

GUIDE TO EMPLOYMENT CONDITIONS

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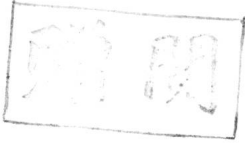
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INTRODUCTION

We have recently seen a significant change in the law relating to employment with the passing of the Employment Protection Act 1975, which received Royal Assent on 12 November 1975. Other fundamental changes have been brought about by the Equal Pay Act 1970 and the Sex Discrimination Act 1975, which came into effect on 29 December 1975. Further legislation is promised, with the Trade Union and Labour Relations (Amendment) Bill not yet law (its provisions are summarised in Appendix D).

The industrial, social and economic implications of the new legislation will gradually become apparent, but the most immediate problem is to convey in as simple terms as possible the meaning of the mass of complex legislation which is now on the statute book.

Every employer of labour must have a working knowledge of the main legal requirements because a wrong decision or action could result in severe financial penalties to which a plea of ignorance would be no defence. Furthermore, sound industrial relations, which the Employment Protection Act seeks to bring about, must be based on a good knowledge of the law, no matter how difficult it may be to understand.

This brief guide, which seeks to give quick and understandable answers to many of the questions likely to be posed, can be no substitute for recourse to official guides and the legislation itself. It has been completed immediately after the passing of the Employment Protection Act 1975. Official guides on various aspects of the act will be published in due course by the Department of Employment, and the full timetable for the operation of the act's provisions

has yet to be announced. (Some indication of the timetable is given in Appendix C.)

Two aspects of the subject are not covered primarily because they would both require a book in themselves—industrial democracy and employer participation under the Industry Act 1975, and health and safety requirements under the Health and Safety at Work Act 1974 and earlier legislation.

The meaning of certain clauses of the new acts (and of the law generally) will only become clearer through decisions of industrial tribunals, the Central Arbitration Committee and the Employment Appeal Tribunal. Added to this will be the orders which the Secretary of State is empowered to make, Codes of Practice, and the advice and recommendations of the Advisory Conciliation and Arbitration Service which will now have much more extensive responsibilities and functions.

The purpose of this guide is to ask many of the questions which are bound to arise and to endeavour to give the answers. This is no easy task because in many respects the legislation is obscure. For example, the Employment Protection Act introduces many new provisions, repeals some existing acts and amends some 30 more. It does not re-enact or codify the legislation affecting employment and we must look to several acts for answers. To assist in following up the brief answers, the main legislation is listed at the beginning of each section. After a brief review of the new legislation the guide follows the sequence of the employment process—recruitment, terms of employment, dismissal and redundancy. A special section is devoted to the employment of women because of the new and far-reaching provisions, and the guide concludes with a section on trade unions (status, membership, negotiating rights, etc).

This guide is on the same lines as my earlier *Site Labour Guide*, published in 1972, but it is three times

its size, a reflection on the increasing complexity of the subject. It seeks to meet the needs of the many employers in the building industry, hence references to particular points of the building industry's working rule agreement (eg, NWR 2A etc). However the issues are those with which every employer throughout the country must be concerned and the questions and answers are relevant to every industry.

The aim of the guide is accuracy, lucidity and, where possible, brevity, since there must be some limit to the stamina of the reader—and of the author.

ROBERT PORTER

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January 1976

1 GENERAL REVIEW OF THE LEGISLATION

In the past five years employment law has been the subject of frequent and sometimes fundamental changes. Because of the resultant confusion this section is designed to place various provisions in perspective and to review broadly the substantial alterations brought about by recent legislation. It forms an introduction to the many aspects of the subject which are dealt with in the following sections.

1 *What are the principal acts relating to employment?*

The principal acts are the Employment Protection Act 1975, the Trade Union and Labour Relations Act 1974 (to be amended in 1976), the Contracts of Employment Act 1972, and the Redundancy Payments Acts 1965 and 1969. Although these are the main acts, there are some 30 more, the most relevant to this guide being the Equal Pay Act 1970 and the Sex Discrimination Act 1975.

2 *What happened to the Industrial Relations Act 1971?*

The 1971 Act was repealed in 1974 but some provisions, particularly on unfair dismissal, were amended and re-enacted in the Trade Union and Labour Relations Act 1974 and further amended by the Employment Protection Act 1975. The former National Industrial Relations Court (NIRC), the Commission on Industrial Relations (CIR) and matters referable to them, together with the Registry of Trade Unions and Employers Associations were all swept away and are now replaced by a strengthened Advisory Concilia-

tion and Arbitration Service (ACAS), a Certification Officer and a Central Arbitration Committee. The concept of unfair industrial practice disappeared and the pre-1971 status of trade unions was largely restored. Agency shop agreements, cooling off periods and orders for ballots on industrial action became things of the past. The statutory right not to belong to a union was repealed. However, the Code of Practice under the 1971 Act will remain valid until revised. It sets out guidelines but no legal obligations. The extent to which it is observed will be taken into account in issues before tribunals.

3 *What are the main provisions of the Employment Protection Act 1975?*

The 1975 Act is the most important piece of legislation currently dealing with the employment of labour and it covers a very wide field. It introduces many new provisions which are dealt with under the appropriate sections of this guide. The act offers far greater safeguards to employees and substantially increases the power and influence of unions. It extends employers' responsibilities and duties established under earlier acts and adds to them. It may be necessary, therefore, to refer to several acts if one is seeking information on any point. Despite its 129 sections and 18 schedules, the 1975 Act does not provide all the answers.

New individual rights for employees include guarantee payments for lost time, payment during suspension on medical grounds, maternity pay and safeguards on the right to return to work, time off with pay for union duties, as well as time off during redundancy notice to look for another job or make arrangements for retraining.

The 1975 Act also extends provisions for unfair dismissal, the emphasis being on re-engagement and

reinstatement, with amended and higher bases for basic, compensatory and additional awards. In cases of redundancy, early union consultation is first necessary with severe penalties for failing to comply with the provisions on handling redundancies, including protective awards for protected periods.

The act also affects negotiating and personnel management matters, with provisions on union membership safeguards, negotiating rights and disclosure of information, time off for union and other activities, notification of terms of employment, entitlement to pay statements and written reasons for dismissal, provisions on notice to terminate which now operate after 4 weeks' service the length of notice to be up to 12 weeks (for 12 years' service and over), recourse to the Redundancy Fund for arrears of wages etc in cases of insolvency, and 4 week trial periods on new contracts following redundancy.

On the employment of women new and onerous provisions will now operate. The Employment Protection Act provides for maternity pay, protection against dismissal because of pregnancy, and the right to return to work in prescribed circumstances where the woman so decides. Discrimination against women will be unlawful on matters of pay (under the Equal Pay Act 1970) and in employment terms and conditions—and other matters—under the Sex Discrimination Act 1975.

4 *Is the Employment Protection Act 1975 binding in every respect?*

Any agreement to contract out of any of the provisions of the act or preclude any person from exercising his remedies under it is void except in respect of:

- (i) guarantee payments and redundancy provisions where the Secretary of State makes an exemption order
- (ii) provisions in a union membership agreement

(ie, closed shop agreement) affecting rights in connection with trade union activities.

5 *Does the 1975 Act apply to all employers and employees?*

There are certain classes of employment generally excluded, such as registered dock workers, masters and crews of fishing vessels on profit sharing, employees normally working outside Great Britain, crews of UK registered ships wholly employed outside and not normally resident in Great Britain.

Where the husband employs the wife or vice versa, the 1975 Act states that the following provisions do not extend to them: guarantee payments, suspension on medical grounds, maternity pay, trade union activities and time off, insolvency payments, unfair dismissal, written reasons for dismissal and itemised pay statements.

6 *Are there any qualifications related to service?*

The provisions for minimum periods of notice start after 4 weeks' continuous service instead of 13 as before, and extend to 12 weeks' notice for 12 or more years' service. For unfair dismissal the minimum period of continuous service is generally 26 weeks and for redundancy and maternity pay etc, 2 years. The provisions on guarantee payments, suspension on medical grounds and redundancy handling procedures do not apply to employees employed for a fixed term of 12 weeks or less or employed to perform a specific task not expected to last more than 12 weeks unless employment continues for longer than that period. This qualification also applies to dismissal notice.

7 *Are part-time workers covered?*

The previous requirement of employment for 21 hours

or more weekly has been reduced to 16 or more for the provisions of the Contracts of Employment Act, unfair dismissal and redundancy. The same limitation applies to time off for union and other duties and to itemised pay statements. It is further provided in the 1975 Act that the qualification shall be only 8 hours or more weekly employment if the employee has been continuously employed for 5 years or more on this basis. If weekly hours are reduced below 16 but not below 8, then for a further 26 weeks on the lower hours the relevant provisions will apply with continuity preserved. In calculating this period of 26 weeks no account is to be taken of employment for 16 hours or more or absence because of a strike or lockout.

8 *What bearing does the legislation have on collective agreements?*

The 1975 Act substantially extends employee rights. These may be incorporated in a collective agreement between a union and an employer or an employers' association (eg, notice to terminate employment) or observed in conjunction with, and additional to, it. A collective agreement may provide for more than the legislation but not less.

9 *How is the legislation enforced?*

There are very extensive rights to refer matters to an industrial tribunal which will make declarations and where appropriate, awards. The right of appeal on a point of law, formerly to the High Court, is now to the Employment Appeal Tribunal. The Central Arbitration Committee may make an order on failure to observe terms and conditions as explained in Question 71 below.

10 *Are there still Codes of Practice?*

The Industrial Relations Code of Practice, issued under the Industrial Relations Act 1971, still applies, and further codes will be issued by the Advisory Conciliation and Arbitration Service (eg, on disclosure of information and time off for union duties).

These codes are designed to give practical guidance on such matters, and should help to clarify a position which the act itself leaves obscure.

11 *What will be the role of the Advisory Conciliation and Arbitration Service (ACAS)?*

As its name indicates, its three main functions are to advise, conciliate and arbitrate. In addition to its right of enquiry, it has wide discretion in dealing with recognition issues and disclosure of information and there is no right of appeal by any party from many of its recommendations. With its new statutory functions, ACAS is likely to play a major role in shaping the future of collective bargaining (see Appendix A). The two major bodies likely to be represented on its council, the TUC and CBI, will have the difficult task of forging mutually acceptable policies.

12 *Where do trade unions stand under the new legislation?*

If a trade union is certified as independent (ie, free from employers' control etc), it has substantial protection and many rights and benefits conferred on it under the legislation. If however it is not certified as independent it will be unable to enjoy these rights. There is no longer the statutory right not to belong to a trade union (except on religious grounds) and union membership agreements, ie closed shops are legal; employers will be penalised for interfering with workers' rights. The subject is fully covered in Section 6.

13 *Will there be an extension in collective bargaining under the new legislation?*

One of the purposes of the 1975 Act is to strengthen and widen the scope and cover of collective bargaining. This is done by providing means for the recognition of independent trade unions, by penalising employers who will not negotiate, and by requiring the disclosure of information about a business to assist in collective bargaining.

The terms of collective industrial agreements can be enforced by submitting claims to ACAS for reference if need be to the Central Arbitration Committee. Where there are no recognised terms and conditions, a claim can be brought before the committee to establish terms and conditions similar to those for comparable workers in similar circumstances and in the same trade and district. The relevant provisions of the 1975 Act take the place of section 8 of the Terms and Conditions of Employment Act 1959 (see Q69 for details).

14 *Does racial discrimination come within the scope of these provisions?*

Generally complaints can be taken up under the Race Relations Act 1968, but if a complaint can be dealt with by an industrial tribunal on such matters as unfair dismissal or infringement of trade union rights etc, a claim under the Race Relations Act cannot be pursued. However if dismissal is due to discrimination because of race, colour etc, and the employee is not covered under the employment legislation, a complaint can be made to the Race Relations Board under the 1968 Act. If a tribunal upholds a discrimination claim the board could seek an assurance from the employer against a repetition.