

EQUAL OPPORTUNITIES

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Equal Employment Opportunity 1964–1991

- Title VII of the Civil Rights Act (1964)
 - An employer cannot discriminate on the basis of race, colour, religion, sex, or national origin with respect to employment.
 - Coverage
 - All public or private employers of 15 or more persons.
 - All private and public educational institutions, the federal government, and state and local governments
 - All public and private employment agencies
 - All labour unions with 15 or more members

Title VII of the 1964 Civil Rights Act

- The Equal Employment Opportunity Commission (EEOC)
 - Consists of five members appointed by the president with the advice and consent of the Senate.
 - Each member serves a five-year term.
 - The EEOC has a staff of thousands to assist it in administering the Civil Rights law in employment settings.
 - EEOC may file discrimination charges and go to court on behalf of aggrieved individuals.

Executive Orders

- Executive Orders 11246 and 11375
 - Require affirmative action: steps that are taken for the purpose of eliminating the present effects of past discrimination
- Office of Federal Contract Compliance Programs (OFCCP)
 - Responsible for implementing the executive orders related to affirmative action and ensuring the compliance of federal contractors.

Employment Discrimination Laws

- Equal Pay Act of 1963
 - The act requiring equal pay for equal work, regardless of sex.
- Age Discrimination in Employment Act of 1967 (ADEA)
 - The act prohibiting arbitrary age discrimination and specifically protecting individuals over 40 years old.
- Vocational Rehabilitation Act of 1973
 - The act requiring certain federal contractors to take affirmative action for disabled persons.

Employment Discrimination Laws (cont'd)

- Vietnam Era Veterans' Readjustment Act of 1974
 - An act requiring that employees with government contracts take affirmative action to hire disabled veterans.
- Pregnancy Discrimination Act (PDA) of 1978
 - A Title VII amendment that prohibits sex discrimination based on “pregnancy, childbirth, or related medical conditions.”
 - If an employer offers its employees disability coverage, then it must treat pregnancy and childbirth like any other disability, and include it in the plan as a covered condition.

Federal Agency Guidelines

- Uniform Guidelines
 - Guidelines issued by federal agencies charged with ensuring compliance with equal employment federal legislation explaining recommended employer procedures in detail.
 - The EEOC, Civil Service Commission, Department of Labor, and Department of Justice together have **uniform guidelines** for employers to use.



Title VII: Sexual Harassment

- Sexual harassment
 - Harassment on the basis of sex that has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.
 - Employers have an affirmative duty to maintain workplaces free of sexual harassment and intimidation.
- Federal Violence Against Women Act of 1994
 - A person who commits a violent crime motivated by gender is liable to the party injured.



Equal Employment Opportunity 1991–present

- Civil Rights Act of 1991 (CRA)
 - It places burden of proof back on employers once the plaintiff has made a prima facie case and permits compensatory and punitive damages.
- Disparate impact
 - A practice or policy that has a greater adverse impact on the members of a protected group than on other employees, regardless of intent.
- Disparate treatment
 - Intentional discrimination on the part of the employer.

Equal Employment Opportunity 1991–present

- Desert Palace Inc. vs. Costa.
 - Mixed motive: an employer cannot avoid liability by proving it would have taken the same action even without the discriminatory motive.
 - Workers do not have to provide evidence of explicitly discriminatory conduct (such as discriminatory employer statements), but could provide circumstantial evidence (such as lowered performance evaluations).

Americans with Disabilities Act (ADA)

- ADA of 1990
 - Requires employers to make *reasonable accommodations* for disabled employees; it prohibits discrimination against disabled persons.
- Disability
 - A physical or mental impairment that substantially limits one or more major life activities.
 - Excludes homosexuality, bisexuality, voyeurism, compulsive gambling, pyromania, and disorders resulting from the current illegal use of drugs.



ADA and Individuals

- Qualified individuals
 - Under ADA, those who can carry out the essential functions of the job.
- Reasonable accommodation
 - If the individual can't perform the job as currently structured, the employer must make a "reasonable accommodation" unless doing so would present an "undue hardship."



Employer Obligations under ADA

- An employer must make a reasonable accommodation for a qualified disabled individual unless doing so would result in undue hardship.
- Employers are not required to lower existing performance standards or stop using tests for a job.
- Employers may ask pre-employment questions about essential job functions but can not make inquiries about disability.
- Medical exams (or testing) for current employees must be job-related.
- Employers should review job application forms, interview procedures, and job descriptions for illegal questions and statements.
- Employers should have up-to-date job descriptions that identify the current essential functions of the job.

Disabilities and ADA

- Courts will tend to define “disabilities” quite narrowly.
- Employers are not required to tolerate misconduct or erratic performance even if the behaviours can be attributed to the disability.
- Employers do not have to create a new job for the disabled worker nor reassign that person to a light-duty position for an indefinite period, unless such a position exists.
- Employers should not treat employees as if they are disabled so that they will be “regarded as” disabled and protected under the ADA.

State and Local Equal Employment Opportunity Laws

- The effect of the state and local laws is usually to further restrict employers' treatment of job applicants and employees.
 - State and local laws cannot conflict with federal law but can extend coverage to additional protected groups.
 - The EEOC can defer a discrimination charge to state and local agencies that have comparable jurisdiction.

CONTRACT OF EMPLOYMENT



Contract of employment

- A contract gives both employers and employees certain rights and obligations.
- The most common example is that employees have a right to be paid for the work they do.
- Employer has a right to give reasonable instructions to you and for you to work at your job. These rights and obligations are called **contractual terms**.


- A contract of employment will usually be made up of two types of contractual terms.
- These are:-
 - express terms
 - implied terms

Express contractual terms

Express terms in an employment contract are those that are explicitly agreed between employee and employer and can include:-

- amount of wages, including any overtime or bonus pay
- hours of work, including overtime hours (there is a legal limit for most employees on the maximum number of hours they can work per week)
- holiday pay, including how much time off you are entitled to (nearly all workers are entitled by law to four weeks paid holiday - they may be entitled to more under their contract)
- sick pay
- redundancy pay
- how much warning (notice) the employer must give you if you are dismissed.

Implied contractual terms

- Implied terms in an employment contract are those which are not specifically agreed between the employer and employee.
- Implied terms are:-
 - general terms which are implied into most contracts of employment (see below)
 - terms implied by custom and practice (see below)
 - terms from agreements made with the employer by a trade union or staff association.

Employee's right to written details about the employment contract

- All employees, regardless of the number of hours they work per week, are entitled to receive a written statement from their employer within two months of starting work.
- The statement should describe the main terms of the contract of employment. An employee who wants a written statement may request one verbally or in writing.
- It is usually best to request the statement in writing and keep a copy of the letter.

What written details must be given

- **The written statement must include by law:-**
 - the names of you and your employer
 - the date you started work
 - the amount of pay and how often you will be paid, for example, weekly or monthly
 - the hours of work
 - your holiday entitlement, including how many days off you are entitled to and what your holiday pay will be, if any
 - how much warning (notice) you are entitled to if you are dismissed and how much warning you must give the employer if you want to leave the job
 - the title of the job
 - where the job is based, for example, whether you will have to work in more than one location
 - what the disciplinary, dismissal and grievance procedures are in the workplace
 - what sick pay you are entitled to
 - whether you can join the employer's occupational pension scheme, if there is one.

How the rights in the employee's contract relate to rights in law

- Most employees have rights given by law. These are called statutory rights. They are in addition to any rights you have under your employment contract. Statutory rights which you may have include:-



- a right to a written statement of the terms of employment
- a right to an itemized pay statement
- a right to maternity leave
- a right to pay in compensation for being made redundant
- a right not to be unfairly dismissed.

REDUNDANCY

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What is redundancy

Redundancy is a form of dismissal.

In order to claim redundancy, you must normally have been dismissed from your job.



Redundancy situations

- The need for the worker has diminished or ceased
- The job no longer exists because other workers are doing the work
- The workplace has closed, or is closing down
- The business moves
- The business is transferred to another employer



Voluntary redundancy

- Where jobs are to disappear, an employer may ask for workers to volunteer for redundancy.

Redundancies of 20 people or more

- Where an employer is making 20 or more employees at one workplace redundant, this is called a 'collective redundancy'.
- An employer making a collective redundancy must consult with a recognised trade union where there is one. Where there is no recognised trade union, an employer must consult with employee representatives before issuing redundancy notices.

Redundancy pay

A redundancy payment is compensation because someone's job has disappeared.

If you are entitled to redundancy pay you will get a statutory redundancy payment from your employer.

You may be entitled to a larger amount of compensation because your employer has a contractual redundancy scheme.

Notice of redundancy

The required statutory notice is one week if you have been employed for at least one month but less than two years, two weeks if you have been employed for two years, three weeks for three years, and so on, up to twelve weeks.



After twelve years service, the statutory notice period is twelve weeks.

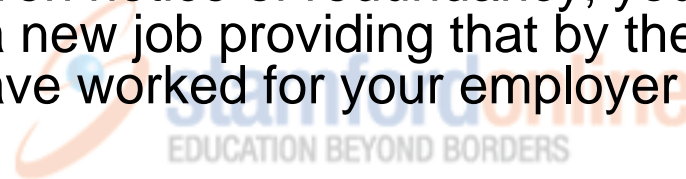
Other rights on redundancy

Right to notice of redundancy

- Because redundancy is a form of dismissal, you will still be entitled to your statutory or contractual period of notice of dismissal, if your employer plans to make you redundant .

Time off to look for work

- If you have been given notice of redundancy, you are entitled to paid time off to look for a new job providing that by the time your notice period ends, you have worked for your employer for two years.



The following employees are not entitled to paid time off to look for work:-

- employees who have worked for their employers for less than two years
- overseas employees
- merchant seamen
- share fishermen
- members of the armed forces
- police service employees.

Handling Grievances: Do

- *Investigate and handle each case as though it may eventually result in arbitration.*
- *Talk with the employee about his or her grievance; give the person a full hearing.*
- *Require the union to identify specific contractual provisions allegedly violated.*
- *Comply with the contractual time limits for handling the grievance.*
- *Visit the work area of the grievance.*
- *Determine whether there were any witnesses.*
- *Examine the grievant's personnel record.*
- *Fully examine prior grievance records.*
- *Treat the union representative as your equal.*
- *Hold your grievance discussions privately.*
- *Fully inform your own supervisor of grievance matters.*



Handling Grievances: Don't

- *Discuss the case with the union steward alone—the grievant should be there.*
- *Make arrangements with individual employees that are inconsistent with the labour agreement.*
- *Hold back the remedy if the company is wrong.*
- *Admit to the binding effect of a past practice.*
- *Relinquish to the union your rights as a manager.*
- *Settle grievances based on what is “fair.” Instead, stick to the labour agreement.*
- *Bargain over items not covered by the contract.*
- *Treat as subject to arbitration claims demanding the discipline or discharge of managers.*
- *Give long written grievance answers.*
- *Trade a grievance settlement for a grievance withdrawal.*
- *Deny grievances because “your hands have been tied by management.”*
- *Agree to informal amendments in the contract.*