

GUIDE TO EMPLOYMENT LAW IN GUERNSEY

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PREFACE

This Guide is a basic summary of employment law in Guernsey.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Employment & Immigration Team in the Dispute Resolution Department, using the [contact information](#) provided at the end of this Guide.

Appleby

Guernsey

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1. WRITTEN STATEMENT OF TERMS AND CONDITIONS

1.1 Contents of Written Statement

All employees are entitled to a written statement within four weeks of the commencement of their employment setting out their terms and conditions of employment which must include the following information:

Contents of Written Statement	
Identity of employer and employee	Start date
Rate of pay or the method of calculation	Pay intervals
Hours of work	Holiday entitlement
Provisions relating to sickness and sick pay	Pension entitlement
Notice periods	Job title
Maternity pay or leave entitlement	Date of expiry of fixed term (if applicable)

Where there is no relevant entitlement to be included within the particulars, the statement shall include that fact e.g. no entitlement to a pension scheme. In addition, the statement may refer the employee to another document which is reasonably accessible which sets out details of any of the required particulars.

Where there is a subsequent change in any of the terms of employment set out above, that information must generally be confirmed in writing not more than four weeks after the change.

1.2 Exclusions

The above provisions do not apply in relation to any period where the employee is engaged to work wholly or mainly outside Guernsey, certain categories of mariners or where the employee and employer are also husband and wife.

1.3 Enforcement and Remedies

Where an employer fails to provide a written statement of terms and conditions, an employee may require a reference to the Employment & Discrimination Tribunal (**Tribunal**) for a determination over what particulars ought to have been included in a statement. In addition, a failure to comply with the obligation to provide a written statement of terms and conditions is a criminal offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale. As at the date of this Guide the current maximum fine is £5,000.

1.4 Comments

The requirement to have a basic written statement is a fairly straightforward requirement, although it is one some employers do not comply with. What is unusual about Guernsey is that failure to comply with this requirement is backed up with potentially criminal sanctions.

2. WRITTEN STATEMENT OF PAY AND DEDUCTIONS

2.1 Contents of Pay Statement

All employees are entitled to a written statement on or before the day they are due to be paid including the following information:

Contents of Pay Statement	
Gross amount of pay	Amount of each deduction from pay
Reason for deduction	Aggregate amount of all deductions
Net amount of payable	Date on which payment will be made

2.2 Enforcement and Remedies

A failure to comply with the obligation to provide a written statement of term and conditions is a criminal offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale. As at the date of this Guide the current maximum fine is £5,000.

2.3 Comments

This requirement is something that any employer with any form of automated payroll system should be compliant with, as the information required is fairly basic.

3. WRITTEN STATEMENT OF REASONS FOR A DISMISSAL

3.1 Qualification for the Right

Where an employee with at least one year's continuous employment is dismissed by his employer, or where a fixed term contract expires and is not renewed, the employee is entitled upon request to a written statement giving particulars of the reasons for his dismissal or termination.

In cases where the employee was pregnant or on any contractual period of maternity leave, then the employee is entitled to receive a statement, regardless of whether she makes a request or her length of service.

3.2 Exclusions

This right does not apply in cases where the employee ordinarily works outside of Guernsey.

3.3 Enforcement and Remedies

An employee has the right to make a complaint to the Tribunal within three months of the effective date of termination on the grounds that the employer unreasonably failed to provide a written statement or that the particulars of reasons given in purported compliance with this section are inadequate or untrue.

Where the Tribunal upholds a complaint by an employee, in addition to making a finding of what the reason for dismissal was, it shall make an award equal to half a month's pay or two weeks' pay (where the employee was paid weekly).

3.4 Comments

The entitlement to receive a written statement of reasons for a dismissal, whilst important in theory, should not cause employers too much difficulty, as in any letter of dismissal it is best practice to include a reason.

4. MINIMUM PERIODS OF NOTICE

4.1 Qualification for the Right

All employees are entitled to receive and required to give minimum periods of notice based on the length of service as follows:

Period of Employment	Notice to be given
1 month but less than 2 years	1 week
2 years but less than 5 years	2 weeks
5 years more	4 weeks

4.2 Exclusions

The above provisions do not apply to fixed term contracts of three months or less (unless the employee has been continuously employed for more than three months); the employee is engaged to work wholly or mainly outside Guernsey; certain categories of mariners or in certain cases of insolvency.

4.3 Comments

Although this is an important right for lower paid employees, in practice, after the end of any probationary period, most employers will generally include notice periods of between one and three months for staff, with more senior staff on anything up to six or 12 months. What is unusual in Guernsey is that the increasing notice periods with service apply equally to employer and employee.

5. UNFAIR DISMISSAL

5.1 The Basic Right

All qualifying employees have the right not to be unfairly dismissed. For the purposes of the law, dismissal means termination by the employer, non-renewal of a fixed term contract on its expiry or constructive dismissal.

In order for a dismissal to be fair:

- it must be for one of the five potentially fair reasons, namely capability, conduct, redundancy, breach of statutory duty or restriction or some other substantial reason; and
- the employer must have acted reasonably in treating it the reason as sufficient for dismissing the employee.

5.2 Qualification for the Right

In order to qualify for the right, an employee must have been employed for a period of not less than one year, save where the reason for the dismissal is on one of the automatically unfair grounds (see below).

5.3 Exclusions

This right does not apply in cases where the employee ordinarily works outside of Guernsey; certain categories of mariners; or on the expiry of a fixed term where the employee has previously agreed to exclude the right to unfair dismissal in writing.

5.4 Automatically Unfair Dismissals

Where the principal reason for a dismissal is on one of the following grounds it will be automatically unfair:

Automatically unfair dismissals	
Trade union membership or activities	Sex, marital status or gender re-assignment
Health and safety grounds	Assertion of a statutory right
Protected or opted-out shop workers who refuse Sunday work	

Please see below for more information on the topics of sex discrimination and Sunday work.

5.5 Enforcement and Remedies

Any claim must be brought within three months beginning on the effective date of termination, or where it was not reasonably practicable for the complaint to have been brought, within such further time as the Tribunal shall allow. Where a dismissal is with notice, it is permitted to bring a claim for unfair dismissal before the notice has expired.

Where the Tribunal upholds a complaint by an employee, it shall make an award equal to six months' pay or 26 weeks' pay (where the employee was paid weekly). Awards of compensation are not subject to reduction on the grounds that the employee has found alternative employment and so mitigated their loss, but can be reduced in circumstances where:

- the employee unreasonably refused an offer of re-employment by the employer; or
- in any other circumstances where it would be just and equitable to reduce the amount of the award of compensation.

In cases of automatic unfair dismissals, there is no reduction applied under the second ground set out above.

5.6 Comments

When considering any judgment, the Tribunal will take into account the relevant Codes of Practice published by the Employment Relations Service which cover redundancy and disciplinary cases. The principles set out in these Codes are largely common sense and will mirror most internal disciplinary procedures, but if in doubt it is always advisable to refer back to these documents.

What is unusual about Guernsey is the fact that there is a single flat award of six months' or 26 weeks' pay in cases of unfair dismissal. Inevitably this figure will often influence negotiations over entering into compromise agreements, as the employer is always aware that this is a worst case figure.

6. SEX DISCRIMINATION

6.1 The Basic Right

It is unlawful to discriminate against people within the workplace on the grounds of:

- sex
- marital status; or
- gender reassignment.

Discrimination for these purposes includes:

- **Direct discrimination** – This occurs when a person is treated less favourably than another person because of their sex;
- **Indirect discrimination** – This occurs when an employer applies a provision, criterion or practice which applies to all employees but which is a detriment to a considerably larger proportion of women and which he cannot show to be justifiable;
- **Victimisation** – This occurs where a person is subjected to less favourable treatment on the grounds that they have either complained about discrimination, or supported another employee who has complained about discrimination; and
- **Harassment** - unwanted, unreasonable or offensive conduct (physical, verbal or otherwise) of a sexual nature or other conduct based on sex affecting the dignity of men or women at work.

6.2 Qualification for the Right

The right extends to all employees regardless of length of service, as well as job applicants and temporary agency staff.

6.3 Exclusions

There are a number of exclusions to the law, but the key ones are as follows:

- **Genuine Occupational Qualification** – Typical examples of GOQ's include the engagement of a female actor to play a female role in a production, or in cases of decency where the job would involve close physical contact by a member of the opposite sex and there would be reasonable objection; and
- **Maternity pay** – Although there is no statutory right to maternity pay in Guernsey, it is not unlawful to provide additional benefits to women in connection with pregnancy or childbirth e.g. provision of paid maternity leave.

6.4 Enforcement and Remedies

Any claim must be brought within three months beginning on the date of the act complained about, or where it was not reasonably practicable for the complaint to have been brought within such further time as the Tribunal shall allow.

Where the Tribunal upholds a complaint by an employee, it shall make an award equal to three months' pay or 13 weeks' pay (where the employee was paid weekly). For cases of dismissal on the grounds of sex, see the Unfair Dismissal section above.

6.5 Comments

At present the only protection against discrimination within Guernsey is on the grounds of sex, although it is anticipated disability discrimination is likely to come into force at some point during 2017. Although there is no formal right to request flexible working in Guernsey, employers should still genuinely consider requests which may be made, otherwise they could face claims of indirect sex discrimination.

It is recommended all employers should have an equal opportunities policy which explains to staff the position of the company on such issues. In addition it is recommended equal opportunities training should be given to staff, so that they can understand the risks involved, including the fact that it is possible for individuals to be personally liable for acts of discrimination as well as their employers.

7. FAMILY FRIENDLY RIGHTS

7.1 The basic right

Legislation introduced a number of family friendly rights with effect from 1 April 2016 including:

- **Ante-Natal Care.** Expectant mothers would be entitled to time off to attend both medical appointments and parent craft classes.
- **Basic Maternity/Adoption Leave.** All new mothers/adoptive parents are entitled to up to 12 weeks' basic maternity adoption leave, the first two weeks' of which are compulsory.
- **Additional Maternity/Adoption Leave.** All new mothers/adoptive parents with at least 15 months' continuous service at the eleventh week before the due date/placement date, would be entitled to an additional period of up to 14 weeks (i.e. a total of 26 weeks).
- **Keeping-In-Touch Days.** During maternity / adoption leave, the mother would be entitled to work for up to ten days without affecting their leave entitlement.
- **Maternity/Adoption Support Leave.** Partners of new mothers will be entitled to take up to two weeks' unpaid leave provided that they have 15 months' continuous service at the eleventh week before the due date/placement date.
- **Right to Return.** Employees who exercise their statutory right to take leave, have a right to return to their former role, or in the case of redundancy to be offered any suitable alternative employment.

7.2 Qualification for the right

The new rights apply in cases where the due date or expected placement date is on or after 7 August 2016.

7.3 Exclusions

The above rights are generally subject to the employee notifying the employer.

The right to return is subject to various exceptions, including in cases of redundancy, although advice should always be sought in such circumstances.

7.4 Enforcement and Remedies

Any claim in relation to the enforcement of these rights is brought through the existing framework of unfair dismissal, sex discrimination or detriment. The remedies for such claims are set out above.

7.5 Comments

The States are set to report back on proposals to implement shared parental leave by the end of 2016 with a view to introducing it over the next few years. In addition, although the right to maternity leave is currently unpaid, the intention is to introduce a paid right in due course. This is being considered alongside the existing right that all new mothers have to a maternity allowance from the States of up to 18 weeks, plus a maternity grant.

There is currently no formal right to request flexible working – see Sex Discrimination above.

8. REFUSING TO WORK ON SUNDAYS

8.1 The Basic Right

Any protected shop workers or opted-out shop workers have the right not to be subjected to a detriment for refusing to work on a Sunday.

8.2 **Qualification for the Right**

Protected shop workers are deemed to be those who have been employed by the same employer prior to 1 July 2002 or any other shop workers whose contract of employment does not require them to work on Sundays.

All other shop workers can opt out of Sunday working by providing their employer with three months' written notice saying that they object to Sunday working.

8.3 **Exclusions**

The right does not apply to those shop workers who are only employed to work on Sundays.

8.4 **Enforcement and Remedies**

Any claim must be brought within three months beginning on the date of act complained about, or where it was not reasonably practicable for the complaint to have been brought, within such further time as the Tribunal shall allow.

Where the Tribunal upholds a complaint by an employee, it shall make an award equal to one month's pay or four weeks' pay (where the employee was paid weekly). For cases of dismissal on the grounds of refusal to work on Sundays, see the Unfair Dismissal section above.

8.5 **Comments**

The procedure around workers opting out of Sunday working are complicated and any notice is required certain prescribed information. For clients in the retail sector, it is advisable to have a policy on this area to hopefully avoid disputes.

9. **MINIMUM WAGE**

9.1 **The Basic Right**

All workers are entitled to receive the minimum wage, which from 1 October 2015 is as follows:

- for workers of 18 years of age and older – £6.85 per hour; and
- for workers of 16 and 17 years old - £6.10 per hour.

Where a worker is provided with accommodation and food, the maximum offset against wage an employer can make is £92 per week. If a worker is provided with accommodation only, then the maximum offset is £64 per week.

A worker's appropriate rate is calculated by averaging their hourly pay in any pay reference period. For those workers paid monthly, the pay reference period is a month, whereas for those paid weekly it will be a week.

Any worker has the right not to be subjected to a detriment in connection with the minimum wage.

9.2 **Qualification for the Right**

The right applies to nearly all workers employed in Guernsey regardless of length of service. As this is a right which belongs to the wider category of workers rather than just employees, it includes, for example, casual workers and temporary agency staff.

9.3 **Exclusions**

The only workers excluded from the right are certain fisherman, prisoners, voluntary workers and apprentices under the age of 18.

Most payments made to staff will count towards the calculation of the minimum wage, but there are a number of important exclusions including overtime rates, unsocial hours allowances and tips.

9.4 **Enforcement and Remedies**

The law can be enforced either by individual workers through the Tribunal or the courts, or by the States themselves. Where a complaint by an employee is upheld, it shall make an award equal to the shortfall in pay plus interest.

Where the Tribunal upholds a complaint by an employee that he has been the subject of a detriment, it shall make an award equal to one month's pay or four weeks' pay (where the employee was paid weekly). For cases of dismissal connected with the minimum wage see the Unfair Dismissal section above.

Failure to comply with the minimum wage, obstructing an enforcement officer, or failing to keep records, or keeping false or misleading records are all criminal offences. Penalties are fines of up to £10,000, three months in prison, or both.

9.5 **Comments**

For employers who operate more complicated pay structures, it can actually be very difficult to properly calculate the appropriate rate of pay, as not all payments made will qualify. In addition, there is the possibility of criminal sanctions for both the employer and responsible individuals, which may include a custodial sentence.

10. **CONTRACTING OUT AND COMPROMISE AGREEMENTS**

10.1 **The Basic Right**

Any provision which purports to exclude or limit any right or otherwise to preclude any person from bringing proceedings before the Tribunal is void, with the exception of:

- an agreement by a fixed term worker to exclude their right to bring a claim for unfair dismissal upon expiry of their contract;
- an agreement reached following conciliation through the Employment Relations Service at the Commerce and Employment Department; or
- A valid compromise agreement.

10.2 **Compromise Agreements**

It is possible for employees to waive any rights they may have to bring a Tribunal claim by entering into a valid compromise agreement which complies with the following conditions:

- the agreement is in writing;
- the agreement relates to the particular proceedings;
- the employee has received independent legal advice on the terms of the agreement;
- the adviser had in force at the time the advice provision for insurance;
- the agreement identifies the adviser; and
- the agreement states the conditions regulating compromise agreements are satisfied.

Legal advice on a compromise agreement can be given by a lawyer (which includes both Advocates of the Royal Court of Guernsey, members of the bar or solicitors in the UK) or a certified officer of the trade union.

10.3 **Comments**

Although there is no legal requirement to make a contribution towards an employee's legal costs of obtaining independent advice, it is certainly customary to do so.

11. **IMMIGRATION AND HIRING FOREIGN NATIONALS**

- 11.1 Immigration in Guernsey is tightly controlled, principally through restrictions on the property market, which means that it is expensive for anyone who is not a qualified resident or has been granted a housing licence, as they would be required to purchase or rent property on the "Open Market", rather than the "Local Market".
- 11.2 In order to take up employment within Guernsey, it is necessary to obtain from any employee a valid Right to Work document. The principal categories are:
- (a) **Status Declaration** – These are held by qualified residents, who typically have either been born and brought up on Guernsey, or lived here for many years and have close connections.
 - (b) **Housing Licence** – As referred to above, in order to live in Guernsey, the Housing Authority must grant a licence to anyone who is not a qualified resident. Most Housing Licences are tied to particular employment and are either: "short term" where it is recognised there is a shortage in manpower usually for up to nine months or "essential workers", which are issued for skilled positions, normally for up to five years, although these can be extended in limited cases.
 - (c) **Declaration of Lawful Residence** – These are granted to individuals who are lawfully in Guernsey, but are not either a qualified resident or housing licence holder. By way of example, this would include anyone who is a spouse of a licence holder or occupant of Open Market property.
 - (d) **Temporary Exemption Certificate** – It is possible for someone who is awaiting one of the above to take up employment, provided they have been granted a Temporary Exemption Certificate.
- 11.3 In addition to the above, all non-EEA nationals also require a work permit to take any employment in Guernsey.
- 11.4 All employers are required by law to keep records of the Right to Work documents held by every employee employed since 1 December 1989, including the type of Right to Work document, its reference number and expiry date. Failure to hold a valid Right to Work document is a criminal offence and both the employee and employer can be liable.

12. SUMMARY OF KEY DIFFERENCES WITH UK LAW

Although Guernsey law is similar to UK law in a number of regards, the following are some of the key areas where there is no equivalent local legislation.

Discrimination	Other areas
Race	Redundancy pay
Disability	Sick pay
Sexual orientation	Holidays
Religion or belief	Collective redundancies
Age	TUPE
Whistleblowing	Agency workers

13. SUMMARY OF KEY RIGHTS AND PENALTIES

Employment Right	Penalties
Written Statement of Terms and Conditions	Criminal offence - max fine £5,000
Written Statement of Pay and Deductions	Criminal offence - max fine £5,000
Written Statement of Reasons for a Dismissal	Half a month's or 2 weeks' pay
Minimum Periods of Notice	1 to 4 weeks' notice
Unfair Dismissal	6 months or 26 weeks' pay
Refusing to Work on Sundays	1 month's or 4 weeks' pay (Detriment)
Sex Discrimination	3 month's or 13 weeks' pay (Detriment)
Minimum Wage	1 month's or 4 weeks' pay (Detriment)

For more specific advice on employment law in Guernsey, we invite you to contact:

Guernsey

Richard Sheldon

Counsel

Dispute Resolution

+44 (0)1481 755 904

rsheldon@applebyglobal.com

For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).

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