

BMA

**BMA employer handbook
2016-17**



British Medical Association
bma.org.uk

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Introduction

Welcome to your *Employers' handbook* – brought to you by the BMA as part of your valuable membership package.

The handbook is written for members who employ staff directly.

As an employer we are here to help you with:

- your responsibilities as an employer
- providing initial guidance on the appropriate steps to follow
- explaining the legal framework that you are required to work within as an employer
- example policies, contracts etc that can be adapted to your individual requirements
- giving you best practice advice.

Please be aware

This handbook cannot replace the expert confidential advice on employment issues that you should and can obtain.

This is available as part of your membership through the

BMA Employer Advisory Service, who can be contacted on

0300 123 1233 or by email at support@bma.org.uk where more detailed individual advice and assistance can be provided.

1

Recruitment

This section introduces the key elements in the recruitment process, and the legal and business implications of that process.

There is no legally defined method for recruitment and selection, but a failure to follow a reasonable process increases legal risk (mostly related to discrimination claims) and increases the potential to recruit the wrong person for the job, which creates inefficiency and inconvenience.

The recruitment process

A typical recruitment process can be summarised as:

1. Identify need to recruit
2. Prepare a job description and person specification for the post
3. Formulate the pay and benefits
4. Determine the selection criteria
5. Advertise post
6. Shortlist applicants (see section 2 Selection process)
7. Interview shortlisted applicants
8. Decide who to offer the job to
9. Send a conditional offer letter to the selected applicant(s)
10. Take up references, get Disclosure and Barring Service (DBS) checks (see NB for equivalents in Scotland and Northern Ireland), arrange a medical and check right to work in UK
11. Check references, entitlement to work in the UK, DBS checks, and pre-employment medical report are acceptable to the practice
12. The applicant confirms acceptance of the offer
13. Inform unsuccessful applicants about their rejection

NB Where an employee starts work before the receipt of satisfactory references, DBS checks and medical then their job offer ought to note that the receipt of unsatisfactory checks may result in their employment being terminated. The Disclosure and Barring Service does not operate in Scotland and Northern Ireland – relevant organisations are: Disclosure Scotland and Access Northern Ireland.

The job description

A formal job description tells you what the job is and helps clarify the relationship between the employer and the employee. It makes it clear to candidates what the job is and helps them to decide whether or not to apply.

The content of a job description usually includes:

- the job title
- name of the post holder
- main purpose of the job described in one or two sentences
- who the post holder reports to
- any 'reports' (those managed by the post holder)
- a list of the main tasks (routine work) or objectives (work that is goal orientated which can be described as end results)
- any relevant numerical information about the post (for instance, budget holding)
- main contacts and the reason for their inclusion
- signature of the job holder
- signature of the immediate line manager
- date prepared and date signed

An employee's job description should be reviewed and amended periodically where necessary so that it reflects the actual work of the post holder and not the work that the employee was initially recruited to do.

The person specification

A person specification tells you what characteristics and skills the jobholder needs to have.

Once you have considered the general requirement for the individual you are seeking you can then place them in a person specification.

Advertising a post

Advertising a post allows you to widen the field of potential candidates. When preparing an advertisement you must ensure that it does not discriminate.

Generally, you cannot make your choices based on a candidate's:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex and sexual orientation
- trade union membership or non-membership

In some circumstances there may be a 'genuine occupational qualification' (GOQ) that provides an exception to the application of discrimination law.

The Equality Act 2010 provides that an employer recruiting workers should not treat them less favourably on the grounds set out in the bulleted list above; these grounds are known as 'protected characteristics'.

It is also unlawful to discriminate indirectly at any stage in the recruitment process against a person with a protective characteristic, unless this can be objectively justified. Further, employers must make reasonable adjustments for disabled applicants where appropriate.

Importantly, under the Immigration, Asylum and Nationality act 2006, employers are under a duty to ensure that any person recruited is entitled to work in the UK (see section 2 Selection process).

Please seek advice from the BMA at the earliest opportunity.

2 Selection process

This section introduces the key elements in the selection process, and the legal and business implications of that process.

There is no legally defined method for selection, but a failure to follow a reasonable process increases legal risk (mostly related to discrimination claims – see section 27 Discrimination) and increases the potential to recruit the wrong person for the job, which creates inefficiency and inconvenience.

Short-listing

When you are trying to narrow down the field of applicants to those you will interview consider the following:

- It is important to adopt an objective and consistent approach to establish whether or not each applicant has the type of work-related background or qualifications suitable for the job
- Do not make selections based on personal information (names, sex, age, nationality, country of birth etc). The initial screening could be conducted with personal details removed from the forms
- Focus on skills and the potential of the candidates
- Keep a record of the reasons for rejecting any applicant at this stage

Interviewing

The interview is the central event in the selection process and you must be well prepared for it. Avoid any questions that may appear discriminatory on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, age, sex and sexual orientation and trade union membership or non-membership.

Examples include:

- do you intend to start a family in the near future?
- will your disability mean that you will need to take time off for hospital appointments?
- do you think you will be able to work in a team of young people?
- will you need to take long holidays to visit your family abroad?

You should prepare a standard interview checklist that can be used for all recruitment exercises, and keep this as a record of the interview.

The right to work in the United Kingdom

As set out in the recruitment section of this handbook under the Immigration, Asylum and Nationality Act 2006, it is a criminal offence for an employer to recruit anyone who does not have the right to work in the UK.

However the employer has an absolute defence to such a charge if it did not know that the applicant did not have the right to work in the UK.

In order to establish this defence, the employer must be able to show that before the person's employment began, it saw and either retained or copied certain documents, specified in the legislation, which indicated that the person did have the right to work here in the UK.

The employer must also satisfy itself that the documents appear to relate to the individual producing them for inspection; in particular by checking that the individual's appearance resembles any photographic likeness the documents contains and that the individual's age is of an age that corresponds with the date of birth given in the documents presented for inspection.

To avoid committing a criminal offence under the Act, an employer would be well advised to ensure that it sees, checks and copies the required documents before offering an applicant a job. The employer also needs to bear in mind that these requirements apply to all recruits, regardless of their racial or national origin. Asking only those applicants who have 'foreign' sounding names or do not speak with an 'English' accent to produce the necessary documentation would be an act of unlawful racial discrimination. It is suggested that employers should consider carrying out the checks of an applicant's eligibility to work in the United Kingdom in the final stages of the selection process to ensure appointment on the basis of merit alone.

Making a job offer

When making an offer it should be strictly confidential, subject to agreement of terms and conditions, satisfactory reference, DBS (or equivalents in Scotland and Northern Ireland)*, etc.

As a minimum, a job offer ought to contain:

- the job title and grade (if appropriate)
- conditions attached to the offer – for example, a reference that is satisfactory to the practice
- location of the work
- details of pay – eg pay intervals (weekly, monthly), progression
- non-pay benefits – eg pension, company car, advance on season tickets
- start date
- information about a probation period, and any terms that do not apply, or are specific to, this period
- hours of work
- holiday entitlement
- the new employee's line manager
- any action that the employee should now take to complete the recruitment (for instance, contacting the practice manager to confirm or negotiate the start date)

The offer letter forms part of the contract

Therefore, if you have a full set of terms and conditions for the post, your offer letter would be accompanied by the full terms and conditions of service (TCS) for the preferred candidate to sign and return to you.

When seeking a reference, you could consider sending the referee a reference request on a form containing the questions you would like answered. Your questions could be designed to clarify any points that were raised in the interview.

If you receive conflicting information in references compared to the information in an application form, contact the BMA for advice.

Remember, making a job offer is the first step in creating a legally binding contract. If you want to withdraw a job offer after discovering major inconsistencies in the references, you should first take advice from the BMA, because **withdrawing the offer without good reason may leave you open to a breach of contract claim**. This can be avoided by making a conditional offer 'subject to satisfactory references, medical and Disclosure and Barring Service checks'.

Criminal records checks and ex-offenders

Candidates who have been offered work in a healthcare setting, such as a GP practice, should have an Enhanced DBS check (or equivalents in Scotland and Northern Ireland)* before starting work.

Rejecting candidates and withdrawing offers

When rejecting unsuccessful candidates, do so in writing as soon after the interview as possible. Do not enter into the reasons why the candidate was rejected in the letter.

Remember:

- the manner in which you treat candidates reflects on your practice's reputation
- to thank the candidate for taking an interest in working for your business
- to offer rejected candidates a verbal explanation

Withdrawing an offer of employment

Remember, the job offer itself forms part of a contract and withdrawing an offer has legal implications. Where the withdrawal of an offer is considered for reasons beyond the control of the candidate (for instance, a change in the circumstances of the business) you should give the candidate pay in lieu of the notice period contained in the contract (offer). If you have any questions about the need to withdraw an offer before the employee starts work, please **contact the BMA** for advice tailored to your circumstances.

Please seek advice from the BMA at the earliest opportunity.

3

Induction

Induction is a process that usually consists of a short period of intensive training over a few days, which delivers the urgent information required by the inductee and then a longer and more flexible period of training as part of an on-going learning process.

It is important to bear in mind that inductees should not be overloaded with information on their arrival and, depending on the job, you must hold reasonable expectations of what new arrivals should be able to achieve.

Induction programmes

Putting new recruits through an induction programme is good business practice. Introducing the employee to the job and the work environment, including work colleagues, the physical environment and work procedures including disciplinary and grievance procedures, ensures that the employee becomes a productive member of the practice staff as soon as possible.

It is important to explain health and safety procedures at an early stage, in order for the practice as an employer to meet its health and safety obligations. See our example induction policy below.

Data protection requirements

The Data Protection Code advises employers to inform newly appointed employees of what information will be kept about them, where it was obtained, how it is to be used, and to whom, if anyone, it may be disclosed.

The Data Protection Code also advises that employees should be provided annually with a copy of any personal details that might change, such as their home address, so that they can check whether they are still accurate.

Please seek advice from the BMA at the earliest opportunity.

Example induction policy

Workplace:

Dated:

Purpose

The practice will provide all new permanent and temporary employees, whether employed on a full-time or part-time basis, with a full programme of induction training. The purpose of induction is to integrate a new employee into the organisation in order that he or she is encouraged to become an effective and motivated member of the team.

Effective induction:

- ensures that new recruits are integrated into their new environment
- reduces the stress on new employees of undertaking new work
- ensures that new recruits become effective within a reasonable period
- is a major factor in retaining new recruits.

The induction programme

Induction is an ongoing process to ensure that the new employee settles well into the organisation and is confident carrying out the full scope of his/her duties. Essential information should be supplied to the new employee in a planned and systematic way to avoid information overload and to ensure that he/she is able to absorb it.

Induction checklist

The practice should provide a newly appointed employee with a range of information and training about the company and his/her new job, including:

- core business objectives and values of the practice
- departmental structure
- the workplace
- the purpose and key responsibilities for his/her new role
- fire and health and safety procedures
- the individuals with whom he/she will be working
- expected standards of behaviour and performance
- probationary arrangements
- completion of all necessary documentation relating to his/her appointment
- all policies, procedures and rules, including those concerning equal opportunities

Delivery of the programme

The induction programme should involve input from a number of different managers and work colleagues who are best placed to supply the new employee with the full range of relevant information and assistance.

Review meeting

A review meeting should be held with the new employee at the end of his/her first month of employment in order to discuss how the first few weeks with the organisation have gone, and to identify any gaps in his/her induction.

The opportunity should be taken to review the individual's job description and answer any queries the employee may have about his/her duties and responsibilities. The review meeting should also be used to agree some short-term objectives, to be reviewed at the end of the first three months of employment. The next review date should be set to take place in eight weeks time (three months into employment).

4 Issuing a contract of employment

A contract is a legally binding agreement between the employer and the employee and it is the basis of the employment relationship. A contract is formed when an offer of employment is accepted. That is, the employee agrees to work under certain terms and conditions in return for the remuneration and benefits the employer will pay them for carrying out the job.

There is no need for a contract of employment to be in writing, so the offer can be made and accepted orally, perhaps in a telephone conversation. Alternatively the employer may set out the offer fully and formally in a letter and ask the applicant to confirm in writing that he or she accepts the terms. In practice it is preferable for a job offer to be made in writing, to ensure that the terms of the offer are clear.

Prior conditions

Once the job applicant has unconditionally accepted an unconditional job offer, he or she has a contract of employment, even if he or she has not yet started work. Therefore, if the offer is intended to be conditional on certain events occurring, such as the practice receiving satisfactory references or medical reports, then the practice, as the prospective employer, needs to make that clear.

The contract will then not take effect unless and until those conditions are met. But if the practice allows the employee to start work before the conditions are met, it could be argued that the conditions no longer apply. In such a situation it will be the case that the employee is working under a contract of employment, and the practice, as the employer, must therefore give proper notice to terminate it.

Express terms

Express terms are terms explicitly agreed and can be:

- in writing
- verbal
- incorporated by collective agreements
- agreements with trade unions recognised by the employer
- incorporated into workforce agreements
- incorporated by statute or reference to other documents, eg the practice handbook, practice policies and procedures

In many cases, the terms must meet minimum standards required by law, for example in areas such as:

- the right to paid holidays
- the right to receive at least the national minimum wage
- the right to receive statutory notice of termination
- the right to daily and weekly rest breaks

Fundamental terms

All employment contracts have the following fundamental terms, whether explicitly agreed or implied:

- to maintain mutual trust and confidence through cooperation
- to act in good faith towards each other
- to take reasonable care to ensure health and safety in the workplace
- to pay wages to the employee

Some implied terms can become part of the contract because of the conduct of the employer and employee, through custom and practice over time, or through the employer's rules, particularly if the employee has been made aware of them and given access to them. For further advice please contact the BMA.

Benefits of a written contract

To avoid uncertainty or dispute between the employer and the employee about the terms of the contract of employment, it is advisable that as many terms as possible are set out in writing, and are issued to the employee prior to, or upon, commencement of employment.

Many practices choose to give employee a written contract of employment, although not essential this is advisable for the following reasons:

- a written contract provides a record of the rights and responsibilities of the practice as the employer and also of the employee, making it less likely that a dispute will arise later about what the terms of their relationship are. In particular, the contract can clarify which of the practice's policies and procedures, if any, are intended to be part of the employee's contractual terms
- while a practice does not need to issue an employee with a written contract of employment, it is under a legal obligation to give the employee written information on the main terms and conditions of his or her employment, as set out below. If the practice supplies the employee with a written contract containing the necessary details, it meets that obligation
- where relevant, a written contract of employment can provide the authorisation needed for certain deductions from the employee's pay

Statement of employment particulars

Employers must provide employees with written details of their main terms and conditions of employment within eight weeks of starting work as follows:

- the employer's and employee's name
- the date when the employment (and the period of continuous employment) began
- the job title or a brief job description
- the place of work or if your employee is required or allowed to work in more than one location, an indication of this and the address of the employer
- the amount of pay and the intervals at which it will be paid, that is weekly, monthly or other specified intervals
- hours of work
- holiday entitlement including public holidays and holiday pay in such a manner as to allow them to be precisely calculated.
- entitlement to sick leave, including any entitlement to sick pay
- pension arrangements
- notice periods (employer and employee entitlements to notice of termination)
- where the employment is not permanent, the period for which the employment is expected to continue or where the employment is for a fixed term, the date when it is to end
- details of your disciplinary and grievance procedures
- details of the existence of any relevant collective agreements which directly affect the terms and conditions of your employee's employment including where the employer is not a party, the persons by whom they were made
- whether or not a pensions contracting-out certificate is in force for the employment in question
- where the person is required to work outside the UK for more than one month: the period he/she is to do so; the currency in which salary will be paid; any additional remuneration payable by reason of working outside the UK; and any terms and conditions relating to his/her return to the UK

Probationary periods

A probationary period is a trial period for a new employee. It allows both the practice and the employee to assess objectively whether or not they are suitable for the role, taking into account the individual's overall capability, skills, performance and general conduct in relation to the job in question.

Where employment commenced before 6 April 2012 then after one year's continuous service, employees gain the right to claim unfair dismissal at an Employment Tribunal subject to adherence to the rules relating to such claims and Early Conciliation with the involvement of Acas.

It is therefore preferable for line managers to identify and address any unsatisfactory performance or behaviour on the part of new employees during a defined probationary period, rather than condoning or disregarding it. For further advice, please contact the BMA. There is no standard period of probation, as the length of time necessary to assess a new employee's performance objectively will depend on the complexity and seniority of the job. Typically, a probationary period will be for a defined period of time. This is often three months in respect of unskilled, clerical or junior administrative roles, or six months for management, supervisory or professional roles.

Retirement and age discrimination

The UK Government abolished the UK Default Retirement Age (DRA) of 65 years from 1 October 2011. Following the abolition of the DRA employees compulsorily retired are able to bring claims for unfair dismissal and age discrimination unless the 'retirement' can be objectively justified.

These issues are dealt with in greater detail elsewhere in the Employer Handbook (section 26). The reference to retirement at clause 20 in the example contract of employment for non-medical staff at section 5A of this handbook sets out the circumstance that a practice does not operate an age-related retirement age. Please note that in view of the current legislation that the BMA strongly advises that a medical practice is unlikely to have grounds that will justify compelled age-related retirements. Therefore, for most practices objectively justifying compulsory retirement will not be possible and therefore practices should prepare or should be prepared to adapt to a workplace without compulsory retirement.

Please seek advice from the BMA at the earliest opportunity.

Model contract example (non-medical staff)

Example model contract of employment for non-medical staff:

1. NAME OF EMPLOYEE
2. EMPLOYER (Insert full name and address of practice)
3. DATE CONTRACT COMMENCED
4. DATE FROM WHICH CONTINUITY OF EMPLOYMENT APPLIES (If applicable)
Your previous employment with name of former employer will count as part of your period of continuous employment which began on date.
5. JOB TITLE & SUMMARY OF JOB DESCRIPTION
You are employed as full time/part time Administrator, Receptionist or other post
Your duties are set out in the job description attached as an appendix.
6. LOCATION
Your job is based at name of main place of employment although you may be required to work at alternative location as requested by the practice manager.
7. SALARY DETAILS
Your salary will be £ per annum paid monthly. You will be paid by cheque or bank or building society transfer monthly in arrears normally on the state date of each month. A salary review will take place on [1 April] each year.
8. HOURS OF WORK
Your hours of work will be () per week. The daily arrangement of these hours is set out in Appendix 1 to this contract, and includes agreed rostered arrangements for weekend surgeries, as well as those for bank and public holidays.

Hours worked on Saturdays or Sundays will be paid at () your current hourly rate or time off in lieu may be granted with your agreement.

The arrangement of your hours may be varied from time to time, subject to your agreement, which should not be unreasonably withheld. Any changes will be confirmed in writing.
9. ADDITIONAL HOURS
You may be required occasionally to work extra hours to cover the absence of colleagues, arising from holiday, sickness or other causes. Such extra hours will be paid at your current hourly rate, [unless they are weekend hours paid for at the higher rate set out in clause 8 above]. Alternatively, time off in lieu may be granted with your agreement. All such time off must be at times to be agreed with the practice manager/ named partner beforehand.
10. PROBATIONARY PERIOD
This contract will be subject to an initial probationary period of [] months.
During the probationary period, your suitability for continued employment in the practice will be assessed and your employment may be terminated at any time at one week's notice.

A decision will be made as to whether your employment with the practice will continue. As part of this decision, the probationary period may be extended for a further, specified period at the discretion of the practice.
11. ANNUAL LEAVE
Your leave year commences on []. You are entitled to [] days' paid annual leave excluding bank and public holidays, which must be taken within the leave year.

Annual leave will accrue during periods of sickness and maternity leave in accordance with current legislation.

To ensure that adequate cover is available [] notice must be given of your intention to take annual leave. You are required to discuss the proposed dates with the practice manager/named partner and have them agreed. They must be agreed before booking your holidays. Following appointment, and during the year of leaving, leave entitlement will be calculated on a pro rata basis, according to the number of complete months' service accrued.

If you have exceeded your leave entitlement at the date of your leaving the practice, for whatever reason, the partners will deduct a sum equivalent to the salary paid in respect of such excess leave from your final salary payment.

12. BANK AND PUBLIC HOLIDAYS

Subject to the provisions of this paragraph, you are entitled to the following bank and public holidays if they are days on which you would normally work: New Year's Day, Good Friday, Easter Monday, May Bank Holiday, Spring Bank Holiday, August Bank Holiday, Christmas Day and Boxing Day and any public holidays proclaimed from time to time.

If you work on a bank or public holiday you will be entitled to a day off in lieu. Part-time staff will receive a pro rata proportion of the bank holiday entitlement. Scotland and Northern Ireland have different public holidays, for details go to:

www.direct.gov.uk/en/Governmentcitizensandrights/LivingintheUK/DG_073741

Note that in Northern Ireland, the extra holidays, and in Scotland that local public holidays, may take the place of some national bank holidays.

13. NOTIFICATION OF ABSENCE

If you are prevented from attending work for any reason, you must notify the practice manager (or other designated person) within one hour of your usual start time on your first day of absence, giving reasons for your absence and giving an indication of when you are likely to return to work.

Employees should note that every effort should be made to speak with the manager directly. Sending an email, text messages or leaving a message with a colleague will not be acceptable unless alternative arrangements have been made. Employees should telephone their manager each subsequent day they are sick, unless a longer reporting period is agreed between the individual and the manager. Further information relating to sickness absence is included in the Sickness Absence Management Policy which staff may access within state location, ie within the Staff Employment Policies File or practice intranet.

14. SICK PAY

Statutory sick pay (SSP)

If you are entitled to SSP, this will be paid to you by the practice at the appropriate rate for the agreed qualifying days. These will be days on which you would normally work. A current copy of the SSP scheme is available in the practice manager's office.

Practice sick pay State current sick pay agreement

Example: Qualifying Service Pay— You will be entitled, subject to length of service, and to proper notification by you, to the following periods of pay during sick leave in any 12-month period: Full-pay period/Half-pay period

15. DEPENDANT LEAVE

Details of your statutory entitlements to dependant leave are contained in state location, ie within the Staff Employment Policies File or practice intranet.

16. MATERNITY LEAVE AND PAY

Your maternity rights are those set down in current legislation. Legislation provides that notices to be given by employees relating to maternity leave should be given in writing if the employer so requests. It is a contractual requirement to produce all such notices to the practice in writing. Also, you are hereby required to produce for the practice a certificate from your doctor or midwife giving the expected week of confinement

at least 21 days before you wish to start your leave. Further important details and contractual requirements are contained in the practice maternity leave policy state location, ie within the staff employment policies file or practice intranet.

17. PARENTAL LEAVE

Details of your statutory entitlement to parental leave are contained in state location, ie within the staff employment policies file or practice intranet.

18. PENSION

This appointment is pensionable under the NHS pension scheme as it applies to NHS GP practice staff, unless you opt out of the scheme or are ineligible to join. Your pensionable salary will be subject to deduction of pension contributions in accordance with the provisions of the scheme.

19. PROFESSIONAL REGISTRATION AND INDEMNITY

(delete where this provision is not appropriate)

Continuation of your contract of employment is dependent upon you effecting and maintaining full registration with your professional regulatory body throughout the period of your employment [and to maintain acceptable insurance cover for professional indemnity purposes]. Further details may be obtained from the practice manager.

20. RETIREMENT

Following the abolition of the UK Default Retirement Age in October 2011 the Practice does not operate a policy of age related retirement. An employee who wishes to retire for reasons of age should comply with the normal notice requirements.

21. CONFIDENTIALITY

Subject to your statutory rights and duties, you are required to preserve the confidentiality of the affairs of the partners, their staff (in connection with their employment), their patients and of all other matters connected with the practice and this obligation shall continue even after the contract of employment has ended. A breach of this requirement will be regarded as gross misconduct and as such will be grounds for dismissal, subject to the provisions of the disciplinary procedure.

22. GRIEVANCE PROCEDURE

A copy of the grievance procedure is available for staff to access within [state location].

23. DISCIPLINARY PROCEDURE

A copy of the disciplinary procedure is available for staff to access within [state location].

24. NOTICE OF TERMINATION OF EMPLOYMENT

In the event that your employment is terminated, you are entitled to receive in writing one week's notice of termination, increasing to two after two years' service. Thereafter your notice entitlement will increase by one week for each additional completed year of service, up to a maximum of 12 weeks. You are required to give the same minimum period of notice in writing.

These arrangements shall not prevent either party waiving his/her rights to notice on any occasion, or accepting payment in lieu of it, or treating the contract as terminable without notice, by reason of such conduct by the other party as enables him/her so to treat it at law.

25. ACCEPTANCE OF TERMS OF EMPLOYMENT

I accept the terms and conditions of employment contained within this document and in the associated policies to which it refers.

Signed

Date

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Statutory employment rights

The practice must ensure that it meets any required statutory minimum terms and conditions to comply with employment legislation, with regards to the following:

- pay
- hours of work
- rest breaks
- annual leave
- protection against unlawful deductions from wages
- protection against discrimination
- protection for whistleblowing
- no less favourable treatment for working part-time
- maternity, paternity, adoption, shared parental leave and pay
- minimum notice periods
- protection against unfair dismissal
- right to request flexible working
- time off for emergencies
- redundancy pay

Pay

The National Living Wage was introduced on 1 April 2016 for all working people aged 25 and over, at the rate of £7.20 per hour. The rate changes every April.

The current National Minimum Wage for those under the age of 25 still applies. The rate changes every October.

Minimum rates of pay vary depending on the age of the employee:

- rate for workers aged 21 to 24
- rate for workers aged 18-20
- rate for workers aged under 18
- rate for apprentices who are either under 19 or 19 or over and in the first year of their apprenticeship

Apprentices are entitled to the minimum wage for their age if they both:

- are aged 19 or over
- have completed the first year of their apprenticeship.

The NMW is reviewed on a regular basis.

For current information on NMW rates go to www.gov.uk/national-minimum-wage-rates

Annual leave

Almost all workers are legally entitled to 5.6 weeks paid annual leave. Additional annual leave can be agreed as part of the contract of employment. 5.6 weeks' leave is based on a full-time employee working a five-day week, ie they are entitled to 28 days. This entitlement is calculated on a pro-rata basis for part-time staff. For example, if a member of staff works three days per week, their entitlement would be 16.8 days' leave.

Public or bank holidays can count towards a worker's statutory holiday entitlement as long as they are paid for that day off. So, in effect, if the GP practice is closed on all public and bank holidays as most GP practices are, the practice can allow the employee 20 days' annual leave of their own choosing and eight days' paid leave for public/bank holidays.

Statutory sick pay

Providing the employee meets the eligibility criteria they are entitled to be paid SSP for absences from work caused by personal sickness.

For further information on the rules relating to the payment of SSP please refer to the annual leave section of this handbook and www.gov.uk/employers-sick-pay

Working hours and rest breaks

Workers aged 18 or over are entitled to work no more than 48 hours per week. They are also entitled to a minimum rest period of 20 minutes for every six hours worked and 24 hours rest in every seven-day period or 48 hours rest in every 14 days.

Workers aged 16 and 17 are entitled to work no more than eight hours a day and 40 hours a week. They are also entitled to take at least 30 minutes' break if they work more than four-and-a-half hours at a time with 12 hours' rest between working days. They are entitled to two days off every week.

Contracts inherited via TUPE arrangements

Practices need to be aware that if they 'inherit' employees via TUPE arrangements – for example, from a TUPE transfer of staff from the PCO or from the merging of two GP practices – they must maintain employee's terms and conditions of employment.

The practice as the 'new employer' is not able to change the employee's terms and conditions as a result of the TUPE transfer to ensure that there is harmonisation of terms between staff members.

Salaried GPs

Since 01 April 2004, all GMS practices have been obliged to offer a written contract of employment to new salaried GPs in line with the model salaried GP contract, which was negotiated between the BMA general practitioners committee and the NHS Confederation.

This 'model' contract applies to all GMS employers throughout the UK. Under the GMS Contracts Regulations, GMS practices must offer terms and conditions of employment, which are no less favourable than the model salaried GP contract.

For further information relating to the employment of salaried GPs, please refer to the BMA's Salaried GPs handbook, 'A guide for salaried GPs and their employers 2010'. This may also be downloaded from the BMA website.

A copy of the model offer letter and contract for a salaried GP employed by a GMS practice can be found at Appendix B of the BMA's Salaried GPs handbook.

PMS/APMS (for Scotland please use equivalent Section 17c contracts) practices are free to offer salaried GPs different terms and conditions of employment to that set out in the GMS model contract. However, the BMA recommends these practices do offer terms and conditions of employment that are at least as favourable as those set out in the model GMS salaried GPs contract.

Please seek advice from the BMA at the earliest opportunity.

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Salaried GPs

Since 01 April 2004, all GMS practices have been obliged to offer a written contract of employment to new salaried GPs in line with the model salaried GP contract, which was negotiated between the BMA general practitioners committee and the NHS Confederation. This 'model' contract applies to all GMS employers throughout the UK and with effect from 2015/16 all PMS practices are also required to issue salaried GPs with a contract or terms that are no less favourable than the model salaried GP contract.

For further information relating to the employment of salaried GPs, please refer to the BMA's Salaried GPs handbook, 'A guide for salaried GPs and their employers 2010'. This may also be downloaded from the BMA website.

A copy of the model offer letter and contract for a salaried GP employed by a GMS practice can be found at Appendix B of the BMA's Salaried GPs handbook.

Please seek advice from the BMA at the earliest opportunity.

7

Managing the employment relationship

The ACAS Code of Practice

In April 2009, a new ACAS 'Code of Practice' on disciplinary and grievance procedures was introduced. Supporting the Code of Practice is a non-statutory guide (also provided by ACAS) on dealing with discipline and grievances at work. Although the guide is non-statutory, it is recommended that employers deal with disciplinary and grievance issues in line with the guide as a measure of best practice.

The ACAS code deals with disciplinary situations relating to employee misconduct or poor performance.

It is recommended that the practice has a separate performance and capability procedure; they may address performance issues under this procedure.

The disciplinary process

Investigation

It is important to carry out investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case.

Where the concern relates to alleged misconduct of the employee, where practicable, a different person should carry out any necessary investigations – including any required investigatory meeting – than the person who is responsible for conducting the disciplinary hearing.

An investigatory meeting should not in itself result in any disciplinary action. If after thorough investigation, the Investigating Officer is of the view that there is a disciplinary case to answer, the employee should be advised that they will be formally invited to a disciplinary meeting.

There is no statutory right for an employee to be accompanied at an investigatory meeting.

If it is decided that there is a disciplinary case to answer, the employee should be notified in writing detailing:

- the alleged misconduct or poor performance
- the possible consequences

The meeting

The meeting should be held without unreasonable delay, while allowing the employee reasonable time to prepare their case. At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made.

The employee should:

- be given a reasonable opportunity to ask questions
- be allowed to present evidence
- be allowed to call relevant witnesses
- be given an opportunity to raise points about any information provided by witnesses

The employee has a statutory right to be accompanied at a disciplinary meeting where the meeting could result in a formal warning being issued. This may be a trade union representative, an official employed by a trade union, or a work colleague of their choice. All parties involved in the meeting should make every effort to attend.

No person acting in a legal capacity should be allowed to accompany the employee at any meeting unless the practice's own policy provides for this.

NB There is no statutory right for an employee to be accompanied at the meeting by a friend, partner or any other person of their choosing. The practice's own policy may provide for an extension to the statutory right and allow the companion to be a friend or partner etc and should this be the case, the practice would need to allow this companion to attend so as not to breach their own policy and procedure.

The outcome

As soon as possible after the meeting, and without unreasonable delay, a decision whether disciplinary, or any other action, is justified should be made. The employee must be informed of the meeting's decision accordingly in writing. The employee should also be informed as part of the outcome that they are entitled to appeal against the decision.

Written warning

Where misconduct is confirmed or the employee is found to be performing unsatisfactorily, it is usual to give the employee a written warning. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning.

If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning.

Dismissal

The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Gross misconduct

Some acts, termed gross misconduct, are so serious in themselves, or have such serious consequences, that they may call for dismissal without notice for a first offence. Regardless, a fair disciplinary process must always be followed before dismissing for gross misconduct.

Suspension

It may be necessary to consider suspension of the employee on full pay. This is appropriate where for example:

- the employee's continued presence in the practice is likely to cause significant disruption to the service and/or staff
- the employee's presence could hinder the investigation
- where the employee may have the opportunity to tamper with evidence in relation to the alleged offence

The right to appeal

If the employee feels that the disciplinary action taken against them is wrong or unjust, they are entitled to appeal against the decision. Appeals should be heard without unreasonable delay, and ideally at an agreed time and place by a partner not previously involved.

Please seek advice from the BMA at the earliest opportunity.

8 Dealing with employee grievances

What is a grievance?

The ACAS code defines a grievance as 'a concern, problem or complaint that an employee raises with their employer'.

Grievances can be raised regarding a variety of issues including:

- terms and conditions of employment
- health and safety
- work relations
- bullying and harassment
- new working practices
- working environment
- organisational change
- discrimination

Wherever possible, employee concerns, problems or complaints should be dealt with informally at the earliest opportunity by discussion with their line manager. Where informal resolution is not possible or has been attempted and failed, there needs to be a formal mechanism in place for the employee to raise the issue with a view to resolution at the earliest stage. This formal mechanism is the grievance procedure.

If the employee's grievance has not been resolved informally, the employee should be entitled to raise the matter formally. This should be done in writing and should set out the nature of the grievance.

Upon receipt of a grievance letter, the employer should arrange for a formal meeting to be held without unreasonable delay, and the employee should be given the opportunity to explain their grievance and how they think it should be resolved. If upon discussion at the meeting it becomes apparent that there are further issues that need to be explored, it is recommended that consideration be given to adjourning the meeting to allow any further investigation that may be necessary.

The employee should be informed of their statutory right to be accompanied at the meeting by a trade union representative or a work colleague. All parties involved in the grievance meeting should make every effort to attend.

NB There is no statutory right for an employee to be accompanied at the meeting by a friend, partner or any other person of their choosing. The practice's own policy may provide for an extension to the statutory right and allow the companion to be a friend or partner etc and should this be the case, the practice would need to allow this companion to attend so as not to breach their own policy and procedure.

Documentation of the process

Wherever possible, an impartial note taker should be present at the meeting to ensure that an accurate record is made of the discussion in addition to any agreed outcomes.

The outcome of the meeting

As soon as possible after the meeting, and without unreasonable delay, the partner/manager hearing the grievance should communicate to the employee in writing what action, if any, the partner/manager intends to take to resolve the grievance. The employee should also be informed as part of the outcome that they are entitled to appeal if they are not satisfied with the outcome of the grievance.

The appeal hearing should be organised to take place without unreasonable delay at a time and place notified to the employee in advance. The appeal should be dealt with impartially and, wherever possible, by a manager/partner who has not previously been involved. Again, the employee has a statutory right to be accompanied at the appeal hearing.

The outcome of the appeal should again be communicated to the employee in writing without unreasonable delay.

In situations where the number of personnel available is likely to cause a problem, it is important to discuss this at the earliest opportunity with the EAS adviser appointed to manage your case.

Dealing with a grievance raised during a disciplinary process

If an employee raises a grievance during a disciplinary process, consideration needs to be given to temporarily suspending the disciplinary process in order to deal with the grievance issue first. Upon completion of the grievance process, the disciplinary process may then resume.

Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. For further advice and support please contact the BMA.

Please seek advice from the BMA at the earliest opportunity.

9

Bullying and harassment

Harassment can be any conduct or comment, which is unreasonable, unwelcome, or offensive and causes the recipient to feel threatened, humiliated or embarrassed, either intentionally or unintentionally.

Bullying is the aggressive misuse of power and/or position. It may include behaviour that criticises, condemns and/or humiliates people and can undermine their ability and confidence.

General guidance on dealing with bullying and harassment

Practices should establish policies stating key principles. They should include a statement that employees have a right to work in a climate of respect, free from intimidating, hostile or humiliating treatment. Policies should outline the effect that bullying and harassment can have together with the steps the practice takes to prevent it.

Policies should also include a definition of harassment, indicating the range and types of behaviour that can constitute harassment, including:

- inappropriate use of email and internet sites
- potentially offensive office banter
- other kinds of behaviour that will be deemed unacceptable

Policies should state the requirement for employees to comply with the policy and for the partners to lead by example. They should also contain assurances that complaints will be taken seriously and investigated fully, impartially and promptly, with appropriate action being taken as a consequence.

Handling complaints

The practice should seek informal resolution where possible and appropriate. Where a formal complaint is made the practice should ask the complainant to make the complaint in writing and confirm that the matter will be dealt with in accordance with the practice bullying and harassment or grievance procedure (as appropriate).

Please seek advice from the BMA at the earliest opportunity.

10

Dealing with requests for flexible working

With effect from 30 June 2014, the right to request flexible working was extended to all employees with the required period of service, irrespective of caring responsibilities. The law essentially gives eligible employees the right to ask their employer for a change to their working hours or place of work, and compels employers to deal with such requests in a 'reasonable manner'.

There is no obligation on the employer to agree automatically to a request for flexible working, but there is a designated procedure to deal with such requests. The employee's right is to request flexible working, not to have it on demand.

Eligibility

Both male and female employees are eligible to request flexible working. However, the right to request flexible working extends to employees only. Requests for flexible working are restricted to one request per employee per year, regardless of whether or not a previous application was made for the same reason.

Employees must have at least six months continuous service to be eligible to make a request, but there is nothing to stop an employer extending the right to request flexibility in working patterns to all staff whether or not they have the requisite period of service.

The requested change to the employee's terms and conditions must relate to:

- the number of hours that the employee works
- the times that the employee works
- the employee's place of work (as between the normal workplace and the employee's home)

Dealing with a flexible working request

The statutory procedure for dealing with requests for flexible working was abolished from 30 June 2014. In its place, there is a requirement to handle requests in a 'reasonable manner'.

The application process

The employee's written request for flexible working should ideally comply with the following requirements:

- the application must be made in writing
- the application must state that the request is for flexible working
- the application must set out the employee's proposal and
- must explain what effect the employee thinks this will have on the employer's business and how this may be dealt with
- the application must specify a start date for the proposed change giving the employer reasonable time to consider the proposal and implement it. This may take 12-14 weeks
- the application must state whether a previous application has been made and if so the date on which it was made
- the application must be dated

The ACAS Code of Practice

ACAS has published a code of practice that lays down the principles that employers should follow when dealing with request for flexible working. The code will be taken into account by employment tribunals in relevant cases.

The ACAS code states that employers should:

- speak to the employee as soon as possible after receiving the request for flexible working (unless the request is approved straight away)
- discuss the employee's request directly with him or her in private
- allow the employee to be accompanied by a colleague (if he or she wishes) at any meeting set up to discuss a request for flexible working

- inform the employee of the decision in writing as soon as possible
- if the employee's request is to be granted, discuss when and how the changes might best be implemented directly with him or her
- if the employee's request is to be rejected, ensure that the rejection is for one of the business reasons permitted by the legislation
- if the request is rejected allow the employee to appeal the decision

To a large extent, the recommendations contained in the ACAS code mirror the previous statutory procedure.

Technically, a request that does not fulfil the above criteria will not be valid and will not, therefore, require the employer to activate the procedure. However, it is recommended that the manager speak to the employee informally to explain what further information is required and to assist the employee to resubmit the application to maintain positive employee relations.

Once the employee has submitted a written request for flexible working under the process, the employer must arrange to meet with the employee to discuss the request as soon as possible. A meeting is not required if the practice/business agrees to the terms of the application at the outset and duly notifies the employee of its agreement in writing as soon as possible after agreeing to the request.

For the majority of applications, a meeting would be appropriate to discuss the request in further detail. The employee is allowed to be accompanied at the meeting by a work colleague if they wish. If the employee's chosen companion is not available on the proposed date of the meeting, the line manager should, within reason, postpone the meeting to allow the employee to bring along the chosen companion. Such a postponement need only be granted once and should normally be to a date that falls within one week of the original proposed meeting date.

The practice/business must notify the employee of their decision as soon as possible after the meeting. The notification will either:

- accept the request, specify the agreed variation to the contract and establish a start date for the new working arrangements
- confirm a compromise agreed at the meeting
- refuse the request and set out clear business reasons for the refusal along with notification of the right to appeal against the decision

Providing the decision

Agreement to a request

Where changes to an employee's working pattern are agreed as a result of the employee submitting a request for flexible working, these will be regarded as permanent changes to the terms of the employee's contract, unless the employer and employee expressly agree otherwise.

The employee has no automatic right to revert to his or her previous pattern of working at a future date. Similarly, the employer will not be able to insist that the employee revert to his or her previous working pattern at a future point in time either.

Further variations to the employee's terms of employment can be changed in the future but only with the consent of both parties, ie they cannot be enforced unilaterally.

There is nothing to prevent the manager and the employee reaching an agreement that any changes to the employee's working pattern should be implemented for a defined temporary period, or that a trial period should be implemented in respect of the proposed working arrangements.

One of the issues that will require discussion at the meeting is the effect of any agreement to vary the employee's working hours on his or her pay and other terms of employment as applicable. Clearly any reduction in hours will be accompanied by a proportionate reduction in pay and the practice, as the employer, should ensure that the employee has thought this through properly.

Applications for flexible working arrangements can only be refused for the following reasons:

- the burden of additional costs
- a detrimental effect on ability to meet customer demand
- a detrimental impact on quality
- a detrimental impact on performance
- an inability to reorganise work among existing staff
- an inability to recruit additional staff
- insufficiency of work during the periods the employee wishes to work
- planned structural changes

If the practice/business refuses a request, it must be for one of the above reasons. The practice/business is not entitled to provide some other reason for refusing an employee's request for flexible working. There should always be concrete evidence to support the reason for a refusal to grant an employee's request.

The right to appeal

If the request is refused it is recommended in the Acas Code that the employee is given a right to appeal. A reasonable period to allow for an employee to submit an appeal would be 14 days.

If the employee does appeal, arrangements should be made for the appeal to be heard by a different manager/partner wherever practicable.

The employee again has the right to be accompanied at the appeal hearing by a work colleague of his or her choice. If the appeal is upheld, the notification must specify the changes to the employee's terms of employment and the date from which the changes are to take effect.

If the appeal is refused, the notification of the decision must explain the grounds on which the refusal is based and the reasons why these grounds apply to the particular case.

The final decision from the appeal should be given not later than three months from the date on which the employee's request was made unless a longer time period is agreed.

Sex discrimination claims

It is important to understand that complying with the procedure for dealing with a request for flexible working will not protect the employer from a sex discrimination claim.

Because women generally have primary responsibility for children and for the care of other relatives, a female employee who is refused a request to reduce her hours of work may be able to succeed in a claim for indirect sex discrimination. In order to defend a claim of this type, the employer will need to be able to show that, when viewed objectively, it is appropriate and necessary for business reasons for the job to be done full time by one person.

A man whose request to work flexibly is refused may have a claim of direct discrimination if a woman in similar circumstances has (or would have been) allowed to work flexibly.

An employee needs no minimum length of service to bring a sex discrimination claim.

Please seek advice from the BMA at the earliest opportunity.

11

Handling sickness absence

Reporting procedure

The contract of employment and/or staff handbook should state clearly what is required of the employee if they are unable to attend for work due to sickness. The procedure should set out:

- to whom they should report their sickness
- the method of contact
- that contact should be made directly by telephone rather than by alternative means of communication, such as text messaging or email

Self-certification

When an employee is absent for less than one week, he or she is required to complete and sign a self-certification form on their return to work. Even absences of one day should require self-certification and be monitored and recorded in this way.

Certification of absence – requiring a doctor's certificate

An employee whose absence lasts for more than seven days (including bank holidays and weekends) should be required to submit a doctor's certificate from the employee's GP.

Sick pay policy

Employees' rights to pay in relation to sickness absence will be determined according to the terms of their employment contract.

Return to work interviews

Irrespective of the length of sickness absence, when the employee returns to work, a return to work interview should be held with the employee.

Return to work interviews should be:

- informal
- private and confidential
- taken seriously
- structured and factual
- carried out in a positive and supportive way
- recorded

Cause of absence

Understanding the root cause of absence is important and also whether the absence is work related or due to personal issues. Until the cause is correctly identified, it will not be possible to identify an appropriate course of action to remedy it:

- the volume of work or pressure of deadlines being too much for a particular employee to cope with
- unhappy working relationships or outright conflict with colleagues
- bullying or harassment
- perceived ineffective management or an authoritarian management style
- an employee's inability to cope with change or fear of inadequacy
- other factors causing dissatisfaction, for example ineffective procedures or equipment, or having no clear goals or targets

Long-term absence

Long-term absence is often defined as absence of more than four weeks. The 'trigger point' of what is defined as long-term absence is a matter for the practice/employer to determine.

There are two stages to managing an employee's long-term sickness absence:

- to manage the employee's absence from work
- to manage their return to work

Request for a medical report

The practice can seek the employee's consent to request a medical report from his or her GP or treating specialist. In this case, the manager must abide by the relevant provisions of the Access to Medical Reports Act 1988. Under the Act, an employee has the right:

- to be informed in writing if their manager wishes to seek their consent to their doctor being contacted for a medical report
- at the same time to be informed about their rights under the Act
- to decline to give their consent for their manager to apply to their doctor for a medical report
- if they have given their consent, to ask their doctor for a copy of the report once it has been prepared
- to ask the doctor to amend the report if, in their opinion, it contains anything inaccurate or misleading
- to refuse to allow the report to be released to their manager

An employee has the right to refuse to give consent for the employer to apply to his or her doctor for a medical report.

The employer should:

- write to the employee and ask for his or her written consent to write to the doctor
- inform the employee of his or her rights under the Access to Medical Reports Act 1988 (see above)
- recognise that the employee has the right to decline to give consent
- enclose a copy of the employee's signed consent when writing to the doctor to request a report

On receipt of the GP report, the line manager should consider carefully whether there are any specific further actions he or she should instigate.

Referral to occupational health

As soon as it becomes clear that an employee's absence will be long term, the line manager should consider referral of the employee to an occupational health doctor for an assessment of the effects of his or her condition, the likely duration of the illness or condition and whether or not there are any steps that the practice/employer could take to facilitate the employee's return to work.

Keeping in touch

The practice should take positive steps to keep in touch so that the employee knows that the organisation is interested in his or her health and wellbeing, and that support is available.

Disability discrimination

An employee who is off sick for a lengthy period of time may be disabled for the purposes of the Equality Act 2010 (formerly referred to in employment legislation as the Disability Discrimination Act 1995 (DDA)). If this is the case the employee will be entitled to protection against discriminatory treatment and to expect the employer to make reasonable adjustments.

Duty to make reasonable adjustments

Employers are under a positive duty to make reasonable adjustments to support a disabled employee. This means that the practice must take the initiative and consider what adjustments would be possible and practicable. Adjustments may be agreed on a temporary or a permanent basis.

Managing the employee's return to work

Once the employee's GP or occupational health doctor has indicated that the employee may soon be ready to return to work, the manager should consider a phased return to work and discuss the options with the employee (and an occupational health doctor or the employee's GP if possible).

Dismissal on grounds of ill health

The dismissal of an employee on the grounds of long-term ill health should be considered as a last resort and only after all other options have been fully considered and discussed with the employee, and after all possible adjustments have been made to support the employee's continuing employment.

Occupational health advice for employers

Employers and managers in small and medium-sized businesses, such as general practices may need to access dedicated occupational health support in response to individual staff issues at work either through their CCGs (Clinical Commissioning Groups) where available, or via their NHS England Area Team where available, or at the expense of the practice.

The utilisation of an occupational health service provides qualified, professional and confidential support on all occupational health issues, including mental health issues and those raised by the new Statement of Fitness for Work (fit note).

Please seek advice from the BMA at the earliest opportunity.

Example sickness absence policy

1. Introduction

This policy is designed to encourage high standards of attendance and ensure the wellbeing of all staff.

The aim of this policy is to ensure that all employees are given adequate time to recover from illness whilst meeting the practice's obligations to its patients. The practice undertakes to treat all employees in a consistent, fair and sympathetic manner to enable them to attend work.

The entitlement to sick pay remains as set out in the terms and conditions of employment.

2. Aims and objectives

The aims and objectives of this policy are:

- to ensure that short and long-term sickness absences are dealt with in accordance with best practice, relevant legislation and ACAS Code of practice
- to monitor the level of sickness absence within the practice
- to identify any action which the practice can reasonably take to promote the health, safety and welfare of staff
- depending on the circumstances of the case the practice will consider any reasonable adjustments to facilitate an employee's return to work after a period of sickness absence

3. Management responsibilities

When an employee returns to work from sickness absence a meeting will be arranged with the practice. The object of this informal meeting will be for the line manager to:

- welcome the employee back and establish/confirm the reason for the employee's absence and ensure that the absence is recorded appropriately
- enquire as to the nature of the health problem and, if appropriate, whether there is some support, which it would be reasonable and practicable for the practice to provide
- if the practice considers it appropriate, the employee's permission may be sought to in order to obtain further information relating to the employee's condition
- if the employee feels unable to discuss their health issue with the practice manager, arrangements will be made for them to discuss the matter with a partner
- information relating to sickness and ill health is sensitive and unnecessary circulation can cause great distress. The practice will make efforts to ensure that confidentiality is maintained in dealing with cases under this policy and that records appertaining to sickness are held in a secure place
- where an employee is disabled, or becomes disabled, the practice will act in accordance with the provisions of the Equality Act 2010 (EQA 2010) and will consider any reasonable adjustments as required under the Act to support the needs of the employee
- when considering rehabilitation options, the practice will undertake risk assessments in accordance with Health and Safety at Work provisions

In certain circumstances absence can result in dismissal. However, no employee will be dismissed on grounds of sickness absence without due warning and without the appropriate procedure in this document having been followed and implemented by the practice.

4. Grievance and discipline

Any employee who feels aggrieved at the way their sickness absence has been dealt with may invoke the practice's grievance procedure.

Where an employee abuses the sickness regulations (eg not providing certificates, being absent without permission, refusing to comply with this policy, etc) it will be dealt with under the disciplinary procedure.

5. Notification of absence

If an employee is going to be absent from work they should speak to the [designated person] within an hour of their normal start time on their first day of absence. The employee should explain the reasons for their absence and give an indication of when they are likely to return to work.

Employees should note that every effort should be made to speak with the [designated person] directly. The sending of an email, text message or leaving a message with a colleague will not be acceptable.

Telephone the [designated person] each subsequent day they are sick, unless a longer reporting period is agreed between the individual and their manager.

Upon returning to work the employee will be required to meet with their practice manager to discuss their return to work arrangements and ongoing responsibilities.

A doctor's certificate is required where the absence has exceeded seven calendar days.

If a period of absence continues after the expiry of the doctor's certificate, further certificates must be obtained as necessary to cover the whole period of absence and should be sent to the practice manager within two days of issue.

Any employee who has been signed off work by a doctor may return to work before the expiry of the certificate, with the agreement of the practice as the employer.

If the GP advises on the Statement of Fitness for Work that an employee 'may be fit for work' a discussion with the employee will take place on ways of helping them get back to work. This may involve talking about a phased return to work or amended duties. Advice may also be obtained subject to the employee's agreement from their GP or occupational health.

If an individual becomes ill on holiday, the time may not be treated as sickness absence unless a medical certificate or evidence of hospitalisation can be produced.

If an employee does not contact the practice manager when absent from work, the absence will be recorded as unauthorised. Failure to provide sickness documentation (or some other valid reason for the absence) within two working days of their return to work may also cause the leave to be viewed as unauthorised and therefore recorded as such. Subject to the circumstances, the absence may be unpaid and may also be investigated under the disciplinary policy.

Any non-medical explanations for absence will be investigated fully.

Appointments with the doctor, dentist or hospital should not be classed as sickness unless the employee is already absent through sickness. Such appointments should be taken as early or late in the day as possible to avoid disruption to work, however, reasonable time for appointments should be accommodated depending on the practice's requirements where ever possible, and normally the hours should be made up. If a series of regular appointments are required the employee should inform the practice manager.

6. Contacting employees on sick leave

Employees on short-term sickness who have followed the reporting procedure will not normally be contacted at home unless the practice manager can demonstrate extraordinary circumstances to justify the contact.

If absence is likely to be longer term, ie more than four weeks continuously, the practice will contact the employee periodically as agreed to check on their wellbeing.

7. Medical reports

In certain cases, subject to the agreement of the employee, the practice may choose to seek further independent, professional advice and guidance relating to the employee's sickness absence. This may involve the practice requesting a medical report from the employee's GP or consultant, or referring the employee for an independent medical assessment or an assessment at an occupational health unit (OHU).

If it is agreed that a medical report will be sought from the employee's GP, consultant or OHU, written permission will be gained from the employee first. Employees have a right under the Access to Medical Reports Act 1988 to see their own medical reports before it is given to the employer and to query items in it.

The practice manager will complete a referral form and must discuss the reasons for the referral with the employee, it is important that both the employee and the referring manager understand the purpose of the referral. It is important that the employee understands that the involvement of occupational health will ensure that both parties obtain the necessary advice to facilitate the management of the employee's condition.

Further to the receipt of the medical report, a meeting will be arranged between the practice manager, employee and his or her representative. The purpose of this meeting is to discuss the response from the employee's GP, consultant or OHU and for all parties to consider options available to the worker.

8. Short-term frequent absence

Frequent absence refers to cases where an employee is frequently absent from work for relatively short periods due to sickness. Most employees will have some short-term sickness absence.

The practice reserves the right to investigate absences in an attempt to determine any underlying problems. The practice will take steps to investigate any absences exceeding: [For example]

- six working days in six consecutive months
- spells of absence in three consecutive months
- 12 working days in a consecutive 12-month period
- any pattern of absence more than twice in a year
- separate absences lasting a working week or more within a 12-month period
- where any unacceptable trend is identified (eg repeated absences linked to weekends)

Where there are reasonable grounds to do so, further medical evidence may be sought. If the attendance issue is not resolved satisfactorily, the practice will:

- (subject to the employee's permission) request further medical information from the employee's GP
- (subject to the employee's permission) obtain further medical information via a referral to occupational health
- investigate the working practices, including problems caused by the absence
- consider the consequences of allowing the absence to continue and whether there are alternative duties that the employee could be moved to

9. Seeking solutions at the informal stage

The practice considers that it is in the interests of the employee and the employer for cases of frequent absence to be dealt with quickly and informally.

In the event that the practice becomes concerned about an employee's level of sickness absence, every effort will be made to resolve the matter informally. Both parties should discuss the matter positively, with a view to identifying the reasons for the absences, ways in which the situation might be improved and what, if anything, the practice can do to support the employee.

The employee should disclose any relevant factors, such as whether the absence is related to an accident, disability, pregnancy or some medical condition and whether it is likely to be temporary, on-going or long term. The manager should look positively

to see if there is anything that the practice can reasonably do to assist the employee. The practice manager should also make the employee aware that if the situation does not improve it might need to be dealt with under the formal process. If the employee has a health problem, which s/he feels unable to discuss with the manager, they should be referred to another appropriate manager or partner who will keep the conversation confidential if the staff member desires.

Where the situation does not improve, the practice will adopt a formal process to manage the situation.

10. Managing sickness absence – formal process

The following arrangements will be put in place if a decision is taken to address an employee's sickness absence in a formal manner in accordance with the practice disciplinary procedure:

- a letter will be sent to the employee inviting them to attend a meeting, stating the reason for the meeting, enclosing any information that the practice is relying on in order to address the matter, for example the employee's sickness record or any medical reports
- the employee should be informed that they may be accompanied at the meeting by a work colleague or trade union representative
- the meeting will be arranged at a time that is convenient for both parties, including the employee's representative
- the employee will be given at least five working days advance notice of the date, time and place of the meeting
- the employee will be informed as to the names of the manager/partner that will be present at the meeting

10.1 Meeting with the employee

The employee should be asked to explain any circumstances, which might be contributing to their level of absence, or any other matter, which they feel ought to be taken into account.

The representations offered by the employee will be considered fairly and reasonably and discussed as appropriate.

The employee will be informed that they will receive a written response within five working days, including notes from the meeting.

The partner will subsequently write to the employee (enclosing the notes of the meeting and any further documentation) as follows in order to:

- a) inform the employee that no further action will be taken.
- b) confirm the discussion and details of any assistance the practice can provide to the employee.
- c) inform the employee of the specified review period (eg one to three months) during which the employee's level of attendance is expected to improve.

The employee will have the opportunity to disagree with the written summary and may, within a further five days, submit their reasons in writing. Both documents will be placed in the employee's personnel file to be discussed during any subsequent review.

At the end of the specified review period the employee's level of attendance will be assessed by the line manager as follows.

If there has been an improvement, no further action will be taken. After a further six months the record will be removed from the individual's file and destroyed.

Where there has been no improvement and the employee has failed to provide a reasonable explanation for their absence the practice manager will consider issuing an appropriate reprimand in accordance with the disciplinary procedure.

The employee will be informed of their right to appeal against the practice's decision to issue the reprimand. The employee will have 10 working days (as per disciplinary policy) from the date of being informed in which to make an appeal.

11 Long-term sickness absence

Sickness absence lasting in excess of one month is generally considered to be long-term absence. Individuals may be absent on long-term sick leave for a variety of reasons (eg following an injury or operation, convalescence from illness, diagnosis of a long-term disability or terminal illness).

Any action taken to address long-term absence will depend on the circumstances of the particular case.

When a disabled employee is on long-term sick leave related to their disability or they are at risk of a cut in pay, the practice will endeavour to maintain them on full pay for the period of absence in accordance with the EQA 2010.

11.1 Informal meeting

Where an employee has been absent for more than two months and there is no identified return date in the near future, the practice manager will contact the employee to arrange an informal meeting to discuss their current situation and when a return to work may reasonably be expected.

The response given by the employee will determine the next stage in the process, as the options will depend on the individual circumstances. In the event that the employee is too ill to attend the meeting, the practice manager will seek to obtain the necessary information from them in an appropriate manner, eg by home visit or via their trade union or other representative.

11.2 Request for a medical report

Prior to any decision being made, and before any formal process is commenced, the practice will request the permission of the employee to obtain information from the employee's GP on their condition. Subject to the content of the report the practice may decide to obtain the agreement of the employee to undergo an occupational health assessment in order to take advice on any reasonable adjustments that may be made to facilitate the employee's return to work.

Referral to the agreed OHU

If a date for return to work cannot be established, the employee will be asked to attend a medical examination at an OHU to obtain an expert assessment of her/his fitness for work. The employee will be provided with a copy of the letter to the OHU and a copy of the medical report.

On the basis of the information contained in the medical reports the practice may be obliged to consider the following option.

11.2.1 Fit to return to work

If the practice is advised that the employee is fit to return to work, a formal meeting (see process under Paragraph 10) will be convened to discuss the employee's return and the arrangements to be put in place to facilitate this. The outcome of the meeting must be confirmed in writing by the line manager and placed on the employee's file.

11.2.2 Unfit to return to current role – consider reasonable adjustments or alternative role

While the practice is under no obligation to create a specific job for an employee who becomes permanently unable to carry out their contractual duties, the practice will endeavour to make reasonable adjustments or identify suitable alternative employment within the capability and medical limitations of the employee.

A formal meeting will be arranged in order to identify which type of adjustments or jobs within the practice that might be suitable for the employee to undertake. If neither is possible, it may be necessary to proceed to dismissal on grounds of capability.

11.2.3 Unfit to return to work in the foreseeable future

Where medical advice states that the employee is unfit to return to their current role for the foreseeable future and reasonable adjustments are not feasible, and where suitable alternative employment can not be offered, the employee will be invited to attend a formal meeting with the practice manager/partner together with the employee's representative to discuss the situation and the content of the medical report. The outcome of this meeting will be dismissal on grounds of ill health and the employee will be entitled to full pay contractual (or statutory if longer) notice.

The employee will be informed of the right to appeal against the decision to terminate their contract of employment.

11.3 Appeal process

If an employee is dissatisfied with the outcome of any aspect of the sickness absence process or any management action taken against them, they may lodge a formal grievance in accordance with the practice grievance procedure. The grievance must be taken out within five working days of the action or decision being complained about.

Grounds for appeal:

- (a) severity of the decision.
- (b) failure to adhere to the agreed procedure.
- (c) mitigating circumstances.

Format of the appeal hearing [To follow practice grievance procedure]

- (a) the employee or their representative will present their case for the appeal.
- (b) the practice manager will then present the case against the appeal.
- (c) the partner hearing the appeal or members of the appeal panel can question both parties in turn.
- (d) both parties will be invited to sum up, with the manager summing up first.

Where feasible, the case will be heard by a partner or appeal panel not previously involved in the process. The employee will be informed of the decision in writing within five working days of the appeal being heard. The decision of the partner/ appeal panel is final.

12

Performance management

Good practice: performance management

Performance management consists of two parallel processes:

- the informal, day-to-day management of individuals and teams by their immediate line manager (see day-to-day performance management below)
- the formal framework within which the performance of individuals and teams is assessed and improved (see formal performance management below)

The two processes are mutually supportive and depend on the same factors for success.

They involve:

- monitoring individual or team performance against accepted benchmarks or standards
- feedback on performance – both praise (positive reinforcement) and feedback highlighting unsatisfactory performance
- ensuring that negative feedback is delivered in an objective manner and is accompanied by an explanation of why the performance is unsatisfactory, affording an opportunity for the employee to provide an explanation, as well as the means to improve in the future
- coaching, training or other support to address poor performance
- follow-up monitoring to check that the performance has improved, with the improvements reinforced with positive feedback
- recourse to formal procedures such as the disciplinary or capability procedure where the poor performance continues and represents serious cause for concern

Day-to-day performance management

The formal process, whereby performance reviews (appraisal) are typically conducted every six or 12 months builds on what should be an everyday practice (please see the section 13 Appraisal).

Practice managers should attempt to resolve performance shortcomings through day-to-day management practices.

The aims of day-to-day informal performance management are to:

- provide feedback on exemplary performance at the time that it occurs, thereby reinforcing it
- provide feedback on instances of unsatisfactory performance by explaining the problem, listening to the individual's side of the story, and explaining what improved performance should look like and how it can be achieved with referral to the capability procedure if necessary

Formal performance management

Formal appraisal or personal reviews tend to overshadow the day-to-day process of supervising and developing employees' performance. However, formal systems cannot operate in isolation from the essential daily activity.

Capability policy

Statement of intent

It is the intention of the practice to:

- deal with issues of staff capability and performance fairly and without due delay
- help create a climate for good employee relationships through the maintenance of high standards of staff performance
- harness the maximum potential from all its employees and deploy skills and competencies appropriately throughout the organisation

In achieving this:

- a clearly defined procedure to deal with capability and performance issues will be followed
- all employees of the practice will be made aware of this document and of who has the authority to manage their performance and ultimately to dismiss them
- training, as necessary, shall be provided for managers in applying the staff capability policy

Please seek advice from the BMA at the earliest opportunity.

13

Appraisal

What is appraisal?

Appraisal should be a positive opportunity to acknowledge achievement, encourage further development and support an employee to reach his/her full potential. An effective appraisal system builds on strengths rather than focuses on weakness. It is vital that people see appraisal as an opportunity to praise rather than directly concerned with discipline, grievance or redundancy.

Why introduce appraisal?

The purpose of performance appraisal is to appraise a person's performance over a given period (usually quarterly or annually) against a number of targets/objectives in order to:

- assess performance, build on strengths and identify weaknesses
- identify areas for improvement, ways of overcoming weaknesses and any consequential training needs
- discuss potential and future prospects for the employee. This is best achieved by looking at performance under three headings

Past

- Praise for achievement and recognition of good performance
- Identify problems and why they occurred and how they may be overcome

Present

- Improve individual performance in current job
- Link personal effort to practice team goals
- Agree personal targets and measure progress
- Assess competence against relevant NVQ standards where appropriate
- Identify individual training needs

Future

- Identify potential for increased responsibility or promotion
- Agree targets in line with organisational development of the practice
- Agree individual professional development plan

Example appraisal form

(Name of practice)

PRIVATE AND CONFIDENTIAL

Annual Performance Appraisal

Name Manager

Job title Date

What has been the overall progress towards the achievement of your objectives set at your last appraisal? What has gone well and what has not gone so well?

What has prevented the achievement of those objectives that were not achieved?

What changes could you make to your job to make it easier for you to achieve your objectives?

What skills or experience have you gained from any training or development undertaken in the year?

What skills or experience do you need to develop to improve your current performance?

Practice manager's overall comments on the year's performance.

Practice manager's signature

Jobholder's comments

Jobholder's signature

Once completed a copy of this form will be given to the employee and a copy held on his/her personnel file at the practice.

14

Managing change

Change within an organisation is inevitable. It is important that any change is managed well through appropriate discussions and consultations with all those involved with a view to reaching agreement on the change.

Training, development and regular communication and involvement are central to the management of change.

Before embarking on any change you need to be clear of the following:

- why are you doing it?
- what are the intended outcomes?
- the impact of the change on your business
- the potential impact on your employees
- the potential cost of the change
- the anticipated time scales
- how you will measure the success of the change

Once you have identified the proposed change you need to begin appropriate consultations with your staff. Changes to a contract should normally only be made if both the employer and the employee agree.

Please contact the BMA for advice if no agreement can be reached.

15

TUPE

The revised Transfer of Undertakings (Protection of Employment) Regulations came into force on 6 April 2006. These regulations often referred to as 'TUPE' were amended from 31 January 2014.

The main purpose of TUPE is to protect the rights of employees who are employed in a business that is being transferred, so that their contracts of employment are not terminated or changed. The effect is that the new employer steps into the shoes of the old employer and the employment continues.

There is a requirement under the Regulations for the old employer to give the new employer certain information about the employees who transfer and the Regulations make it automatically unfair for the old or the new employer to dismiss an employee because of the transfer, unless an economic, technical or organisational reason can be shown that entails changes in the workforce.

Overview

Contracts of employment transfer automatically for those employed immediately before the transfer from the old employer to the new employer. All employees transfer to the new employer on the same terms and conditions and their continuity of employment is preserved.

Any dismissal or change to the terms and conditions by reason of the transfer is prohibited unless an economic, technical or organisational reason can be shown entailing changes in the workforce. The employers are obliged to inform and consult their employees affected by a proposed transfer. The old employer is obliged to give the new employer written information as to the transferring staff.

TUPE is likely to apply in two types of transfer, which are not necessarily mutually exclusive. The first is a business transfer, this is when the whole or part of the business is transferred to a new employer. Practice mergers would potentially fall into this category and TUPE would apply. The second situation where TUPE will apply is when a 'service provision change' takes place. For example, where a practice contracts out or contracts in some of its cleaning activities, or changes the contractor it uses to provide cleaning services.

Business transfers

TUPE will apply to business transfers that involve a change in the identity of the employer and where there is a transfer of an 'economic entity which retains its identity'. In general terms, a transfer will be subject to TUPE providing that:

- the type of business conducted is the same
- the entity retains its identity after the transfer
- the people that transfer continue to perform their previous role for the new owner
- the entity, or part of it, is situated in the UK immediately before the transfer

Service provision changes

In 2006 the original TUPE regulations were extended to cover virtually all types of 'contracting out', 'contracting in' and 're-tendering' situations. A 'service provisions change' occurs when there is an 'organised grouping of employees whose principal purpose is the carrying out of the activities concerned on behalf of the client and the client intends that the activities will, following the service provision change, be carried out by the new employer'.

The TUPE regulations cover three situations:

- where a service previously undertaken by the client is awarded to a contractor (a process known as 'contracting out' or 'outsourcing')
- where a contract is assigned to a new contractor on subsequent re-tendering
- where a contract ends with the service being performed 'in house' by the former client ('contracting in' or 'in sourcing')

TUPE regulations

Changes to terms and conditions

As stated at the start of this chapter, the purpose of TUPE is to protect the rights of employees and ensure they do not suffer any detriment as a result of a transfer. This protection applies before and after the transfer. The new employer or the old employer will not be in a position to vary employee contracts where the sole or principal reason is the transfer unless it is for an 'an economic, technical or organisational reason entailing changes in the workforce' (an ETO).

For example, if there is a merger of two practices and all employees in practice A are on terms and condition in line with agenda for change, their terms and conditions will be preserved even if practice B employees are on different sets of terms and conditions. The new practice could not harmonise the terms and conditions to the detriment of the employees from practice A.

Dismissal

The Regulations make it automatically unfair for an employer to dismiss an employee if the only or main reason for the dismissal was the transfer. This principle applies whether the employee was dismissed by the old employer, or the new. In order to be entitled to bring an unfair dismissal claim on these grounds, an employee must have been continuously employed for two years or more. If the employee resigns in response to substantial changes in working conditions to their material detriment they are treated as dismissed and the enhanced protection against dismissal applies.

Refusal to transfer

Where a relevant transfer is going to take place the employee can object to the transfer, the effect of this objection to the transfer would be that the employment contract is terminated at the point of transfer, but there will be no entitlement to claim that they have been dismissed or make a claim for redundancy.

Information and consultation

The TUPE regulations place an obligation on the old and new employer to inform and consult with employees or their representative who may be affected by the transfer.

To enable consultation to take place the employer should provide the following information:

- the fact of, date of and reason for the transfer
- the legal, economic and social implications of the transfer for the affected employees
- any action the employer intends to take, eg re-organisation, in connection with the transfer in relation to the affected employees so that consultations between the employer and the employee representatives can take place

'Suitable information' relating to the use of agency workers (if any) by the employer. This means the number of agency workers working temporarily for and under the supervision and direction of the employer; where they are working and what tasks they are doing. If there are special circumstances which make it impracticable for the employer (old or new) to fulfil the information or consultation requirement, the employer must take such steps to meet the requirement as are reasonably practicable in the circumstances.

The changes introduced in January 2014 permit direct consultation with affected employees where the employer employs fewer than 10 employees. This applies where there are no appropriate representatives and the employer has not invited any of the affected employees to elect representatives.

Requirement for old employer to provide information to new employer. The old employer has an obligation to provide the new employer with information about the employees to enable him to understand the rights, duties and obligations in relation to those employees who will be transferred.

This information should be made available in writing or a readily accessible form and should include:

- identity and age of employees
- terms and conditions of employment as laid down in the written statement of employment particulars
- details of any disciplinary/grievance action taken within the previous two years,
- details of any legal action brought against the old employer within the previous two years or any potential legal action which the old employer believes may be brought
- information of any collective agreements which apply to the employees to be transferred

This information may be provided in instalments or through a third party to the new employer and must be provided at least four weeks before the completion of the transfer.

Employees (and their representatives) can bring a claim against the old or new employer where there has been failure to comply with the information and consultation obligations under TUPE. The employment tribunal can award up to 90 days pay to each employee in respect of whom the claim has been brought, which equates to approximately 25% of the employee's annual salary. Therefore it is important for the practice to comply with its information and consultation duties.

The TUPE regulations are a complicated and complex area of employment law and we would always suggest that you contact BMA in the first instance to seek advice.

Please seek advice from the BMA at the earliest opportunity.

16

Social media

The use of social media (or social networking as it is sometimes known) has expanded rapidly in recent years and has substantial benefits for both employers and employees but can also give rise to employment problems.

The term 'social media' refers to the underlying platforms and interactions through which people communicate electronically including for example smart phones, the internet and sites such as Facebook, LinkedIn and Google+, tweeting and blogging.

While social media has helped people work more flexibly, stay in touch longer and respond to each other more rapidly, it has often blurred the lines between people's private and professional lives.

The main areas where social media may adversely impact on employment are:

- Managing performance
- Discipline and grievances
- Recruitment
- Bullying
- Defamation, data protection and privacy
- Protecting business interests
- Social media policy

Managing performance

For example there may be productivity issues when employees spend too much time social networking away from their core work duties.

Discipline and grievances

For example, postings on a social media site might come to your attention that suggest one of your employees has committed an act of misconduct or could contain statements that lead other employees to raise grievances. Investigating misconduct connected to or evidenced by postings on social media sites can often be very difficult.

Recruitment

Advertising jobs and screening applicants through use of websites and social networking sites can save time and money but does carry risks. For example, relying on social media to advertise could in some cases lead to the exclusion of those without easy access to these facilities. Looking up candidates on the web could result in possible discrimination claims if a person is rejected because of a protected characteristic referred to on a social media site, might breach the law on data protection and could undermine the other processes that are in place to ensure that recruitment decisions are made objectively.

Bullying

For example, harassment and victimisation can be conducted via social media channels, in some circumstances even where the information is uploaded outside of work.

Defamation, data protection and privacy

Given that employees might post damaging or libellous comments about their employer or its products and services on social media sites, which could end up being widely seen, employers may wish to monitor and restrict what employees can say on certain sites. This raises issues of data protection and privacy. It helps to have a clear policy in place explaining what type of comments about the practice, its workforce and its customers and suppliers are acceptable and what is being monitored and why.

Protecting business interests

The use of social media sites such as LinkedIn has changed the way people keep contact information and communicate with them. If you are concerned about what might happen to your contacts when a particular employee leaves, you may want to consider ways of pro-actively manage the process of handing over business connections as part of the exit process.

Bear in mind also that social media websites make it more difficult to prevent individuals from soliciting clients or employees, so you may need to review restrictive covenants to see that they still protect your business interests.

Social media policy

Even though each employer is different, all employers need to consider the issues raised by social media and decide on what stance they take on how they should be managed. Employers should consider drawing up a policy on the acceptable use of social networking or expanding on existing rules or policy they have on email and internet use. A significant element in such policies is to ensure that there is a consistency of treatment between electronic 'misbehaviour' and non-electronic 'misbehaviour'. ACAS says that an organisation with a written policy on social media can:

- help protect itself against liability for actions of its employees
- give clear guidelines for employees on what they can and cannot say about the practice
- help line managers to manage performance effectively
- help employees to draw a line between their private and professional lives
- help employers comply with the law on discrimination, data protection and protecting the health of employees
- set out the practice's approach to monitoring and how disciplinary rules and sanctions will be applied

Example social media policy

Aims and objectives

We aim:

- to establish clear rules on personal usage of social media at work
- [to outline our policy on using social media for promoting our business]
- to remind you that monitoring is taking place
- to warn you that what you say on social media sites, even outside of your working time, is not private and that we will not tolerate comments which bring the practice, its employees or its patients into disrepute or which infringe our bullying and harassment policy
- [to outline the practice's policy on using social media for recruitment practices]
- [to outline the practice's policy on business contacts stored on professional networking sites]
- to explain the possible consequences of policy breaches

What we mean by social media

Social media means:

- social networking sites such as Facebook, Google+, Twitter and My Space
- professional networking sites such as LinkedIn
- online chatrooms and forums
- blogs
- other social media such as YouTube and Flickr

[Using social media to promote our business]

If your job involves using social media for business purposes, eg sales and marketing, you must stay within the following parameters:

- [You should always seek approval from [name of contact] for each communication]
- You should always identify yourself by name and role
- You should not contravene our equality or harassment and bullying policies, make comments which may harm the reputation of the practice, its employees or patients or divulge confidential information
- You should not use the practice logo and marketing material unless specifically authorised to do so
- You should always correct any mistakes immediately you become aware of them
- You should not say anything about a third party which might be defamatory
- [Add guidance on tone/approach]
- [Add guidance on the range of opinions they may express]

Use of practice equipment for personal social media activities

[You may not use our practice equipment including PCs, laptops and smart phones to access social media sites.]

OR

[You may use our practice equipment, including PCs, laptops and smart phones to access social media outside your working hours or during breaks. However you must not access any inappropriate or offensive websites (detailed rules can be found in our Electronic Communications Policy) and you must comply with the rules on responsible content set out below.]

OR

[You may make limited and reasonable use of our equipment, including PCs, laptops and smart phones to access social media whilst you are at work, as long as this is done mainly outside of working hours and during breaks and does not interfere with your productivity. You must not access any inappropriate or offensive websites (detailed rules can be found in our Electronic Communications Policy) and you must comply with the rules on responsible content set out below.]

Monitoring

We log and audit the use of practice computers, laptops and PDAs, including email, internet and other computer use. Auditing software has been installed to monitor which internet sites you visit. We will look at the content of what you have posted or uploaded where we have good reason to do so. We do this in order to investigate and detect unauthorised use

of our equipment in breach of our policies, including social media use. For further details of how we monitor and the purpose of monitoring, see our Electronic Communications Policy.

Use of your own equipment to access social media sites whilst you are at work

[You must not use your own equipment (eg your iPhone) to access social media when you are supposed to be working. Please restrict usage to breaks and time outside working hours.]

OR

[You can make very limited use of your own equipment (eg iPhone) to access social media whilst you are at work, as long as this is done mainly outside working hours and during breaks and does not interfere with your productivity.]

Posting responsible content on social media sites

When using social media sites such as Facebook, MySpace, Google+, Twitter, YouTube, blogs etc you are operating in a public space and your conduct may have serious consequences for the practice, its employees, its patients/suppliers and other affiliates.

You should comply with the following basic rules whenever you are using social media sites, whether using our equipment or your own equipment and whether you are doing so during or outside of working time.

Do:

- Say 'I' rather than 'we' in any context where you might be construed as talking about our organisation, even if you have not named us
- Remember that conversations between 'friends' on Facebook are not truly private and can still have the potential to cause damage
- State that the views you are expressing are your personal ones, not those of the practice, in any situation where you disclose that you are an employee of the practice or where this could be inferred
- Report to [name] if you see anything on a social media site that indicates that a colleague may have breached this policy
- Use our whistleblowing procedure to raise any issues of malpractice – this is the appropriate channel for raising issues in the first instance, not social media sites

Do not:

- Make comments which could damage the reputation of the practice or its employees
- Make comments which could damage the practice's relationships with its patients/suppliers and other affiliates
- Use social media to insult, embarrass or offend a colleague, patient or supplier.
- Use social media to bully or harass or discriminate against any colleague in a way which contravenes our bullying and harassment policy
- Comment on sensitive business-related topics such as the practice's financial performance
- Post comments or pictures which are inconsistent with the requirements of your role or the image it requires you to project
- [Post pictures of yourself wearing practice uniform unless this projects a positive image of the practice]
- Use a practice e-mail address to register on social media sites

Divulge confidential information about our business or our patients or suppliers

[Recruitment]

[HR and/or line managers or any other employees should not conduct searches on social media sites to vet prospective employees]

OR

[If HR and/or line managers use social media sites to investigate a job candidate, they should:

- ensure that they keep searches to a minimum
- avoid forwarding, printing or keeping notes of material
- never use the information gained to discriminate against job applicants in contravention of our equality policy.]

OR

[We may use social networking sites as recruitment aids but we will adhere to the following guidelines:

Searches will not be carried out before candidates have been shortlisted for interview

- We will warn candidates that we conduct searches of social media sites as part of our decision-making process
- Searches will be limited to what ostensibly looks like material that is relevant to the candidate's ability to do the job
- Candidates will be permitted to comment on any information which causes us to reject a candidate's application
- Information about a candidate's gender, ethnic origin, age, sexual orientation, disability, religion or pregnancy which is revealed through any searches will not be used or disclosed
- Under no circumstances will the information gained be used to discriminate against job applicants in contravention of our equality policy]

Business contacts

[The details of business contacts made during the course of your employment belong to us, even where they are created through professional networking sites such as LinkedIn. We will require you to forward details of them to us and then delete your records upon the termination of your employment.]

Breaches of this policy

Any breach of this policy will be taken seriously and may lead to disciplinary action. In serious cases, such as posting material which could damage the practice's reputation, or which amounts to bullying and harassment or the disclosure of confidential information, this could include dismissal under our disciplinary procedure.

You must remove any material posted in breach of this policy upon our request.

You must co-operate to the fullest extent possible in any investigation into suspected breaches of this policy. This may include handing over any relevant passwords in situations where we need these passwords in order to investigate a suspected breach.

If the effect or meaning of any part of this policy is unclear you should seek clarification from [name of contact].

Status of this policy and new instructions

This policy does not give contractual rights to individual employees. The practice reserves the right to alter any of its terms at any time although we will notify you in writing of any changes.

This policy may be supplemented by additional instructions from the [name of contact/IT department] about how you use our telecommunication systems. It is very important that you comply with any such instructions.

Links to other policies (where in place)

[Electronic Communications Policy](#)

[Disciplinary policy](#)

[Whistleblowing Policy](#)

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Annual leave

Statutory annual leave entitlement

On 1 April 2009, the Working Time (Amendment) Regulations 2007 increased the statutory leave entitlement for all full-time workers to a minimum entitlement of 5.6 weeks or 28 days (based on a five-day working week).

The eight public bank holidays may be counted as part of the statutory 5.6 weeks' holiday entitlement provided that the employee is paid for this day. The 5.6 weeks' statutory entitlement is calculated on a pro-rata basis for part time staff.

For example, if a member of staff works three days per week, their entitlement would be 16.8 days' leave.

Contractual annual leave entitlement

Many practices/employers offer a more favourable entitlement to annual leave over and above the statutory requirement as a means of rewarding staff, and also to aid recruitment and retention.

Annual leave entitlement should be clearly set out in the employee's contract of employment and staff handbook.

Managing annual leave requests issues to consider:

- ensuring there are sufficient staff available to cover the needs of the service
- minimum periods of notice
- carry over of leave from one leave year to the next
- booking procedure
- fairness and equity in applying the policy

Annual leave entitlement while on maternity leave

All annual leave entitlement (both statutory and additional contractual leave) must continue to accrue while an employee is on maternity leave (both ordinary maternity leave (OML) and additional maternity leave (AML)).

The practice/employer should therefore ensure that the employee is given sufficient opportunity to use up any outstanding annual leave entitlement prior to commencement of maternity leave. If service requirements mean this is not practicable, then it is recommended that a discussion takes place with the employee to agree that outstanding leave will be carried forward to the following leave year, to be taken either at the end of her maternity leave or at other agreed times.

Special conditions apply to annual leave during maternity leave. Please contact the BMA for advice.

Annual leave entitlement while on sick leave

Statutory annual leave entitlement must continue to accrue while an employee is on sick leave. It is a matter for the practice/employer to decide whether contractual leave entitlement over and above statutory entitlement also continues to accrue.

If an employee fails to return to work after a period of lengthy sickness absence, any outstanding statutory annual leave entitlement accrued and untaken must be paid in lieu upon termination.

If an employee returns to work after a period of lengthy absence, their accrued statutory annual leave entitlement must be carried forward to the next annual leave year should the present leave year have ended.

Annual leave upon termination of employment

Every employee has the right to be paid for any outstanding leave accrued and not taken throughout the annual leave year upon termination of employment. Under Section 1 of the Employment Rights Act 1996, employers should include in a written statement of employment particulars, sufficient detail to enable the precise calculation of a worker's entitlement to accrued holiday pay on termination of employment to be worked out.

It is advisable for the employer to include in the contract of employment that upon termination of employment (for any reason) they have the right for the employer to recover any overpayment of wages in relation to annual leave. If the practice/employer fails to incorporate such a statement in the contract of employment and subsequently deducts wages for any overpayment in the employee's final salary, this could put the employer at risk of a claim for an unlawful deduction of wages.

Please seek advice from the BMA at the earliest opportunity.

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Adoption leave and pay

Entitlement to statutory adoption leave

When an employee adopts a child, or has a child through a surrogacy arrangement, they may be eligible for adoptive leave and pay. To be entitled to statutory adoption leave, the employee must have been employed with the practice for 26 weeks, ending with the week in which they were matched with the child.

Where a couple adopt a child, only one person (male or female) can be regarded as the 'adopter'. The other (male or female) may be eligible to claim statutory paternity leave and pay. Those who are eligible can take 52 weeks' adoption leave – made up of 26 weeks' ordinary adoption leave and 26 weeks' additional leave. Adoption leave can start up to 14 days before the expected date that the child is to reside with the adopter, or when the child actually starts living with the adopter.

Returning from adoption leave

Employees returning from ordinary adoptive leave (after the first 26 weeks of adoptive leave) are entitled to return to their same job. Those who take additional adoptive leave (up to 52 weeks' leave in total including ordinary adoptive leave) are entitled to return to the job in which they were employed before the absence. But if it is not reasonably practicable for the employer to permit them to return to that job, then the employee is entitled to return to another job which is both suitable for the employee and appropriate for them to do in the circumstances.

However, any alternative job must be on terms and conditions that are no less favourable than those under their previous job. If the adopter wishes to change the date of return, eight weeks' notice must be given to the employer.

Statutory adoption pay

Employees with at least 26 weeks service may be eligible for statutory adoption pay. Statutory adoption pay is paid for up to 39 weeks. The weekly amount is:

- 90% of average weekly earnings for the first 6 weeks
- flat rate or 90% of average weekly earnings (whichever is lower) for the next 33 weeks

It's paid in the same way as wages (eg monthly or weekly). Tax and National Insurance will be deducted. For current rates go to www.gov.uk/employers-adoption-pay-leave

Surrogacy arrangements

To qualify for Statutory Adoption Pay you must:

- have worked continuously for the employer for at least 26 weeks by the 15th week before the baby's due
- intend to apply for a parental order
- expect the order to be granted (eg because the employee does not have any convictions involving children, and the birth mother or father agree to the arrangement)

All the other conditions for qualifying for pay and leave are the same as for adoptive parents.

If the employee is genetically related to the child (ie the egg or sperm donor), they can choose to get paternity leave and pay instead.

Notification requirements

The employee must inform the practice of the following, and must do so within seven days of being told that they have been matched with a child for adoption:

- that they want to take adoption leave
- the expected date for the child to be placed with the employee
- when they want the adoption leave to start. This date can be changed provided 28 days' notice is given to the practice

Additional paternity leave and pay for adoptive parents

For adoptions prior to 5 April the right to additional paternity leave and pay applies to adoptive parents who are notified of being matched with a child and further details are contained at section 21 of this Employers' handbook, which relates to 'paternity leave'.

For some exceptions go to www.gov.uk/adoption-pay-leave/eligibility

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Maternity leave

Statutory maternity leave

All pregnant employees are entitled to take up to 52 weeks' statutory maternity leave around the time of birth of their child, irrespective of their length of service with the practice or business. This is made up of 26 weeks' ordinary maternity leave (OML), followed by 26 weeks' additional maternity leave (AML). The employee also has the right to return to work afterwards.

Eligibility

To be eligible for maternity leave, an employee must give notification in writing:

- that she is pregnant
- of her expected week of childbirth
- of the date on which she intends her maternity leave to start

If an employee has a stillbirth after 24 weeks of pregnancy, she remains entitled to take statutory maternity leave. If the stillbirth occurs before 24 weeks of pregnancy, she should be allowed to take a period of sick leave or compassionate leave instead. If the baby is born alive but later dies, either the same day or afterwards, then she is still entitled to take statutory maternity leave.

Notification requirements

Notification must be provided no later than the end of the 15th week before the week that the baby is expected, unless this is not reasonably practicable, in which case the employee must provide notification as soon as it is reasonably practicable for her to do so.

The employee can choose when to start her ordinary maternity leave, subject to two restrictions:

- maternity leave cannot begin prior to the 11th week before the week that the baby is expected, unless the baby is born prematurely, in which case maternity leave will begin the day after the baby is born
- the start of ordinary maternity leave will be triggered automatically if the employee is absent from work wholly or partly on account of a pregnancy-related reason within four weeks of the week her baby is due

Upon receipt of an employee's notification that she intends to take maternity leave, the employer must respond in writing within 28 days acknowledging the employee's intentions and informing her of the date on which her additional maternity leave will end. This will be 52 weeks after the start of the employee's maternity leave.

Length of maternity leave

Statutory maternity leave is 26 weeks' OML followed by 26 weeks' AML. The first two weeks immediately following the birth are compulsory, and a new mother may not choose to return to work within this two-week period. This period is extended to four weeks if the mother works in a factory.

SMP (statutory maternity pay)

SMP is payable for 39 weeks. An employee is eligible to receive SMP provided that:

- she has been employed for a minimum of 26 weeks as at the end of the 15th week before the week her baby is due (which is known as the qualifying week)
- she is still employed during that week
- her average weekly earnings are equal to or greater than the lower earnings limit for National Insurance contributions
- SMP can begin on any day of the week according to the date that the employee has notified as the start date of her maternity leave. SMP is payable whether or not the employee intends to return to work or actually returns to work after maternity leave

SMP is payable as follows.

- For the first six weeks of maternity leave, the employee is entitled to 90 per cent of her average weekly earnings (based on the earnings during the period of eight weeks that immediately precede the 14th week before the expected week of childbirth)
- The remaining 33 weeks are paid at a standard weekly rate set by the Government. Where the standard rate is more than 90% of the employee's average weekly earnings, her entitlement will be 90% of her actual earnings, rather than the standard rate. The rate is revised each April

For current rates go to www.gov.uk/employers-maternity-pay-leave

SMP is treated as earnings, and is therefore subject to tax and National Insurance contributions in the usual way.

Contractual maternity pay

The practice may choose to offer a more generous contractual entitlement to maternity pay if they wish, as a means of recruitment and retention.

Rights during maternity leave

Contractual benefits

All employees are entitled to maintain any contractual benefits that they would usually receive/benefit from during both ordinary and additional maternity leave, with the exception of paid wages.

Annual leave entitlement

Statutory and contractual annual leave entitlement continues to accrue in the normal way during both ordinary and additional maternity leave.

Keeping-in-touch (KIT) days

An employee may work for up to 10 days under their contract of employment without bringing their maternity leave to an end or losing their entitlement to statutory maternity pay. These days are known as 'keeping-in-touch (KIT) days'.

Reasonable contact

The GP practice/employer may make reasonable contact with an employee who is on maternity leave.

Returning to work

An employee who decides to return to work at the end of her additional maternity leave is not required to give any notice of her return date. If, however, she wishes to return to work early, including at the end of her ordinary maternity leave, she may be required to give eight weeks' notice of her intended early return date.

Failure to return to work

If the employee does not wish to return to work at the end of her maternity leave, she is required to provide the appropriate notice period as set out in her contract of employment.

Please seek advice from the BMA at the earliest opportunity.

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Paternity leave

To be eligible for paternity leave and pay, an individual must be an employee of the practice. An employee is eligible for paternity leave and pay provided that they:

- have or expect to have responsibility for the child's upbringing
- are the biological father of the child or the mother's husband or partner or cohabiting same-sex partner of the child's mother
- have worked continuously for their employer for 26 weeks ending with the 15th week before the baby is due or the end of the week in which the child's adopter is notified of being matched with the child

Paternity leave is available to both birth and adoptive parents.

In the case of an adopted child, paternity leave is available to:

- an employee who is married to, or the civil partner of, the child's adopter
- the cohabiting partner of the child's adopter (including same-sex partners)

Where a couple adopt a child jointly, assuming they are eligible, one may take adoption leave and the other may take paternity leave. They are entitled to choose for themselves which parent takes which type of leave.

Notification requirements

Employees are required to provide notification of their intention to take paternity leave. Notification must be given as at the 15th week before the expected week of confinement or within seven days of matching. Practices are entitled to ask employees who have requested a period of paternity leave to sign a self-certification form declaring that they meet the eligibility criteria.

The employee must also tell his employer when his baby was actually born or placed for adoption as soon as is reasonably practicable after the event.

If the employee wishes to change the timing of his paternity leave after having given notice to the employer, he may do so provided that he gives at least 28 days' notice of the revised start date.

Length of paternity leave

An employee may choose to take either one week or two consecutive weeks paternity leave. The employee cannot choose to take odd days or two separate non-consecutive weeks.

The employee must complete their paternity leave within 56 days of the actual date of birth of the child.

If the child is born early, leave must be taken within the period from the actual date of birth up to 56 days after the first day of the week in which the birth was expected.

If the child is born late, the eight-week period runs from the date of the actual birth.

Only one period of paternity leave is available at any one time even if the pregnancy results in a multiple birth or the adoption placement is for more than one child. An employee cannot start a period of paternity leave before the child is born.

In the case of a child adopted within the UK, the employee must take his paternity leave within the eight-week period from when the child is placed for adoption.

SPP (statutory paternity pay)

SPP is treated as earnings for tax and NI purposes. The standard rate is revised each April. If the employee's average weekly earnings are lower than the standard rate then they receive 90% of their earnings.

To view the current rates go to www.gov.uk/employers-paternity-pay-leave

Rights during paternity leave

When an employee is on paternity leave, all terms and conditions of employment are maintained with the exception of his pay. In most cases, the employee will be eligible for SPP in place of his normal wages or salary.

The employee continues to be bound by any obligations arising under the terms of his contract during paternity leave.

Contractual paternity pay

A practice may choose to pay an employee a more beneficial rate of paternity pay if they so wish, for example maintain his contractual rate of pay. This is a matter for the practice to consider.

Returning to work

An employee who has taken a period of paternity leave is entitled to return to work in the same job as before or if the leave has been longer than 26 weeks a job with similar rights and seniority on terms and conditions no less favourable than the terms that would have applied had he not been absent.

Please seek advice from the BMA at the earliest opportunity.

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Parental leave

Eligibility

Parental leave was introduced to allow employees to take time off to care for a child.

Eligible employees can take unpaid parental leave to look after their child's welfare – for example, to:

- spend more time with their children
- look at new schools
- settle children into new childcare arrangements
- spend more time with family, such as visiting grandparents

Their employment rights (like the right to pay, holidays and returning to a job) are protected during parental leave.

An employee is entitled to take parental leave provided that:

- they have a minimum of one year's continuous service with the practice at the time the parental leave is taken
- they have, or expect to have, parental responsibility for the child in question
- the leave is taken for the purpose of caring for the child

A parent doesn't have to live with the child to take parental leave, but he or she must have parental responsibility. A person has parental responsibility if he or she is the natural parent of the child (although where the father is not married to the mother, he must be registered as the child's father).

Adoptive parents are also deemed to have parental responsibility as from the date of placement of the child with them for adoption. Step-parents may acquire parental responsibility for their spouse or civil partner's child by means of an agreement with the child's natural parents. An individual who is a child's guardian will also have parental responsibility.

There is no legal obligation for employers to pay employees during parental leave.

Amount of parental leave

Parental leave is unpaid. An employee is entitled to 18 weeks' leave for each child and adopted child, up to their 18th birthday.

The limit on how much parental leave each parent can take in a year is 4 weeks for each child (unless the employer agrees otherwise).

Parental leave must be taken as whole weeks (eg 1 week or 2 weeks) rather than individual days, unless the employer agrees otherwise, or if the child is disabled. The leave does not have to be taken all at once.

A 'week' equals the length of time an employee normally works over 7 days. The maximum amount of parental leave that may be taken in any one year in respect of a child is four weeks, unless the contract of employment specifies otherwise. The right to take parental leave is open to all employees, male and female, part and full time, etc.

Change of employer

An employee's total entitlement to parental leave is limited to 18 weeks irrespective of whether he or she changes employer. If, for example, an employee has taken four weeks' parental leave (out of a total entitlement of 18 weeks) during his or her current employment, the employee will have fourteen weeks' parental leave outstanding on moving to new employment. The employee will, however, have to work for a full year with the new employer before becoming eligible to take any of his or her entitlement.

Notification requirements

An employee is required to give at least 21 days' notice of the period of parental leave that they wish to take. The notice must specify the dates on which they wish to take the leave.

A practice may request documentary evidence from an employee to support a request for parental leave (such as a birth certificate):

- where the employee is exercising a right in relation to a disabled child, evidence of the child's entitlement to Disability Living Allowance
- a signed declaration from the employee that the purpose of the requested period of leave is to care for the child

The provisions in place in respect of fathers who wish to take a period of parental leave beginning when their child is born are slightly different. In this case, the notice must be given at least 21 days before the expected week of childbirth, and must specify the expected week of childbirth and the duration of the period of parental leave requested.

Similarly, where parental leave is requested to begin on an adopted child's placement, the employee's notice must be given at least 21 days before the beginning of the week in which the child is to be placed for adoption, or as soon as is reasonably practicable thereafter. The notice must specify the week in which the adoption placement is expected to occur, and the duration of the period of parental leave requested.

A period of parental leave requested by an employee may be postponed by the practice if the employee's absence would cause undue disruption to the service. If this is the case, the practice must:

- give the employee written notice of the postponement
- state the reason why the postponement is necessary
- suggest alternative dates for the employee to take an equivalent period of parental leave within the next six months

The notice of postponement must be given to the employee no more than seven days after receipt of the employee's notice requesting parental leave.

The practice may not, however, postpone parental leave where the period of leave has been requested to coincide with the birth of the child, or the child's adoptive placement. This is the case irrespective of whether the dates requested are likely to cause inconvenience or disruption to the business.

Postponing parental leave

An employer can only postpone parental leave if they have a good business reason for doing so; for example, seasonal production, another member of staff is off, or the staff absence would harm the business.

Parental leave can be postponed for up to 6 months but can not be postponed so that the leave ends after the child's 18th birthday.

If an employee does not qualify for parental leave, then the employer may offer contractual parental leave, which may be offered to all staff.

Alternately, annual leave or unpaid leave may be taken if an employee gets a new job. They can carry over the untaken parental leave, but not until they have been with the new employer for a year.

Record keeping

It is recommended that a record should be made whenever an employee takes parental leave, so that the practice can properly manage and administer future requests for leave.

Unreasonable refusal of a request

Any employee who has been denied the opportunity to take parental leave, or had a period of leave unreasonably postponed, may bring a complaint to an employment tribunal. The complaint must be lodged with the tribunal within three months of the act complained of. The employee does not need to resign in order to bring such a claim.

If the complaint succeeds, the tribunal will make a declaration to that effect and may award such compensation as it considers just and equitable. In assessing how much compensation is appropriate, the tribunal will take into account the employer's behaviour and any loss suffered by the employee. Employees are also protected against dismissal and detriment for having requested or taken a period of parental leave. Where an employee is dismissed or selected for redundancy because he or she has requested or taken parental leave, the dismissal will be automatically unfair.

Please seek advice from the BMA at the earliest opportunity.

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SPL (Shared parental leave)

Eligibility

SPL is different from Parental Leave. It is a form of leave that will only be available if the EWC (Expected Week Childbirth) or matching week for adoption is on or after 5 April 2015. In summary, the employee who qualifies for statutory maternity leave/pay or statutory adoption leave/pay may opt to curtail their entitlement and replace it with SPL, which provides greater flexibility in how to share the care of the child with their partner.

An employee will be eligible for SPL if s/he:

- is the child's mother, father, adopter or the mother/adopter's partner
- shares the main responsibility for the care of the child with the mother
- has at least 26 weeks continuous employment by the end of the Qualifying Week
- is still employed by the employer in the week before the leave is to be taken

The 'other parent' (who is not entitled to statutory maternity leave/pay or statutory adoption leave/pay) must have worked in an employed or self-employed capacity in at least 26 of the 66 weeks before the EWC and had earned at least £390 in total in 13 of those of those weeks.

Both parents must provide the necessary statutory notices and declarations as summarised below, including notice to end any maternity leave, SMP (statutory maternity pay) or MA (maternity allowance) periods.

Entitlement

The total amount of SPL available is 52 weeks, less a minimum of two weeks spent by the child's mother on compulsory maternity leave or the adopter on adoption leave. The longer the period of maternity/adoption leave taken the shorter the period of SPL.

Not less than eight weeks before the date an employee intends their SPL to start, they must provide a written opt-in notice which includes the information set out below.

Notice of intention to take SPL

Each employee must give notice to their employer stating:

- their name and their partner's name
- the start and end dates of the maternity/adoption leave and pay
- the total SPL available, which is 52 weeks minus the number of weeks' maternity/adoption leave
- the number of weeks SPL the employee will take, and the number of weeks that the other parent will take (the allocation may be later changed by a further written notice)
- the total Statutory Shared Parental Pay (SSPP) available, which is 39 weeks minus the number of weeks of the SMP, SAP or MA taken
- the number of weeks of SSPP the employee will take and the other parent will take. (The allocation may be later changed by a further written notice)
- the intended start and end dates for the leave period or periods (further notice may change these arrangements)
- the employee and the other parent both meet the statutory conditions to enable them to take SPL and SSPP

Curtailment notice

A minimum of eight weeks written notice is required from an employee to end their maternity leave and pay.

The end date given must be at least two weeks after the birth/adoption.

The other parent may be eligible to take SPL from their employer before the maternity leave ends if the curtailment notice has been given.

There are only limited circumstances when a curtailment notice can be revoked, and it should therefore be considered generally binding.

Evidence

The practice may request that an employee provides a copy of the birth certificate or documents from the adoption agency showing the agency's name and address and the expected placement date as appropriate, together with the name and address of the other parent's employer, or a declaration that they have no employer.

Leave dates

At least eight weeks' notice is required to change the leave dates set out in the opt-in notice. In general, a period of leave notice should set out a single continuous block of leave. However it may be possible to agree for it to be split into shorter periods (of at least a week) with periods of work in between. A response to such a request should be provided within a two-week period. If refused, the employee may take the full amount of requested SPL as one continuous block, or choose a new start date and provide eight weeks' notice.

The eight-week notice requirement will not apply if the child is born early and SPL was to start within eight weeks of birth. In such cases, the employee should notify the employer in writing of the change as soon as she can.

An employee is generally entitled to give up to three notices proposing leave arrangements.

Shared parental pay

An employee with at least 26 weeks' continuous employment may be entitled to SSPP of up to 39 weeks, less any weeks of SMP, SAP or MA already claimed, provided they have average earnings over the lower earnings limit set by the government each tax year. SSPP is paid at a rate set by the government each year.

Terms and conditions

An employee's terms and conditions of employment remain in force during SPL, except for the terms relating to pay. This will include accrual of annual leave entitlement.

Keeping in touch

Reasonable contact may be maintained during the SPL.

Up to 20 'Shared Parental Leave in Touch' days (SPLIT days) may be agreed during periods of SPL. This is in addition to any KIT days that an employee has taken during maternity leave. Payment for these days will be agreed with the practice manager.

Returning to work

To end a period of SPL early, an employee must give eight weeks' written notice of the new return date.

Where an employee has already given three notices of leave periods early return will need to be agreed.

An employee will normally be entitled to return to the same position as held before starting SPL, and on the same terms of employment.

However, where the total leave has been for more than 26 weeks in total or in addition to SPL there has been more than four weeks of ordinary parental leave and if it is not reasonably practicable for an employee to return the same job they employee they must be offered another suitable and appropriate job on terms and conditions that are not less favourable.

In the event that an employee does not want to return to work, then their notice of resignation should be provided in accordance with the contract terms. This will have an impact on their entitlement to practice shared parental pay.

Please seek advice from the BMA at the earliest opportunity.

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Special leave

Special leave pertains to statutory right to time off to deal with emergencies.

Eligibility

There is a statutory right for all employees – regardless of length of service – to be entitled to a reasonable amount of time off work (generally regarded as a day or so) to:

- provide assistance to a dependant
- make arrangements for the provision of care for a dependant
- deal with events in consequence of the death of a dependant

A dependant is a spouse, civil partner, child, parent or person sharing a house other than in the capacity of lodger. They can also take leave when they need to:

- make longer-term care arrangements for a dependant who is ill or injured
- arrange or attend a dependant's funeral
- deal with an unexpected problem in care arrangements, eg if a childminder is unexpectedly unavailable
- deal with an incident involving the employee's child during school hours, eg suspension from school

Notification requirements

The employee must inform the employer of the following as soon as reasonably practicable:

- the reason for absence
- how long the absence will (or is likely to) last

Reasonable time off

The right is to reasonable time off. This amount of time is not fixed, and should simply allow the employee to deal with the immediate problem and put any other necessary care arrangements in place.

Unpaid time off

There is no statutory right for an employee to be paid during such time off.

Protection against detriment and dismissal

An employee is entitled not to be subjected to detrimental treatment for taking emergency time off work. It will also be automatically unfair to dismiss, or select for redundancy, an employee because they sought to take or took emergency leave. An employee may bring a claim for detrimental treatment or unfair dismissal regardless of their length of service.

Please seek advice from the BMA at the earliest opportunity.

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Termination of employment

Notice periods and fair reasons for dismissal

There are five statutory fair reasons for dismissal of an employee.

These are:

- conduct
- capability (eg qualifications, illness, incompetence)
- redundancy (see section 26 for further information)
- statutory illegality
- some other substantial reason (SOSR) to justify the dismissal of an employee (eg an employee specifically employed to provide maternity leave cover when the worker on maternity leave returns)

Whether a dismissal is considered to be fair or unfair will also depend on whether the employer acted reasonably in treating the reason as a sufficient reason for dismissal given the circumstances and the size of the employer's business.

To be fair, the decision to dismiss must be within the band of reasonable responses open to the employer. Any BMA member considering the dismissal of an employee, clinical or non-clinical, is strongly advised to contact the EAS (Employer Advisory Service) for advice.

Statutory notice periods

Employers are required by law to give employees defined minimum periods of notice to terminate their employment. Statutory notice periods take effect once an employee has completed one month's service. At that point, you must give employees:

- at least one week's notice after one month's employment
- two weeks' notice after two years' service
- three weeks' notice after three years' service, and so on, up to 12 weeks after 12 years' service or more

After one month's service, the statutory minimum period of notice that the employee must give to the employer if he or she wishes to resign is one week. This does not rise with increased length of service.

Contractual notice periods

Statutory minimum periods of notice can be extended through a clause in the employee's contract of employment. However, the period of notice cannot be shortened to less than the statutory minimum (except in the case of gross misconduct on the part of the employee, in which case the employee may be dismissed without any notice).

Varying the notice period

Notice periods can be varied in a number of situations and by mutual agreement between employer and employee.

Termination without notice

Where the employee is dismissed without any notice, or pay in lieu of notice, for reason of an act of gross misconduct. However, a fair process must still be followed to ensure that the dismissal is fair.

BMA members are strongly urged to contact the BMA immediately for further advice before taking any steps to dismiss an employee on the grounds of gross misconduct.

Breach of contract

The employee can also terminate the contract of employment without notice if they consider that the employer has fundamentally breached the contract by their conduct.

Right to waiver

Employers and employees can both waive their right to notice – even though they cannot contract out of the legal minimum period.

Frustration of the contract

Frustration occurs when either it is impossible for the contractual obligation to be performed, or the circumstances (such as long-term sickness or imprisonment) would render the contract substantially different from that envisaged by the parties at the time of the contract being entered into.

If the contract is frustrated, then there is no requirement for the employee to be given notice of the termination. However, it can be difficult to prove that the contract has been frustrated since factors need to be taken into account, such as the employee's role and duties, the need for work to be done, etc.

Further advice on this should be sought from the EAS (Employer Advisory Service) adviser as it is often very difficult for an employer to prove frustration of contract.

Please seek advice from the BMA at the earliest opportunity.

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Redundancy

Contractual notice periods

Redundancy occurs when an employee is dismissed, and this is wholly or mainly attributable to one of the following:

- the closure (or intended closure) of the employer’s business
- the closure (or intended closure) of the employee’s workplace
- a diminution (or expected diminution) in the need for employees to carry out work of a particular kind in the place where they were employed

Redundancy is legally regarded as a dismissal. To avoid claims being made against the employer, the following procedures should be followed. Practices are strongly advised to contact the BMA at the earliest opportunity if they are considering that redundancies may be necessary.

Statutory redundancy procedures

There are different procedures to be followed by an employer depending on the number of employees to be made redundant.

Procedure where up to 19 employees are to be made redundant

There are various steps that should be followed by the employer. These include:

- identifying the need to make redundancies, and considering when, where and how these would best be made
- determining the area where the redundancies will be occurring and the number of redundancies required
- inviting volunteers and considering alternatives to redundancy
- objectively selecting employees for redundancy (eg not because an employee is disliked or disruptive; for maternity related reasons; etc)
- meeting with affected employees individually to explain that there is a redundancy situation, and that their job is at risk. Discussing the possibility of alternative work within the practice or organisation, and fully considering the employee’s suggestions for alternative work
- allowing the employee to take time off to seek external alternative work
- not sending out dismissal notices until consultation has occurred

Procedure where 20 or more employees are to be made redundant

In addition to the steps identified above, if 20 or more people are to be made redundant, then the employer should consult with trade union representatives or employee representatives who have been elected accorded to specific rules.

The employer is also required to notify the Department of Business, Enterprise and Regulatory Reform (DBERR) or equivalent in Scotland and Northern Ireland. This consultation and notification must be undertaken at least 30 days prior to the first dismissals for up to 99 employees, or at least 45 days prior where there are 100+ employees to be made redundant.

Contractual redundancy procedures

Some employers may also have a redundancy policy. Where this is the case, it is important that both the statutory and contractual procedures are followed.

SRP (statutory redundancy pay)

Eligibility criteria

Employees must have been employed with their current employer for at least two continuous years to be eligible for SRP.

Amount of SRP

SRP is calculated according to:

- complete years of service with the current employer (capped at 20 years)
- age of the employee
- weekly wage. The maximum weekly wage for redundancy purposes is reviewed annually in April. The current maximum weekly wage is available at www.gov.uk/staff-redundant/redundancy-pay

An employee will receive:

- 0.5 weeks' pay for each full year of service where the age of the employee was under 22
- 1 weeks' pay for each full year of service where the age of the employee was 22 or above but under 41
- 1.5 weeks' pay for each full year of service where the age of the employee was 41 or above

Years of service x age factor x weekly wage = SRP

To calculate the employee's entitlement to SRP, please refer to the statutory redundancy pay calculator (go to www.gov.uk/calculate-employee-redundancy-pay).

Please also contact the BMA Employer Advisory Service for advice. Claiming SRP SRP must be paid by the employer and should be paid automatically. If the employer does not pay this, then the employee may commence a claim with an employment tribunal within six months of the relevant date, unless an extension is just and equitable. Alternatively, the employee can write to the employer within six months requesting the SRP.

Other remedies

In addition to claiming SRP, the other remedies available include:

- wrongful dismissal
- redundancy declaration
- re-instatement, re-engagement or compensation arising from an unfair dismissal claim

Redundancy pay for GPs employed under the model salaried GP contract

This is a complex area and specialist advice should be sought at the earliest opportunity from the BMA.

Please seek advice from the BMA at the earliest opportunity.

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Retirement

Age discrimination legislation

In October 2006, age discrimination legislation came into force, introducing a statutory retirement procedure to be followed for the fair retirement of all employees. However, this legislation was impacted by the abolition of the UK Default Retirement Age (DRA) of 65 years with effect from 1 October 2011.

Abolition of the UK National DRA (default retirement age)

The UK default retirement age was phased out in a six month transitional period, commencing 6 April 2011 and running until 30 September 2011.

Following the abolition of the DRA, employees who have been compulsorily retired (without objective justification) are likely to be able to present claims for unfair dismissal and age related discrimination, unless the compelled retirement can be justified.

This issue is also discussed, albeit briefly, in section 4 Issuing a contract of employment, where the BMA has suggested that a contract of employment should indicate that there is no set retirement age.

This is based on the view that a medical practice is unlikely to have grounds that will justify compelled age related retirements. Therefore, it is considered that for most practices, objectively justifying age related retirement will not be possible.

Contractual retirement age

A GP employer may choose to:

- impose a contractual retirement age of 65 if this can be objectively justified
- impose a contractual retirement age above 65 (eg 68 or 70). Again, this must be objectively justifiable
- operate without a compulsory retirement age and allow employees to decide individually when to stop working

If and when an employee chooses to 'retire' from the Practice, then it is important that this is not treated as a dismissal. A decision to retire is one entirely for the employee to make and, as such, if they choose to retire, then they should submit a notice of resignation/retirement to the Practice in the usual way, providing a period of notice in line with their contract of employment.

Voluntary retirement

The retirement provisions in the age discrimination legislation do not prevent employers operating voluntary early retirement schemes. Voluntary retirement is usually regarded as termination by mutual agreement, or as a resignation, and does not therefore constitute a dismissal.

Pension age

The age discrimination legislation does not affect the age at which an employee may draw their state or NHS pension. It prevents an employer from enforcing age related retirement.

For example, an employee will have no contractual retirement age (such as the previous age of 65 years) but may be eligible to draw a pension from the occupational scheme at any time after age 60.

The practice should be aware that the NHS Pension Scheme permits scheme members to 'retire' and then return to working with caveats. Such retirements are generally referred to as '24 hour retirements'.

It is important that the practice and the employee understand that 24 hour retirement requires a formal resignation in order to terminate the contract of employment, and to trigger the NHS Pension, and therefore any return to working must be in agreed in advance. Continuity of service for statutory employment purposes may in some circumstances be retained.

There is no automatic right for an employee to be re-employed by a practice under their pre-retirement terms and conditions of employment. The BMA therefore recommends that a legal deed or revised contract is signed prior to the 24 hour retirement, setting out the terms and status under which the employee is returning to the practice. Indeed there are rules in place, which requires retirement for not less than 24 hours, and additionally, the employee must not work for more than 16 hours per week in the first month after 'retirement'.

Please seek advice from the BMA at the earliest opportunity.

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Discrimination

Equal opportunities laws aim to create a 'level playing field' so that people are employed, paid, trained and promoted only because of their skills, abilities and how they do their job.

Discrimination happens when an employer treats one employee less favourably than others due to 'protected characteristics'.

The protected characteristics set out in the Equality Act 2010 include:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race and nationality
- religion or belief
- sex discrimination
- sexual orientation

Types of discrimination

There are various types of discrimination:

Direct discrimination is when a person is treated less favourably on the grounds of a personal characteristic, such as their age, a disability they have, their race or religion, or their gender or sexual orientation. For example, if a female employee is not given a promotion because she is pregnant.

Indirect discrimination occurs where a practice policy would put people of one sex, race or religion, etc. at a particular disadvantage compared with persons of a different sex, race or religion, etc. However, it is possible to objectively justify such a policy if it can be shown to be a proportionate means of achieving a legitimate aim.

Victimisation is where a person is treated unfavourably due to having made a complaint or assisted another in a complaint of discrimination; for example, failing to promote a candidate because they have made allegations of disability discrimination.

Harassment is where a person is subject to unwanted conduct related to a relevant protected characteristic, which violates the person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment; for example, teasing an employee about his partner's religious convictions.

Who is protected?

Discrimination laws protect job applicants, apprentices, employees, former employees, contract workers, and those working on a contract personally to execute any work in the UK.

Disability discrimination

There are also some specific forms of discrimination that are unique to disability. These include discrimination arising from disability where there is unfavourable treatment because of something arising in consequence of the worker's disability.

For example, if an employee's visual impairment means that he cannot work as quickly as colleagues, and his employer dismisses him because of his low output, this dismissal will be discrimination arising from disability. However, as with indirect discrimination, the employer will have a good defence if it is able to show the policy is objectively justified.

In addition, there is also a duty to make 'reasonable adjustments'. The duty arises where a provision, criterion or practice puts a disabled person at a substantial disadvantage in comparison with those who are not disabled; the employer must take such steps as it is reasonable to have to take to avoid the disadvantage. What is a 'reasonable adjustment' will vary. For example:

- varying the duties of the disabled employee
- allocating some of their work to another employee
- physical adjustments to the working environment transferring the employee to a location nearer home

Please seek advice from the BMA at the earliest opportunity.

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Public interest disclosure act

Protection for 'whistle-blowers'

The Public Interest Disclosure Act 1998 (PIDA) protects workers who raise legitimate concerns about specified matters. The Act makes provision about the kinds of disclosure which may be protected and the circumstances in which disclosures are protected.

The provisions make it automatically unfair to dismiss an employee or select an employee for redundancy for whistle-blowing, or to suffer any detriment regardless of the employee's age or length of service. There is no financial cap on compensation in whistle-blowing claims, and no requirement for a minimum period of service.

Protected information

In order to qualify for protection, the worker must have reasonably believed that the information he or she disclosed indicated one of the following:

- a criminal offence has been committed
- someone has failed to meet a legal obligation
- a miscarriage of justice has occurred
- someone's health or safety has been endangered
- the environment has been damaged
- evidence of one of these things has been deliberately concealed

The protection also applies if the worker reasonably believed that the information he or she disclosed indicated that one of these things was currently happening or would happen in the future.

Protected methods of disclosure

The worker is protected if he or she disclosed the information to:

- the practice, or to some other person the practice had authorised to receive the information
- if the information related to the conduct or legal duties of some other person, that other person
- in certain circumstances other bodies that have been prescribed as appropriate recipients of certain information. For example, the worker is protected if he or she disclosed information about income tax to the Inland Revenue, or information about health and safety matters to the Health and Safety Executive

Raising concerns internally

A disclosure should be made to the employer first or, if the worker feels unable to use the organisation's procedure, the disclosure should be made to a prescribed person so that employment rights are protected.

This makes it important for practices to ensure that they encourage workers to raise concerns internally and inform them how to do so.

Workers who 'blow the whistle' on wrongdoing in the workplace can claim unfair dismissal if they are dismissed or victimised for doing so. An employee's dismissal (or selection for redundancy) is automatically considered 'unfair' if it is wholly or mainly for making a protected disclosure. From 25th June 2013, if a case goes to a tribunal and the tribunal thinks the disclosure was made in bad faith, it will have the power to reduce compensation by up to 25%.

A worker will have to show three things to claim PIDA protection:

- that he or she made a disclosure
- that they followed the correct disclosure procedure
- that they were dismissed or suffered a detriment as a result of making the disclosure

Please seek advice from the BMA at the earliest opportunity.

BMA Member relations

British Medical Association, BMA House,
Tavistock Square, London WC1H 9JP
bma.org.uk

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