

Pay Issues

OVERVIEW

This chapter is concerned with a number of issues related to pay, beginning with the duty to pay wages or salaries. There is then some detailed consideration of the National Minimum Wage Act 1998 and the complexities associated with trying to establish the actual rates paid in a variety of work circumstances. We then consider the employer's duty to provide pay statements and make guarantee payments when employees are not provided with work. Finally, we examine issues related to pay and sickness, including statutory sick pay and the right of employers to suspend employees on medical grounds.

THE DUTY TO PAY WAGES

This is a basic obligation of employers and is normally dealt with by an express term. There are a number of issues to be considered.

- 1 *An employer may be required to pay wages even if there is no work for the employee to do*

The general rule is that wages must be paid if an employee is available for work,¹ but everything will depend on whether there is an express or implied term of fact in the contract which deals with the matter. Thus an express term to the effect that 'no payment shall be made during a period of lay-off' will eliminate the possibility of a contractual claim being brought in such a situation.

- 2 *Deductions from wages or payment by the employee are unlawful unless required or authorised by statute – for example, PAYE or social security contributions – or the worker has agreed to it²*

Section 27(1) ERA 1996 defines 'wages' as 'any sum payable to the worker in connection with his employment'. This includes holiday pay and commission earnings which are payable after an employee has left. It also includes discretionary bonus payments where the employee has been told that he or she will receive the payments.³ Before payment of such 'wages' the employer would

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be entitled to deduct an amount to repay any advances that had been given to the employee.⁴

The worker must give oral or written consent to the deduction before it is made,⁵ and where the agreement constitutes a term of the contract of employment, it must be in writing and drawn to the employee's attention (or its effect must have been notified to the worker in writing).⁶ To satisfy the requirements of ERA 1996 there must be a document which clearly states that a deduction is to be made from the employee's wages and that the employee agrees to it.⁷ Even if an employee has entered into a compromise agreement to settle an unfair dismissal complaint over non-payment of wages, he or she may still be able to make a claim for that underpayment.⁸ If a tribunal is not persuaded on the evidence that a deduction was authorised by a provision of the employee's contract, the individual is entitled to be paid the money deducted. Thus, in *IPC Ltd v Balfour*,⁹ the EAT held that a reduction in pay following the unilateral introduction of short-time working amounted to an unauthorised deduction. However, if the contract of employment allowed the employer to change the hours or shift-patterns of an employee, the employer would be entitled to adjust the pay levels to reflect those changes.¹⁰

For these purposes there is no valid distinction between a deduction and a reduction of wages. The issue is whether, for whatever reason, apart from an error of computation, the worker is paid less than the amount of wages properly payable.¹¹ However, employers who take a conscious decision not to make a payment because they believe that they are contractually entitled to take that course are not making an error of computation.¹² Although section 13(4) refers to an 'error of any description', it does not include an error of law.¹³ Where there is a dispute over the justification for a deduction, it is the employment tribunal's task to resolve it.¹⁴ However, tribunals do not have jurisdiction to determine whether a deduction by reason of industrial action was contractually authorised.¹⁵

Written agreements under which employers pay a proportion of wages to third parties are not affected by ERA 1996 and in retail employment deductions or payments made to an employer in relation to stock or cash shortages are subject to a limit of one-tenth of gross pay, except for the final payment of wages.¹⁶

3 *Payments in lieu are not wages within the meaning of ERA 1996 if they relate to a period after the termination of employment*

According to the House of Lords in *Delaney v Staples*,¹⁷ ERA 1996 requires wages to be construed as payments in respect of the rendering of services during employment. Thus the only payments in lieu covered by the legislation are those in respect of 'garden leave' (see below), since these can be viewed as wages owed under a subsisting contract of employment. In the same case the Court of Appeal accepted that non-payment of wages constitutes a deduction for these purposes, as does the withholding of commission and holiday pay.¹⁸ Indeed, the withholding of commission may amount to an unlawful deduction even where it is discretionary so long as commission was normally expected by the employee.¹⁹

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4 *A complaint that there has been an unauthorised deduction must normally be lodged with an employment tribunal within three months of the deduction being made*²⁰

If the complaint is well-founded, the tribunal must make a declaration to that effect and must order the reimbursement of the amount of the deduction or payment to the extent that it exceeded what should lawfully have been deducted or received by the employee. Employment tribunals can also provide compensation for workers who suffer financial losses as a result of unlawful deductions from wages.²¹ The only method of contracting out of the requirements of ERA 1996 is if an agreement is reached following action taken by ACAS or there is a valid compromise agreement (see Chapter 15).

5 *Overpayments*

Employers may be entitled to restitution of overpayments made to an employee owing to a mistake of fact but *not* a mistake of law. For example, an overpayment that arose as the result of a misunderstanding of the National Minimum Wage Act would be irrecoverable.²² Indeed, employees may commit theft if they fail to notify the employer of an accidental overpayment.²³ Section 16(1) ERA 1996 makes specific provision for the recovery of overpayments, and tribunals cannot inquire into the lawfulness of a deduction for this purpose.²⁴

THE NATIONAL MINIMUM WAGE

The National Minimum Wage Act 1998 (NMWA 1998) provides for a minimum hourly wage for workers. 'Worker' is defined in section 54(3) as someone working under a contract of employment or any other contract under which an individual undertakes to do or perform in person any work or service for another. From October 2008, the standard rate was £5.73 per hour. There are also two development rates for younger workers: for those aged 18 years to 21 years inclusive it was set at £4.77 per hour and for 16- and 17-year-olds it was set at £3.53 per hour.²⁵ Any other allowances paid by the employer to workers in relation to their work cannot be used to offset the fact that an individual's basic hourly rate is less than the NMW. It is possible to reduce those other rates in order to increase the basic rate without contravening the requirements of the NMW Regulations 1999, although doing this might result in the employer being guilty of an unlawful deduction of wages in contravention of section 13(1) ERA 1996.²⁶

Regulation 12 of the National Minimum Wage Regulations 1999²⁷ (NMW Regulations) describes those who do not qualify for the national minimum wage at all. These include:

- a worker who is employed under a contract of apprenticeship and is in the first 12 months of that contract, or who has not reached the age of 19
- a worker who is participating in a scheme designed to provide him or her with

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training, work, or temporary work, or which is designed to assist him or her to obtain work²⁸

- a worker who is attending higher education up to first degree level or a teacher-training course, and who, before the course ends, is required as part of the course to attend a period of work experience not exceeding one year
- a homeless person who is provided with shelter and other benefits in return for performing work.

WHEN IS A WORKER 'WORKING'?

Workers who work and live in the employer's household and who are treated as members of the family are also excluded.²⁹ However, workers who, by arrangement, sleep on the employer's premises may be entitled to payment for all the hours that are required to be spent at those premises. In *Scottbridge Ltd v Wright*³⁰ a night-watchman was required to be on the premises between 5 pm and 7 am each night. Apart from some minor duties he was mainly required to be present in case of intruders. He was provided with sleeping facilities and allowed to sleep during the course of the night. The Court of Session upheld the EAT decision that he was entitled to be paid at least the national minimum wage rate for the specific hours that he was required to be at work. It was up to the employer to provide him with work and the fact that he was not required to do any did not nullify his entitlement to be paid.



CASE STUDY

*British Nursing Association v Inland Revenue*³¹

The employers were a national organisation providing emergency 'bank' nurses for nursing in homes and other institutions. Part of the work involved a 24-hours-per-day telephone booking service. This service was carried on at night by employees working from home. The 'duty' nurse would take the diverted call and contact the appropriate person to do the work requested. The duty nurse was paid an amount per shift.

The issue was whether this person was 'working' within the meaning of the NMW Regulations when they were not actually receiving or making phone calls – even when watching television while waiting for calls. The Court of Appeal endorsed the EAT's view that in deciding when a worker is working for the purposes of the NMW Regulations, an employment tribunal should look at the type of work involved and its different elements to see if altogether it could be properly described as work. Aspects to be examined include:

- the nature of the work
- the extent to which the worker's activities are restricted when not performing the particular task
- the mutual obligations of employer and worker, although the way in which remuneration is calculated is not conclusive
- the extent to which the period during which work is being performed is readily ascertainable.

Thus the duty nurses were held to be working throughout their shift and entitled to payment for it.

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CALCULATING REMUNERATION

The hourly rate is calculated by adding up the total remuneration, less reductions, and dividing by the total number of hours worked³² during a pay reference period.³³ Total remuneration³⁴ in a pay reference period is calculated by adding together:

- all money paid by the employer to the worker during the reference period
- any money paid by the employer to the worker in the following reference period which is in respect of work done in the current reference period
- any money paid by the employer to the worker later than the end of the following pay reference period in respect of work done in the current reference period and for which the worker is under an obligation to complete a record and has not done so
- the cost of accommodation, calculated by an approved formula.³⁵

Deductions that can be made from this total remuneration figure are set out in Regulation 31 and include:³⁶

- any payments made by the employer to the worker in respect of a previous pay reference period
- in the case of non-salaried work, any money paid to the worker in respect of periods when the worker was absent from work or engaged in taking industrial action
- in the case of time-work, the difference between the lowest rate of pay and any higher rates of pay paid during the reference period
- any amounts paid by the employer to the worker that represent amounts paid by customers in the form of service charge, tips, gratuities or cover charge – that is, not paid through the payroll³⁷
- the payment of expenses.

CALCULATING HOURS

The calculation of the hours worked can be complex. There are four different types of hours of work. These are:

1 *salaried hours work*³⁸

This is where the worker is paid for a number of ascertainable hours in a year (the basic hours) and where the payment, which normally consists of an annual salary and perhaps an annual bonus, is paid in equal instalments, weekly or monthly.

2 *time-work*³⁹

This is work that is paid for under a worker's contract by reference to the time worked, and is not salaried hours work.

3 *output work*⁴⁰

This is work that is paid for by reference to the number of pieces made or processed, or by some other measure of output such as the value of sales made

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or transactions completed. The rated output hours, in a reference period, will be the total number of hours spent by the worker in doing output work. The employer has to arrive at a 'fair' piece rate by reference to the time taken by the average employee doing the same job.

4 *unmeasured work*⁴¹

This is any work that is not salaried hours work, time-work or output work, especially work where there are no specified hours and the worker is required to work when needed or whenever work is available. The unmeasured work hours will be the total hours, in a pay reference period, spent by the worker in carrying out his or her contractual duties.⁴² Regulation 28 allows for a 'daily average' agreement to be reached between the employer and the worker.⁴³

UNDERPAYMENT OF THE NMW

Section 9 NMWA 1998⁴⁴ allows the Secretary of State to require employers to keep and preserve records for at least three years. Workers have the right to inspect these records if they believe, on reasonable grounds, that they are being paid at a rate less than the national minimum wage.⁴⁵ When inspecting these records a worker may be accompanied by another person of his or her choice.⁴⁶ That choice must be stated in the 'production notice' that the worker gives to the employer requesting the production of the records.⁴⁷ The employer must produce these records within 14 days following receipt of the notice and must make them available at the worker's place of work or some other reasonable place.⁴⁸ Failure to produce the records or to allow the workers to exercise their rights can lead to a complaint at an employment tribunal.⁴⁹ In these circumstances the tribunal can make an award of up to 80 times the national minimum wage. If a worker has been remunerated, during the reference period, at a rate less than the national minimum wage, there is a contractual entitlement to be paid the amount underpaid. There is a reversal of the normal burden of proof and a presumption that the worker qualifies for the national minimum wage and that he or she is underpaid.⁵⁰

Sections 5–8 of the NMWA 1998 established the Low Pay Commission and gave the Secretary of State discretion to refer matters to it. The HM Customs and Revenue has the task of ensuring that workers are remunerated at a rate that is at least equivalent to the NMW. It has wide powers to inspect records and enforce the Act's requirements.⁵¹ If it is discovered that workers are not being paid the national minimum wage, the Revenue can issue notices of underpayment requiring payment of the national minimum wage together with arrears and a financial penalty.⁵² Section 14 allows HMRC officers to take information away from the employer's premises in order to copy it and section 31 enables serious offences to be tried in the Crown Court.

Workers have a right not to suffer detriment⁵³ if they assert in good faith their right to the national minimum wage, to inspect records or to recover underpayment.

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PAY STATEMENTS

Under section 8 ERA 1996 employers must give their employees an itemised pay statement. The statement must contain the following particulars:

- the gross amount of wages or salary
- the amount of any variable or fixed deductions and the purposes for which they are made (on the legality of such deductions see above)
- the net wages or salary payable and, where the net amount is paid in different ways, the amount and method of payment of each part.

Such a statement need not contain separate particulars of a fixed deduction – for example, of union dues – if it specifies the total amount of fixed deductions and each year the employer provides a standing statement of fixed deductions which describes the amount of each deduction, its purpose and the intervals at which it is made. If no pay statement is issued, an employee may refer the matter to an employment tribunal to determine what particulars ought to have been included. Where a tribunal finds that an employer failed to provide such a statement or the statement does not contain the required particulars, the tribunal must make a declaration to that effect. Additionally, where it finds that any unnotified deductions have been made during the 13 weeks preceding the application, it may order the employer to pay compensation to the employee. This refund cannot exceed the total amount of unnotified deductions.⁵⁴ Thus there is here a penal aspect to the discretion that tribunals have to exercise.

GUARANTEE PAYMENTS

Employees with one month's continuous service qualify for a guarantee payment if they are not provided with work throughout a day in which they would normally be required to work in accordance with their contract of employment because of:

- a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or
- any other occurrence that affects the normal working of the employer's business in relation to work of that kind.⁵⁵

The words 'normally required to work' are significant for two reasons. First, an employee who is not obliged to work when requested may be regarded as not being subject to a contract of employment.⁵⁶ Second, if contracts of employment are varied to provide for a reduced number of working days – for example, four instead of five – employees will be unable to claim a payment for the fifth day because they are no longer 'required to work' on that day. 'Any other occurrence ...' would seem to comprehend something like a power failure or natural disaster rather than works holidays.

No guarantee payment is available if the workless day is a consequence of a strike, lock-out or other industrial action involving any employee of the employer or any

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associated employer.⁵⁷ The entitlement to a guarantee payment may be lost in two other circumstances:

- where the employer has offered to provide alternative work which is suitable in the circumstances (irrespective of whether it falls inside or outside the scope of the employee's contract) but this has been unreasonably refused,⁵⁸ and
- where the employee does not comply with reasonable requirements imposed by the employer with a view to ensuring that his or her services are available.⁵⁹ This is to enable the employer to keep the workforce together, perhaps in the hope that the supplies which have been lacking will be delivered.

CALCULATING GUARANTEE PAYMENTS

A guarantee payment is calculated by multiplying the number of normal working hours on the day of lay-off by the guaranteed hourly rate. Accordingly, where there are no normal working hours on the day in question, no guarantee payment can be claimed.⁶⁰ The guaranteed hourly rate is one week's pay divided by the number of normal hours in a week and, where the number of normal hours varies, the average number of such hours over a 12-week period will be used.⁶¹ Payment cannot be claimed for more than five days in any period of three months.⁶² There is a maximum daily sum payable of £21.50 in 2009 but this increases or decreases each year in line with the retail price index.⁶³ It should be noted that contractual payments in respect of workless days not only discharge an employer's liability to make guarantee payments for those days⁶⁴ but are also to be taken into account when calculating the maximum number of days for which employees are entitled to statutory payments.⁶⁵ Where guaranteed weekly remuneration has been agreed, this sum is to be 'apportioned rateably between the workless days'.⁶⁶ If an employer fails to pay the whole or part of a guarantee payment, an employee can complain to an employment tribunal within three months of the last workless day. Where a tribunal finds a complaint to be well-founded, it must order the employer to pay the amount which it finds owing to the employee.⁶⁷

If guaranteed remuneration is the subject of a collective agreement currently in force, all the parties may choose to apply for an exemption order. So long as the Secretary of State is satisfied that the statutory provisions should not apply, the relevant employees will be excluded from the operation of section 28 ERA 1996. However, the Secretary of State cannot make an order unless a collective agreement permits employees to take a dispute about guaranteed remuneration to arbitration, an independent adjudicating body or an employment tribunal.⁶⁸

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PAY AND SICKNESS

THE RIGHT TO SICK PAY AT COMMON LAW

In the absence of an express term in the contract of employment, the correct approach to determining whether there is an obligation upon the employer to pay wages to an employee absent through sickness is to look at all the facts and circumstances to see whether such a term can be implied. Such a term may derive from the custom or practice in the industry or from the knowledge of the parties at the time the contract was made. The nature of the contract will have to be taken into account and, on occasions, it will be permissible to look at what the parties did during the period of the contract. Only if all the factors and circumstances do not indicate what the contractual term is will it be assumed that wages should be paid during sickness. If such a term is implied, it is likely to provide for the deduction of sums received under social security legislation.⁶⁹ In *Howman & Sons v Blyth*⁷⁰ it was held that the reasonable term to be implied in respect of duration in an industry where the normal practice is to give sick pay for a limited period only is the term normally applicable in the industry. The EAT did not accept that where there is an obligation to make payments during sickness, in the absence of an express term to the contrary, sick pay is owed so long as the employment continues.

ENTITLEMENT TO BENEFITS AND THE INDIVIDUAL'S CONTRACT OF EMPLOYMENT

The courts have intervened to ensure that employees' entitlements to disability benefits under health insurance schemes have not been frustrated by a strict interpretation of the contract of employment. In *Adin v Sedco Forex International*⁷¹ an employee's contract of employment included provisions for short-term and long-term disability benefits. It also contained a clause which allowed the employers, at their sole discretion, to terminate the contract for any reason whatsoever. The Court of Session concluded that because the right to these benefits was established in the contract of employment, the employer could not take them away by dismissing the employee. The courts have also been willing to imply terms into contracts which will give effect to agreed health insurance schemes. In *Aspden v Webbs Poultry Group*,⁷² a manager had a contract of employment which did not mention the generous health insurance scheme which, the High Court held, had been mutually agreed by the employers and the senior management. The employee was dismissed while on sick leave as a result of angina. It was claimed that there was an implied term that the employee would not be dismissed while incapacitated because this would frustrate the permanent health insurance scheme. The court accepted this argument, even though there was an express term in the contract that allowed the employer to dismiss employees for reasons of prolonged incapacity. It should also be noted that an employee can rely on contractual terms to pay long-term benefits, even if the employer has stopped paying the premiums on his or her health insurance policy.⁷³

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CASE STUDY

*Hill v General Accident*⁷⁴

Mr H started employment with the company in 1988. In March 1994 he became ill and remained absent from work for medical reasons until his employer terminated his employment on the grounds of redundancy in November 1995.

During his absence he had received sick pay in accordance with the contractual scheme. Under that scheme employees could receive full pay for 104 weeks. After this period employment was to be terminated and the employee would receive either an ill-health retirement pension or sickness and accident benefit. When Mr H was made redundant he was still four months away from qualifying for his long-term sickness provision. He claimed that there was an implied term in his contract of employment that he would not be made redundant where this would frustrate his entitlement to long-term benefit.

The contract contained an express provision for the retention of sick employees for a period of two years' absence before they were able to qualify for the ill-health retirement scheme. The Court held that this did not exclude the possibility of the employee being dismissed for redundancy, despite the unfortunate consequence. To allow this exclusion would put sick employees at an advantage compared to those who were well and attending work when it came to selecting those who would be dismissed.

STATUTORY SICK PAY

The Social Security Contributions and Benefits Act 1992 (SSCBA 1992) and the Statutory Sick Pay Act 1994 make employers responsible for paying statutory sick pay (SSP) to such of their employees as work within the EU. SSP will be paid for up to 28 weeks of absence due to sickness or injury in any single 'period of entitlement' (see below).⁷⁵ As well as those who pay full Class 1 National Insurance contributions, married women and widows paying reduced contributions are eligible for SSP. Part-timers who earn more than the lower earnings limit (£95 per week in 2009) are to be treated in the same way as full-time employees, and there is no minimum service qualification. Indeed, an employee may be entitled to SSP under more than one contract or with more than one employer if the relevant conditions are satisfied.

The rate of SSP in 2009 is £79.15 per week, and the daily rate will be the appropriate weekly rate divided by the number of 'qualifying days' in the week (starting with Sunday).⁷⁶ Employers must pay the stipulated amount of SSP for each day that an employee is eligible, but any other sums paid in respect of the same day can count towards the SSP entitlement – eg normal wages.⁷⁷ Any agreement which purports to exclude, limit or modify an employee's right to SSP or which requires an employee to contribute (directly or indirectly) towards any cost incurred by the employer will be void.⁷⁸ For many employees SSP will be worth less than state incapacity benefit because the former is subject to tax and National Insurance contributions and will be paid at a flat rate without additions for dependants. It is therefore hardly surprising that trade unions endeavour to

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negotiate sick pay schemes which ensure that their members do not suffer any detriment as a result of this legislation.

Normally employers cannot recover the sums they pay out by way of SSP. However, if in any tax month the amount of SSP exceeds 13 per cent of National Insurance contributions' liability for that month, the employer can recoup the excess from the contributions due.⁷⁹

Section 14(3) of the Social Security Administration Act 1992 gives employees the right to ask their employer for a written statement, in relation to a period before the request is made, of one or more of the following matters:

- the days for which the employer regards himself or herself as liable to pay SSP
- the reasons the employer considers himself or herself not liable to pay for other days
- the amount of SSP to which the employer believes the employee to be entitled.

And, to the extent to which the request is reasonable, the employer must comply with it within a reasonable time.

THE DUTY TO KEEP RECORDS

Employers are obliged to keep records showing:

- the amount of SSP paid to each employee on each pay day
- the amount of SSP paid to each employee during each tax year
- the total amount of SSP paid to all employees during the tax year.

Additionally, Regulation 13 of the SSP Regulations 1982 (as amended) stipulates that for three years after the end of each tax year employers must in relation to each employee keep a record of the following matters:

- a) any day in that tax year which was one of four or more consecutive days of incapacity for work, whether or not the employee would normally have been expected to work on that day
- b) any day recorded under (a) for which the employer paid SSP.

PENALTIES

An employer who knowingly produces false information in order to recover a sum allegedly paid out as SSP commits an offence.

SUSPENSION ON MEDICAL GROUNDS

Employees with at least one month's continuous service who are suspended from work in consequence of a requirement imposed by specified health and safety provisions or a recommendation contained in a code of practice issued

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or approved under section 16 HASAWA 1974 are entitled to a week's pay (see Chapter 16) for each week of suspension up to a maximum of 26 weeks.⁸⁰ The relevant health and safety provisions are listed in section 64(3) ERA 1996 and cover hazardous substances and processes – for example, lead and ionising radiation. It should be observed that this statutory right can be invoked only where the specified safety legislation has affected the employer's undertaking and not the employee's health. Employees are therefore not entitled to remuneration under this provision for any period during which they are incapable of work by reason of illness or injury. Additionally, if employees unreasonably refuse to perform suitable alternative work (whether or not it is within the scope of their contract), or they do not comply with reasonable requirements imposed by their employer with a view to ensuring that their services are available, no payment is owed.⁸¹

It is important to note that these sections do not grant employers the right to suspend: they merely give rights to employees who are lawfully suspended. If there is no contractual right to suspend, employees will be entitled to sue for their full wages anyway, although any amounts already paid in respect of this period can be set off.⁸² Where the employer fails to pay remuneration which is owed to the employee by virtue of the statute, the employee can apply to an employment tribunal normally within three months. Section 70(3) ERA 1996 provides that if the tribunal finds a complaint to be well-founded, the employer must be ordered to pay the amount due to the employee. As long as any replacement for a suspended employee is informed in writing by the employer that the employment will be terminated at the end of the suspension, dismissal of the replacement in order to allow the original employee to resume work will be deemed to have been for a 'substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held'.⁸³ However, an employment tribunal must still be satisfied that it was reasonable in all the circumstances to dismiss (see Chapter 13).

KEY LEARNING POINTS

- Subject to express or implied contractual terms, an employer is normally obliged to pay wages if there is no work.
- Deductions from wages are unlawful unless approved by statute or by agreement with the employee.
- The standard rate for the national minimum wage is set at £5.73 per hour from October 2008.
- The types of hours worked, for the purposes of the NMWA 1998, are salaried hours work, time-work, output work and unmeasured work.
- Employers are obliged to give their employees itemised pay statements.
- Statutory sick pay is payable for up to 28 weeks of absence due to sickness or injury in any single period of entitlement.
- Employees suspended from work as a result of a requirement imposed by any provisions or code of practice under the HASAWA 1974 are entitled to a week's pay for each week of suspension up to a maximum of 26 weeks.

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REFERENCES

- 1 See *R v Liverpool City Corporation* (1985) IRLR 501
- 2 See sections 13(1) and 15(1) ERA 1996; wages are defined in section 27 and a worker is defined in section 230(3) ERA 1996.
- 3 *Farrell, Matthews & Weir v Hansen* (2005) IRLR 160
- 4 See *Robertson v Blackstone Franks Investment Management Ltd* (1998) IRLR 376
- 5 See *Discount Tobacco v Williams* (1993) IRLR 327
- 6 Section 13(2) ERA 1996; see *Kerr v The Sweater Shop* (1996) IRLR 424
- 7 See *Peninsula Business Services Ltd v Sweeney* (2004) IRLR 49
- 8 See *Dattani v Trio Supermarkets Ltd* (1998) IRLR 240
- 9 (2003) IRLR 11
- 10 *Hussman Manufacturing Ltd v Weir* (1998) IRLR 288
- 11 See sections 13(3) ERA 1996 and *New Century Cleaning v Church* (2000) IRLR 27. On the distinction between a deduction in respect of wages and a deduction in respect of expenses, see *London Borough of Southwark v O'Brien* (1996) IRLR 240.
- 12 See *Yemm v British Steel* (1994) IRLR 117
- 13 See *Morgan v West Glamorgan County Council* (1995) IRLR 68
- 14 See *Fairfield Ltd v Skinner* (1993) IRLR 3
- 15 See section 14(5) ERA 1996 and *Sunderland Polytechnic v Evans* (1993) ICR 196
- 16 See section 13 ERA 1996
- 17 (1992) IRLR 191
- 18 *Delaney v Staples t/a De Montfort Recruitment* (1991) IRLR 112
- 19 See *Kent Management Services v Butterfield* (1992) IRLR 394 and compare *Coors Ltd v Adcock* (2007) IRLR 440
- 20 'Or, within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complainant to be presented within three months': sections 23(2)–(4) ERA 1996. This 'escape clause' applies to other statutory provisions and throughout the rest of the book will be referred to as the 'time-limit escape clause'; see *List Design Ltd v Douglas & Catley* (2003) IRLR 14.
- 21 See section 24 ERA 1996
- 22 See *Avon C.C. v Howlett* (1993) 1 All ER 1073
- 23 See Attorney General's reference (No 1 of 1983) 1 All ER 369
- 24 See *SIP Ltd v Swinn* (1994) IRLR 323
- 25 The development rate can also apply to workers aged 22 years and above during their first six months of employment in a new job with a new employer and who are receiving accredited training.
- 26 This was the case in *Laird v A K Stoddart Ltd* (2001) IRLR 591
- 27 SI 1999/584 (as amended)
- 28 See National Minimum Wage Regulations 1999 (Amendment) Regulations 2001 SI 2001/1108, which ensure that all trainees on government training schemes are excluded from entitlement to the NMW during the first 12 months of their engagement or if they are under 19 years of age.
- 29 Regulation 2 NMW Regulations 1999
- 30 (2003) IRLR 21

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- 31 (2002) IRLR 480
- 32 Regulation 14 NMW Regulations 1999
- 33 Regulation 10 NMW Regulations 1999; a pay reference period is one month or a shorter period if a worker is usually paid at more frequent intervals.
- 34 Regulation 30 NMW Regulations 1999
- 35 Regulation 36 NMW Regulations 1999
- 36 On deductions for gas and electricity in tied accommodation see *HM Revenue and Customs v Leisure Management Ltd* (2007) IRLR 450
- 37 See *Revenue and Customs Commissioners v Annabel's Ltd* (2008) ICR 1076
- 38 Regulation 16 NMW Regulations 1999
- 39 Regulation 15 NMW Regulations 1999
- 40 Regulation 17 NMW Regulations 1999
- 41 Regulation 18 NMW Regulations 1999
- 42 Regulation 27 NMW Regulations 1999
- 43 See *Walton v Independent Living Organisation* (2003) IRLR 469
- 44 See also regulation 38 NMW Regulations 1999
- 45 Sections 10(1) and 10(2) NMWA 1998
- 46 Section 10(4)(b) NMWA 1998
- 47 Sections 10(5) and 10(6) NMWA 1998
- 48 Sections 10(8) and 10(9) NMWA 1998
- 49 Section 11 NMWA 1998; section 11(3) requires that the complaint should normally be made within three months of the end of the 14-day notice period.
- 50 Section 28 NMWA 1998
- 51 Sections 13–17 NMWA 1998
- 52 See the National Minimum Wage (Enforcement Notices) Act 2003 and Sections 19–19H NMWA 1998
- 53 Section 23 NMWA 1998
- 54 Section 12(4) ERA 1996
- 55 Section 28(1) ERA 1996
- 56 See *Mailway (Southern) Ltd v Willsher* (1978) IRLR 322
- 57 Section 29(3) ERA 1996; ‘associated employer’ is defined by section 231 ERA 1996.
- 58 Section 29(4) ERA 1996
- 59 Section 29(5) ERA 1996
- 60 Section 30(1) ERA 1996
- 61 Section 30(2)–(4) ERA 1996
- 62 Section 31(1)–(3) ERA 1996
- 63 Section 34 ERel Act 1999
- 64 Section 32(2) ERA 1996
- 65 See *Cartwright v Clancey Ltd* (1983) IRLR 355
- 66 Section 32(3) ERA 1996
- 67 Section 34(3) ERA 1996
- 68 Section 35 ERA 1996
- 69 See *Mears v Safecar Security* (1982) IRLR 501

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- 70 (1983) IRLR 139
- 71 (1997) IRLR 280
- 72 (1996) IRLR 521
- 73 See *Bainbridge v Circuit Foil UK Ltd* (1997) IRLR 305
- 74 (1998) IRLR 641
- 75 Section 155 SSCBA 1992 sets the entitlement limit at '28 times the appropriate weekly rate'.
- 76 See section 157 SSCBA 1992
- 77 See Schedule 12 paragraph 2 SSCBA 1992
- 78 Section 151(2) SSCBA 1992
- 79 SSP Percentage Threshold Order 1995 SI 1995/512
- 80 Section 64(1) ERA 1996
- 81 Section 65 ERA 1996
- 82 See section 69(3) ERA 1996
- 83 See section 106(3) ERA 1996

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