not only before but also during the contract - to agree to waive his/her statutory rights. But the attempts may fail and, in any event, waiver will not prevent the employee in appropriate circumstances from instituting proceedings for wrongful and/or unfair dismissal. To assist those organisations whose employees on fixed term contracts are willing to contract out of their rights a suggested form of exclusion clause is set out below.

It follows, therefore, that fixed term contracts should be avoided by employers.

Whether or not a prospective employee for a job of fixed duration is prepared to waive his/her statutory rights (when it is lawful to do), he/she should as a matter of policy be offered - and, whenever possible, persuaded to accept - an "ordinary" contract terminable by notice. Not only does such a contract give the employer a freedom of manoeuvre which he/she does not possess under a fixed term contract, but also one of the reasons for which an "ordinary" contract may be lawfully brought to an end is redundancy. Also, it means that the employee will not lose any rights to claim "unfair dismissal" or redundancy.

In most cases where projects run out of funds and have to come to an end, this will be a redundancy situation and it will be perfectly legal to make employees redundant. Although an employer in these circumstances will not be entirely relieved from financial liability, any payment to a redundant employee is likely to be substantially less than the compensation which might otherwise be awarded either by an Industrial Tribunal for unfair dismissal or by the Court for wrongful dismissal.

A better solution to the problem of liability, which protects employers without excluding employees rights, is to register your group as a company or industrial and provident society, which will give your members limited liability for the debts of the group. (see section on Organisation)

In conclusion, it must be emphasized that there are dangers inherent in giving generalized advice - especially in an area of law which is still being "pioneered" - and voluntary organisations are therefore strongly advised to seek professional assistance at an early stage in negotiations with prospective employees for jobs of fixed duration. Once an employee has been employed on an ordinary contract of employment, this cannot be unilaterally altered by the employer.

Suggested waiver clause

(The employee) HEREBY AGREES to exclude any claim under Section 54 of the Employment Protection (Consolidation) Act 1978 or any statutory modification or re-enactment thereof and any right to a redundancy payment under the same Act where his/her dismissal under this Agreement consists only of the expiry. of the term hereof without its being renewed.

5) TIME OFF WORK

Employees who work for 16 hours a week or more, or 8 hours a week for 5 years, are entitled to ask for time off work in certain circumstances:

(a) To carry out union duties.

(b) To take part in union activities.

(c) To undertake public duties.

(d) To look for work after notice of redundancy.

(e) To receive ante-natal care in pregnancy.

If the employer refuses to allow time off then the employee can claim compensation from an industrial tribunal.

(a) Union duties

An official of an independent trade union which is recognised by the employer can claim time off work as long as it is reasonable to carry out union duties in connection with industrial relations, or to receive training in industrial relations and be paid for it.

If the employer does not allow time off or will not pay for the time then the employee can bring a claim to an industrial tribunal within three months of the refusal.

(b) Union activities

A member of an independent trade union recognised by the employer can claim time off for union activities, but cannot be paid for it unless the employer agrees. The activities are not defined but are simply described as any activity of the union or activity in which the employee represents the union.

Again, the employee can complain to a tribunal within three months.

(c) Public duties

The right is for reasonable time off, but not with pay. The duties include lay magistrates, local councillor, tribunal membership, membership of NHS bodies, schoolgovernor or manager, and membership of the Water Boards.

The time off must be for actual duties, and not just for meetings of the body involved. The complaint is to a tribunal within three months.

2) WRITTEN PARTICULARS

As already mentioned, certain employees, i.e. those who work 16 hours a week or 8 hours for 5 years, are entitled to receive written particulars of the main terms of their employment within thirteen weeks of the commencement of their employment, and of amendments within one month.

If this does not happen then they can bring a case before an industrial tribunal. The application can be made while the employee is still employed, or within three months of leaving the job.

The application is made in the same way as an application for unfair dismissal, i.e. the employee completes an application form and sends it to the Central Office of the Industrial Tribunals within the time limit. ACAS, the state arbitration scheme, see if they can settle the matter, and if not it proceeds to a hearing. Once the tribunal has made its decision then this will take the place of the written particulars and the employee can sue for any breach of them.

3) HOLIDAYS AND HOLIDAY PAY

There is no statutory right to any holidays with or without pay, not even to paid bank holidays. So it is important to check the contract or collective agreement to see what the holiday entitlement is. If the employer is not willing to give holidays or pay for them, then unless the employment is covered by a Wages Council order there is no legal machinery to force him or her to do so.

4) NOTICE AND WRONGFUL DISMISSAL

As mentioned earlier, certain employees are entitled to receive minimum periods of notice. These are employees who work for 16 hours per week or more, or 8 hours per week for 5 years. If the contract of employment gives longer periods then these will be substituted for the statutory periods.

If an employee is summarily dismissed, i.e. without any notice, or is not given the correct notice, then he/she is entitled to receive pay in lieu of notice and can sue in the county court if the employer refuses to pay it. This is called wrongful dismissal and is quite different to unfair dismissal. Terminating a fixed term contract before the term has ended is also wrongful dismissal. An employee can claim for both at the same time, but in most cases there will be little point in this as the wrongful dismissal award will be taken into account in calculating the unfair dismissal award. Howver, employees who are not entitled to go to a tribunal for unfair dismissal because they have not been employed long enough can still sue for their proper notice. Also, employees who had fixed term contracts may get more compensation by claiming wrongful dismissal so they could choose to do this instead. Wrongful dismissal cases are brought in the county court or high court depending on the amount

(d) Redundancy

If an employee is entitled to redundancy pay (see later for those entitled), then s/he is also entitled to take reasonable paid time off to look for a job, or to make arrangements for training, while you are working your notice.

If the employer refuses to allow the employee time off, or won't pay her/him, s/he can complain to an industrial tribunal within three months of the day on which s/he wanted the time off. The employer can be made to pay him/her up to two days pay. but this will be set off against any other payments under the contract, e.g. notice.

(e) Ante-natal care

All pregnant women are entitled to reasonable paid time off for ante-natal care. The remedies for refusal are the same as in (d) above.

6) SICK PAY

It is now the responsibility of employers to pay employees sickness benefit for the first eight weeks of sickness. There are fixed minimum rates below which the pay cannot drop, but employers can, of course, pay more if they want to. An employer is also responsible for deciding whether an employee is sick or not (although s/he can appeal against this). Employers can then deduct what they have paid out from the next month's National Insurance Contributions. But they will only be compensated for the minimum amount of sick pay in this way.

How employers' statutory sick pay (ESSP) works

Almost anyone working under a contract of service for an employer will be entitled to claim ESSP. This includes people starting work, and married women and widdows paying the reduced rate of contribution.

The following are excluded:-

* People over pension age.
* People earning less than the National Insurance lower earnings limit.
* Casual workers - people with a contract for less than 3 months.
* Women who are pregnant, during the period when they are entitled to maternity pay allowance, i.e. 11 weeks before the anticipated date of birth to 7 weeks afterwards.
* People involved in trade union disputes who fall sick after the dispute starts
* People who have been getting state sickness benefit or invalidity benefit for a period of sickness that ended less than 8 weeks before.

* People who fall sick just as they start a new job, if they have done no work for the employer with whom they have a contract.

If an employee is excluded s/he can still claim National Insurance sickness benefit if s/he is eligible for it.

ESSP is not paid for the first 3 days of sickness. After that an employee is entitled to sick pay from an employer for eight weeks only. This means eight weeks in any one tax year (which runs from the 6th April to the 5th April) or, if an employee is off sick over the end of one tax year and the beginning of the next, eight weeks in any one "period of entitlement". Periods of sickness that are separated by not more than two weeks are linked together when deciding what a "period of entitledment" is. But if an employee is sick twice within two weeks, s/he does not have to serve the waiting days again.

What an employee should do if s/he is sick

S/he must notify her/his employer and also prove that her/his sickness is genuine. The procedure for this should be laid down in the written particulars. If it is not, then make sure they are re-negotiated because the law says that an employer can refuse to accept self-certification, tell an employee to pay for a private doctor's certificate, and refuse to accept a doctor's certificate even if s/he has asked for it. (see model written particulars for suggested sickness clause). If an employer does not accept that an employee is sick, and refuses to pay sick pay the employee has a right to appeal to the insurance officer at the DHSS. To do this s/he must put an appeal in writing to the nearest DHSS office. S/he can find this in the phone book. Once the insurance officer has decided, then either the employee or employer has a further right of appeal to a National Insurance Local Tribunal, and from there to the Social Security Commissioners.

Amounts

The minimum rate of ESSP depends on the wages. The current weekly gross rates are:-

* People earning more than the lower NI earnings limit, but less than £45. per week. £ 25.
* People earning between £45 and £60 £ 31.
* People earning £60 or over £ 37.

ESSP is taxable and subject to N.I. deductions.

7) WAGES COUNCILS AND BOARDS

Wages Councils cover industries where trade unionism is weak, and include retailing, clothing manufacture, hotels, catering, agriculture, road haulage, and a number of small manufacturing industries. A list of industries covered can be obtained from the Wages Inspectorate.

They provide minimum wages and holidays for their industries and can deal with all the terms and conditions of employment. Once an order has been made, breach of it is a criminal offence and the employer can be prosecuted, and fined. The criminal courts can order arrears of pay for up to two years if the employer has been paying less than the order, and the employee can sue in the civil courts for up to six years back pay.

8) TRUCK ACTS AND DEDUCTIONS

The Truck Acts prevent employers from paying in kind for work done, and allow deductions from wages to be made only in certain circumstances. Payment in tickets to be used at the employers' premises is illegal.

The Acts apply to "artificers" and "workmen engaged in manual labour". An employee is covered if manual labour is her/his "real substantial employment".

The employee can agree to deductions in writing if they are paid to third parties, e.g. trade unions, or they are for medicine, fuel, tools, materials, rent and food. The amount has to be agreed in writing.

The Acts are enforced by Wages Inspectors, and the employer can be prosecuted and fined. The employee has to sue in the county or high court for the wages deducted, and can do this even if s/he has agreed to it.

Workers covered by the Truck Acts can have fines and deductions taken from their wages for negligent work or damage to the employer's property, but only if there is a written contract or notice allowing for this and written particulars of the "offence" and the deductions are given each time. The amounts taken must be reasonable.

Other workers can sue for improper deductions but it is not a criminal offence. Deductions should only be made if the employee agrees in writing.

9) TRADE UNION MEMBERSHIP

One of the basic rights of a worker is the right to be a trade unionist and to organise the union at the workplace. All the rights that the law gives employees can be better enforced by using a union, and it is much easier to obtain more than the statutory minima as an organised union shop that as individuals. As already mentioned, an employee has a right to time off for union activities and duties, and also has the right not to be dismissed for union activities, which include trying to organise a union in the workplace.

10) MATERNITY LEAVE AND PAY

Leave

An employee who has been absent from work because of pregnancy is entitled to return to work with her original employer or his successor. She can do so at any time before the end of a period of 29 weeks beginning with the week in which she gave birth. She is entitled to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those which would have applied to her had she not been absent, e.g. she is entitled to any pay rises which had been given while she was away. There are two occasions when an employer does not have to allow a woman to return to her job after she has been away having a baby:-

i) Where immediately before her absence the number of people employed by her employer did not exceed 5, and it is not "reasonably practicable" to reinstate her in her original job or to offer her suitable alternative employment.

ii) Irrespective of the size of the workplace, it is not "reasonably practicable" to reinstate her in her original job and suitable alternative employment is offered and she either accepts or unreasonably refuses that offer.

If, while a woman if off having a baby, her job becomes redundant then she is entitled to a suitable alternative job with her employer or to redundancy pay. (see section on redundancy later).

In order to claim the right to return to work, a woman must satisfy the following conditions:-

i) She must be an employee who is not within an excluded class (see below).

ii) She must have been continuously employed until immediately before the beginning of the eleventh week before the expected week of birth.

iii) She must, at the beginning of that eleventh week, have been continuously employed for a period of not less than two years.

iv) She must inform her employer in writing at least 21 days before her absence begins that she will be absent from work because of pregnancy, that she intends to return to work, and the date of the expected week of birth.

v) If her employer asks for one she must produce a medical certificate showing the expected week of birth.

vi) She must confirm in writing the date on which she intends to return to work within 14 days of receiving a request in writing from her employer for confirmation (or as soon as possible after the request).

vii) She must give 21 days written notice of her intended day of return. She can postpone this day of return, but only once, for up to four weeks, and only for medical reasons. Her employer may do this as well, on more than one occasion, but only up to a total of four weeks, and he must give his reasons.

The women who are excluded from rights to maternity leave are:-

* Women who are employed by their husbands.
* Shqre fisherwomen.
* Policewomen
* Women who normally work outside the U.K.

If her employer refuses to let her return to work, then this will be unfair dismissal. (see section on Unfair Dismissal).

Pay

Women who are absent from work because of pregnancy are entitled to maternity pay. This is payable for six weeks and at the rate of 9/10ths of a week's pay, less maternity allowance. It is paid for the first six weeks absence starting on or after the eleventh week before the expected week of confinement. If her employer fails to pay, a woman can go to an industrial tribunal within three months.

In order to qualify for maternity pay a woman must:-

i) Be an employee and not come within the list set out above.

ii) Have continued to be employed until immediately before the beginning of the eleventh week before the expected week of birth.

iii) At the beginning of that week have been continuously employed for at least two years.

iv) Inform her employer (in writing if he asks) at least 21 days before her absence begins, or as soon as possible, that she will be absent from work because of pregnancy.

v) She must produce, if her employer asks for it, a medical certificate showing the expected week of birth.

A woman is still entitled to the statutory maternity pay even if she does not intend to return to work, or if she resigns, or is dismissed, after she has gone on leave. The only way in which she can lose her rights is if she resigns before the eleventh week before the expected week of confinement.

11) HEALTH AND SAFETY AT WORK

Rights concerning health and safety can be divided into two groups - those which establish the right to safe working conditions and those which entitle a worker to compensation if s/he suffers as a result of unsafe working conditions.

A worker will normally have to look to Acts of Parliament or Common Law (judge-made law) for his/her rights in this field as they are rarely, if ever, properly covered by his/her contract of employment.

There is a wide range of laws in this field, and this section can give only the briefest indication of their scope. When dealing with health and safety, particularly where compensation claims are concerned, it is very important to seek further specialist advice. Minor errors can easily result in loss of compensation in this highly technical area.

Safe working conditions and adequate welfare facilities

Nearly all workers are covered by the Health and Safety at Work Act 1974 (HASAWA). The Act imposes general duties on employers and employees and aims to cover all possible hazards and sources of danger at work. Employers have, as far as is "reasonably practicable" to ensure the health, safety and welfare at work of all employees. Amongst other things, this means that employers must:

- provide safe systems of work, safe machinery and plant and ensure adequate maintenance of it;

- ensure that there is no risk to health in the use, transport handling and storage of substances;

- provide information, instruction training and supervision as is necessary to ensure the health and safety of workers;

- maintain premises and places under his/her control in a safe condition and ensure that access routes and exists are safe;

- maintain a working environment which is without risk to health and provide adequate facilities and arrangements for their welfare at work.
  This applies even if a project is a short term one, eg MSC funded.

The Act also gives trade unions special rights in relation to safety organisation, including rights to time off for safety duties, facilities for safety reps, rights to information etc.

The general duties outlined above are supplemented by details and specific regulations. These will be developed by the Health and Safety Commission. In the meantime, the old regulations and standards established under previous laws set minimum standards for many types of machinery and work processes. For example, the Factories Acts contain standards relating to heating, lighting, provision of toilets rules about the guarding of certain types of machinery in factories, amongst other things. The Offices Shops and Railway Premises Act also contains standards which still have to be used in these work-places.

Most voluntary sector projects will be covered by one of these two Acts, as well as the HASAWA, so it is important to get a hold of the Acts and find out what the duties of employers are under them.

Both the HASAWA and the old legislation is enforced, in most cases, through the Health and Safety Executive.

Local Authority Inspectors also have enforcement powers in certain circumstances.

Where a question arises concerning the adequacy of safety standards (as opposed to action to be taken after an accident) it should normally be taken up by the trade union safety representatives. However, it could if necessary be referred to local Health and Safety Inspectors.

Compensation for injury, illness or death arising out of work

An injured worker, or the family of a dead worker, may be able to claim compensation from her/his employer and/or from the National Insurance scheme.

Compensation from the employer

If the law thinks that the employer should be held responsible for the worker's injury, illness etc. then s/he may be ordered to pay damages (i.e. money compensation) to the workers. This is so even if the employer is grant aided and is a voluntary management committee. This is another reason for obtaining limited liability (see section on Organisation).

In order to get damages the worker will have to be able to show that the employer has broken a legal duty towards him or her. Such a duty might exist because of a statutory provision (although in this case s/he will not always be able to claim), because of the employer's obligations under the contract of employment or, what is the most common ground, because the employer has failed to fulfill his or her common law duty to take reasonable care for the worker's safety. In this last case the employer is usuall said to be 'negligent'.

The employer's common law duty

'Common Law' is the law which has been developed by judges. Under this law it is now well established that the employer has a legal duty to take reasonable care to ensure the health and safety of his or her workers. This means that s/he must ensure:

a) the provision of a safe place of work;
b) the provision of a safe and proper plant and equipment;
c) the provision of a safe system of work;
d) the provision of a competent staff and adequate supervision.

It should be noted that the employer only has to take 'reasonable' care. The courts must decide whether the safety provision was adequate by deciding whether or not the employer had taken 'reasonable' care. This usually involves matters such as a balancing of the forseeability of the accident, the likelihood of such an accident occuring, the gravity of the injury envisaged, existing state of technology and safety standards and the cost of taking safety precautions.

Where the injury is caused by another worker

If a worker has been injured as a result of another worker's negligence, the employer is still responsible to the injured worker. The employer is said to be 'vicariously liable' for the negligence of his or her employees.

Where the injured worker is partly or totally responsible for his or her own injury

If a worker contributes to his or her own injury by being careless him or herself, s/he can still claim damages from her/his employer. However, the court can reduce the damages according to the extent to which the worker is thought to be to blame for the accident. For example, if the court thinks s/he was 50% to blame they could reduce the damages by 50%.

Injury of an unborn child

An employer may be liable to a child which is born injured or which suffers a result of injury caused by negligence etc. of the employer whilst the child was in the womb. For example, if the baby were born deformed as a result of his/her mother being knowingly exposed to the chemicals likely to cause deformity during pregnancy.

Injury to visitors or other people on the premises

Employers have a duty to take reasonable care for the safety of everyone on their premises under both the HASAWA and the Occupiers Liability Act 1959.

What an employee should do if s/he has an accident

If s/he has an accident at work, or is ill and thinks the illness might be connected with work then the following action should be taken:

i) If s/he is in a trade union, s/he should report the matter as soon as possible to the trade union safety representative. If there is no safety representative it should be reported to the shop steward or union rep. etc.

ii) A doctor should be seen as soon as possible. This is essential even if the injury does not seem serious. This is because there may be complications later. In any case, s/he will need a medical certificate to claim National Insurance benefits;

iii) S/he should either get the safety representative to report the accident, in writing, or do it her/himself as soon a possible. (There should be a book in which accidents can be reported.) The report should be brief and factual stating when and where the accident occurred, how it happened and the injuries. S/he should be careful not to admit any responsibility for the accident.

iv) S/he should take the names and addresses of any witnesses.

v) S/he should take advice. S/he should then follow the matter up with the safety representative. If there is no safety rep. take it up with the trade union official, and seek advice from a local Citizens Advice Bureau, Law Centre or Solicitor.

Employers are legally obliged to insure their employees, and the insurance should cover claims for damages. It is also an extremely good idea to take out insurance to cover claims by members of the public coming into your premises.

12) DISCRIMINATION

It is unlawful for an employer to discriminate either on grounds of race or sex in recruiting and employing staff. The terms offered, the access to opportunities for promotion, training and other benefits, and selection for dismissal and redundancy, all have to be the same regardless of the employees race, sex and marital status. It is possible however, to argue that race or sex is a genuine occupational qualification, e.g. you might want an Asian worker to work in a project to help Asians. But take advice because discrimination is a complicated area.

13) EQUAL PAY

Both UK and EEC law say that a woman must be paid the same pay if she is doing like work to a man in the same or broadly similar employment. There are four exceptions to this:-

i) Retirement age;
ii) Occupational pension schemes;
iii) Maternity leave and pay;
iv) Protective legislation.

If a woman believes that she is not being paid equally to a man doing similar work, she can take court proceedings.

14) PROTECTIVE LEGISLATION

There are still laws in force restricting the hours and types of work of women and young persons, i.e. under 18. These are to do with work in factories and industrial workplaces, where night work is forbidden, and in mines, where work is prohibited altogether. But there are also acts which prohibit the employment of young persons in a number of occupations, e.g. goods delivery, errands, hotels, public places, lifts, cinemas and laundries. If you are considering employing young people then check up on the restrictions because if you break the law you could be fined.