

Hiring in **the UK**

An Early-Stage Employer's Guide

Introduction

We understand that you are currently considering hiring one or more individuals in the UK. This note briefly outlines the key practical steps and employment law considerations that companies should be aware of when hiring staff in the UK.

While not all of the entitlements and obligations described below will necessarily apply to you, we have included information that will be relevant in the event that you decide to grow your workforce in the UK.

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Employment Status

In the context of employment rights, there are three types of employment status, and the status determines the rights, duties and obligations owed by the company to the individual and vice versa. Somewhat unhelpfully, the definitions of each change depending on the context – e.g., someone might be an employee for tax purposes but not otherwise. Broadly speaking, however, this is the position:

Employee	Worker	Independent Contractor
Contact <i>of</i> service	Contract to perform work <i>personally</i>	Contract <i>for</i> service
Personal service, control, and mutuality of obligation	Occasional workers/LLP members	In business for own account
Full employment protection	Some statutory protections: <ul style="list-style-type: none"> ▪ Minimum wage ▪ Holiday pay ▪ Discrimination and whistleblowing protection 	Takes financial risk Very few statutory protections

The tests for employee status have evolved through case law and can be complex. As a general guide, the key minimum indicators of employee status are *personal service* (the individual performs services and cannot arrange a substitute), *control* (the employer determines broadly what tasks are to be done, when and how) and *mutuality of obligation* (the employer has an obligation to provide work and pay a wage or salary). “Worker” status falling short of employee status is often relevant to individuals engaged in casual or occasional work, e.g. in gig economy roles or in a quasi-employee capacity such as a member of a limited liability partnership.

Employment status is determined by the factual reality of the relationship, not by the agreed status set out in writing (i.e. entering into a *consultancy* agreement with an individual will not preclude them claiming *employee* status if the nature of the relationship is really more akin to an employment one).

Setting up as an Employer

The UK government's website has a helpful (albeit basic) summary of the steps that companies should take when looking to employ staff in the UK. A link to the summary can be found here: <https://www.gov.uk/get-ready-to-employ-someone>, and we have provided further detail on the key steps below.

Registering as an Employer with HM Revenue and Customs (“HMRC”)

Employers of UK-based employees must deduct income tax and employee's National Insurance contributions from each employee's earnings through the Pay As You Earn (“PAYE”) system. The employer must also pay employer's National Insurance contributions on the employee's earnings. Income tax bands and National Insurance contribution levels are set by the government on an annual basis. In order to make the necessary deductions, you must register as an employer with HMRC and apply for a PAYE reference number through the following link: [Register as an employer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/register-as-an-employer).

Employer's Liability Insurance

Every employer in the UK is obliged to safeguard the health and safety of its employees, visitors to its premises and the public. The obligations are extensive and extend to employees who work from home – they include a duty to carry out a risk assessment and to obtain employers' liability insurance of at least £5,000,000. Further details regarding these obligations can be found on the UK government's website, which includes a link to suggested insurance brokers: <https://www.gov.uk/employers-liability-insurance>. You should aim to have

the necessary insurance in place from an employees' commencement date as employers can face daily fines of up to £2,500 for failing to have the appropriate insurance in place. Contacting an appropriate insurance broker should be a priority.

Right to Work

An employer has a duty to ensure that any employee that it hires has the right to work in the UK. The UK government has provided guidance on the steps required to check that a candidate has the right to work in the UK: [Checking a job applicant's right to work - GOV.UK \(www.gov.uk\)](https://www.gov.uk/checking-a-job-applicant-s-right-to-work). These steps include reviewing the candidate's original identity documents.

Data Protection Register

Most commercial employers will qualify as “controllers” of personal information under UK data protection law and are required to register as a feepayer with the Information Commissioner's Office (ICO). Annual fees range from £40 to £2,900, depending on headcount and turnover. See: <https://ico.org.uk/for-organisations/data-protection-fee/register>.

Employment Contract

See our blog post article *New Requirements for Employment Agreements in Europe*. Click on the link or scan the code below.



In this guide we hope to remove some of the uncertainty that can come with making your first hires in the UK; providing you with the key information you need to consider when employing people for the first time and helping you to anticipate some of the challenges and complexities that can arise during the employment life cycle.



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Basic Entitlements for Employees

Written Statement of Terms and Conditions of Employment

It is a requirement for an employer to give the employee a written statement setting out certain specified terms of their employment on the date of their employment. This “written statement” usually takes the form of an employment contract, supported by various employee-facing policies or a handbook. Together, these documents will cover both the mandatory terms as well as other commercial or industry-specific protections that the employer or employee may require – e.g. confidentiality obligations, intellectual property protections, garden leave and, often heavily negotiated, other restrictive covenants necessary to protect the employer’s interests in the event that the employee leaves. See our blog post on these written statements: [New Requirements for Employment Agreements in Europe | Morrison Foerster \(mofo.com\)](#).

It is important to note that if an employer proposes to amend the terms of an employment contract, and there is no existing contractual right allowing the change, they should obtain the consent of the employee/s affected. If the employer varies the terms of the contract, for example by changing the employee’s job title and duties without the employee’s consent, the employee may be able to resign and claim “constructive dismissal”.

Basic Entitlements for Employees (cont.)

Minimum Entitlements

An employee’s minimum entitlements to pay, holiday and sick pay as well as the minimum notice periods to terminate an employee’s employment are described in the table below:

Benefit	Minimum Entitlement
Pay	All employees in the UK are entitled to be paid at least the national living wage, which is currently set at £11.44/hour for persons aged 23 and over. ¹ <i>Note: It is possible to pay employees in the UK in US\$, although you will have to agree on a formula for calculating the exchange rate of such payments.</i>
Itemised Pay Slips	Employers must give their employees itemised pay statements specifying gross and net salary and the amount and purpose of any deductions.
Hours of Work	Employees may not work, on average, for more than 48 hours per week, unless they consent to opt-out of this limit in writing. Employees have the right to cancel their consent to opt-out by giving three months’ notice at any time.

¹ The National Living Wage is reviewed annually and usually increases in April each year.

Benefit	Minimum Entitlement
Holidays	UK employees are entitled to a minimum of 5.6 weeks (or 28 days for full-time employees) of paid annual leave each year, inclusive of public holidays. Employers can require employees to take (or not take) leave on specific dates. Employees in the UK do not have a legal right to time off on public holidays, and employers are not required to allow employees to take leave on those dates (although most employers will) provided their overall annual leave entitlement for the year amounts to at least 28 days (or a pro-rated equivalent for part-time employees). Employers are not allowed to pay employees in lieu of their annual leave entitlement, other than on termination of employment. <i>Note: The right to annual leave is separate from and additional to any leave taken by the employee for other reasons (e.g. sickness or family leave).</i>
Statutory Sick Pay	Employees in the UK are entitled to receive statutory sick pay at a rate of £116.75 per week for the 2024-2025 tax year during periods of sickness from work for up to 28 weeks. It is quite common for UK businesses to also pay contractual sick pay (often calculated based on full or half salary) for a limited period during sickness absence, albeit this is not a legal requirement. A tool for calculating statutory sick pay is available here: https://www.gov.uk/calculate-statutory-sick-pay .
Notice	Unlike the U.S. concept of “employment at will”, employers must both have a fair reason for dismissing employees in the UK and follow a fair process in doing so. Part of this involves providing the employee with prior written notice. An employee with continuous employment of at least one month is entitled to be provided with a statutory minimum notice period of at least one week. An employee with two years (or more) of continuous employment is entitled to one week’s notice for every complete year of service, up to a maximum of 12 weeks. It is common practice in the UK for employers to agree to longer notice periods, particularly for more skilled employees.

Basic Entitlements for Employees (cont.)

Pension Obligations

UK employers are required to auto-enrol jobholders (employees aged at least 22 with yearly earnings of at least £10,000) in a pension scheme that meets specific standards. An eligible jobholder can opt out of the pension scheme once they have been automatically enrolled. However, while they remain an active member, their employer will be required to pay a minimum level of pension contributions – this minimum contribution is 8% of the individual’s earnings, with at least 3% being an employer contribution. The UK Pensions Regulator provides advice to new employers who might be late in auto-enrolling employees, as well as advice regarding auto-enrolment obligations more generally: [New employers | The Pensions Regulator](#).

The obligation to auto-enrol starts from the date on which the first employee commences employment, and so, as with employer’s liability insurance, you should look into putting in place a qualifying pension scheme as soon as possible. The Nest pension scheme is a pension scheme run by the UK government, which is free (to set up and run) for employers. Nest is required by law to accept employees onto its scheme (as opposed to other providers). The Nest pension scheme may be one cost-effective way of complying with the employer’s pension auto-enrolment obligations when hiring a small number of employees in the UK. Further details on the Nest pension scheme are available here: <https://www.nestpensions.org.uk/schemeweb/nest/employers/set-up-your-workplace-scheme.html>.

Family-Friendly Rights

Maternity leave and pay

All pregnant employees are entitled to paid time off for antenatal care and to take statutory maternity leave of up to 52 weeks, made up of 26 weeks of ordinary maternity leave and 26 weeks of additional maternity leave, and the right to return to the same or a suitable, alternative role. The employee may also be entitled to statutory maternity pay (“SMP”) for up to 39 weeks provided she has been continuously employed by her employer for at least 26 weeks by the 15th week before the week the baby is due.

Paternity leave and pay

Eligible employees currently have the right to take up to two weeks’ statutory paternity leave (in blocks of one week or two consecutive weeks) during the 52 weeks after birth/adoption (known as ordinary paternity leave). Eligible employees may also be entitled to statutory paternity pay at a rate set by the UK Government or 90% of normal weekly earnings if lower.

Shared parental leave

Employees may also be entitled to take shared parental leave, instead of or in addition to a period of maternity and paternity leave. This leave is aimed at allowing parents more flexibility to share childcare in the first year. Parents are able to share up to 50 weeks of leave and up to 37 weeks of pay and can be off work at the same time or separately.

Basic Entitlements for Employees (cont.)

Statutory adoption leave

Employees are entitled to statutory adoption leave of up to 52 weeks, made up of 26 weeks of ordinary adoption leave and 26 weeks of additional adoption leave, if they are matched with a child for adoption by an adoption agency or have a child through a surrogacy arrangement. The employee may also be entitled to statutory adoption pay, calculated on the same basis as SMP.

Parental bereavement leave

Employees are entitled to take up to two weeks of statutory parental bereavement leave, which may be taken at any time within 56 weeks of the death of a child or in the case of a stillbirth after 24 weeks of pregnancy. Employees may also be entitled to statutory parental bereavement pay, which is paid at the same rate as statutory paternity pay for one or two whole weeks.

Other leave entitlements also exist and there are recent new protections for working parents and carers, including, in a RIF or redundancy scenario, priority consideration for suitable alternative vacancies for new parents who have recently returned to work after a period of family leave. See our article on this here: [What To Know About Latest UK Employment Law Changes](#).

Additional Benefits

In addition to the basic statutory entitlements described above, many employers in the UK will choose (although they are not obliged) to enhance the level of entitlement and/or to offer additional benefits such as, for example:

- private medical and dental insurance;
- critical illness cover;
- remote or hybrid working;
- income protection;
- life assurance; and
- cycle-to-work schemes.

Further information regarding such additional benefits can be provided by benefits consultants. Note that benefits-in-kind are generally taxable, and so this cost should be factored into the provision of such benefits and communicated to employees.

Termination of Employment

Notice Period

When terminating an employee, you must observe the terms of the contract governing dismissal (including in respect of applicable notice periods) in order to avoid a breach of contract (known as a “wrongful dismissal” claim). The measure of damages for a wrongful dismissal claim is usually the salary and benefits the employee would have received if they had worked their notice period, reduced by any income the employee has earned during the period equivalent to the notice period. Employers will often include a probationary period in a new employee’s contract (usually between three and six months), which will allow the employer to assess the employee’s ability to perform the role during that period and will typically include a shorter notice period.

Statutory Protection Against Dismissal

In addition to contractual notice, if the employee has at least two years of continuous employment, they may be entitled to bring a statutory claim for ordinary unfair dismissal if their employment is terminated without a potentially fair reason (e.g. misconduct, performance or redundancy) and/or their employer fails to follow the correct process in carrying out the dismissal.

Advice for employers on good practice for dealing with disciplinary issues and grievances is offered by Acas: [Acas guide to discipline and grievances at work | Acas](#).

Note: Following the change in government on 5 July 2024, significant legislative changes are anticipated in the UK over the coming months, which are likely to include abolishing the length of service requirement to bring an unfair dismissal claim.

Redundancy

Employees with at least two years of service who are dismissed by reason of redundancy are also entitled to a statutory redundancy payment calculated by reference to their weekly pay (which is capped for the purposes of the calculation at a government-set rate), age and length of service with the employer. Statutory redundancy payments are currently capped at £21,000.

Collective Consultation

It is important to note that where employers propose to dismiss 20 or more employees within a 90-day period collective consultation is required which will impact timing and process for the redundancies – and getting it wrong can be costly.

Severance Payment

Aside from notice pay and redundancy pay, it is uncommon for employees to be entitled to payments on termination of employment. However, such payments may be made in return for a release and waiver of claims (a “settlement agreement”). In order effectively to waive statutory claims such as unfair dismissal and discrimination, employees must receive independent legal advice on the terms and effect of the waiver.

Get in touch!

Some of your questions not answered yet? We're here to help!



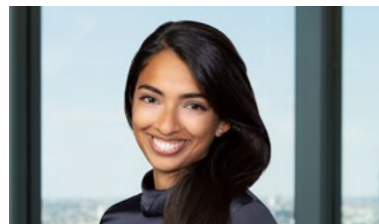
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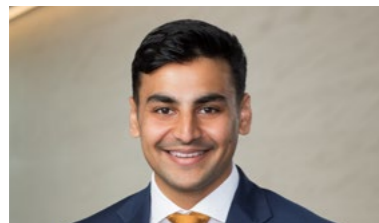
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Setting up in a new jurisdiction can feel like a giant step into the unknown, especially when it comes to the unique twists and turns of local employment laws. Our experienced London-based team works alongside clients starting out on their journey in the UK, ensuring that those “unknowns” quickly become known quantities and that our clients set out on the right path to growth.



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