

Employment Law: Establishing Working Time Regulations, and other Employment Law Provisions on St Helena

You may recall that in 2010 the first employment legislation was established, the *Employment Rights Ordinance, 2010*. This provided employees with most employment minimum rights and protections. These also protect employers because **minimum rights and protections** reduce the space for misunderstanding. The advantage of good comprehensive employment legislation is that it clearly sets out the rights and responsibilities of employers and employees; and encourages the settling of disputes in the work place, which is cheaper and less destructive of social relations than going to court.

The Judiciary has prepared leaflets explaining the law in place, and these can found at <https://www.sainthelena.gov.sh/public-services/labour-regulating-authority/>

These guidance leaflets cover:

Contract of Employment Pack

1. GUIDANCE ON THE CONTRACT OF EMPLOYMENT
2. GUIDANCE ON AMENDING A CONTRACT OF EMPLOYMENT.
3. SAMPLE CONTRACT OF EMPLOYMENT – STATEMENT OF INITIAL EMPLOYMENT PARTICULARS

The Disciplinary Procedures Pack

4. GUIDANCE ON DISCIPLINARY PROCEDURES
7. GUIDANCE ON CARRYING OUT AN INVESTIGATION
8. GUIDANCE ON APPEALING A GRIEVANCE OR DISCIPLINARY DECISION
9. SAMPLE DISCIPLINARY PROCEDURE – ANY ORGANISATION
10. SAMPLE DISCIPLINARY PROCEDURE – SMALL ORGANISATION
12. TEMPLATE LETTERS FOR EMPLOYERS IN GRIEVANCE AND DISCIPLINARY PROCEDURES
13. TEMPLATE LETTERS FOR EMPLOYEES IN GRIEVANCE AND DISCIPLINARY PROCEDURES
14. THE CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES

The Grievance Procedures Pack

5. GUIDANCE ON GRIEVANCE PROCEDURES
7. GUIDANCE ON CARRYING OUT AN INVESTIGATION
8. GUIDANCE ON APPEALING A GRIEVANCE OR DISCIPLINARY DECISION
11. SAMPLE GRIEVANCE PROCEDURE – SMALL ORGANISATION
12. TEMPLATE LETTERS FOR EMPLOYERS IN GRIEVANCE AND DISCIPLINARY PROCEDURES
13. TEMPLATE LETTERS FOR EMPLOYEES IN GRIEVANCE AND DISCIPLINARY PROCEDURES
14. THE CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES

The Capability Procedures Pack

6. GUIDANCE ON CAPABILITY PROCEDURES
7. GUIDANCE ON CARRYING OUT AN INVESTIGATION

Missing from the law are minimum working time regulations to cover, see Table below:

- a) Rest periods (during any daily or weekly periods) whereby an employee is entitled to minimum rest periods.
- b) The maximum number of working hours in a week averaged over a 17 week period.
- c) The maximum number of working hours to be worked by night workers in any 24 hour period.

- d) The right of an employee to unpaid leave to attend to or care for a dependant in prescribed circumstances. But we have the right to two weeks paid parental leave. This was aimed at providing paternity leave. Therefore there is no law for unpaid parental leave in St Helena.
- e) The circumstances under which an employer shall permit an employee to take time off during the employee's working hours for the purpose of performing the duties of any public office.
- f) Right to redundancy Pay
- g) Application of Transfer of Undertakings in Employment (TUPE)

We have and are reviewing:

- a) The minimum period of paid annual leave to which an employee is entitled, but this is five days. The only country with less is the USA.
- b) During each annual leave cycle an employees is entitled to up to five days paid sick leave¹.

We are holding a meeting on the 11th March 2024 for both information for and consultation with small employers on the above issues. Please do come along and let us know what this could mean for you.

Monday 11th March 2024

Venue: Museum

Time 19.00 to 21.00

The table below lists all the internationally accepted MRPs. Those not covered in the island's legislation are highlighted in **yellow**. The situation in the UK is used to describe what these cover, but this is only meant for information and to guide discussion – we have to do what is best for employees and employers on the island.

Table: Gaps in MRPs

| RIGHTS AND PROTECTIONS | | |
|---|------------------|---|
| EXISTING COVERAGE AND GAPS | NOTES | (Including rationale for addressing gaps and situation in the UK) |
| 1. A minimum wage In Legislation Minimum Wage Regulations, 2010 | Last uplift 2023 | |
| 2. The right to a written statement of employment particulars and procedures including the right to itemised pay statements and protection from unauthorised deductions from pay. In Legislation Employment Rights Ordinance, 2010 | | |
| 3. The right not to be unfairly dismissed, including information on disciplinary and grievance procedures in the workplace. In legislation Employment Rights Ordinance, 2010 | | |
| 4. Rest periods (during any daily or weekly periods) whereby an employee is entitled to minimum rest periods. | | |

¹ Unlike in the UK where SSP is paid by the state to the employer (whose policy may exceed this and pay more than SSP), in St Helena the employer bears any wage costs or the employee applies for IRB.

Not in Legislation.

Rationale:

- a) To make sure health and safety are not at risk, for example as a result of tiring manual labour, monotonous work or eye strain from screen work.
- b) For adequate rest between working periods in the work place on a daily and a weekly basis.

In the UK²

Workers over 18 are usually entitled to three types of break - rest breaks at work, daily rest and weekly rest.

1.1. Rest breaks at work

- Workers have the right to one uninterrupted 20 minute rest break during their working day, if they work more than 6 hours a day. This could be a tea or lunch break.
- The break doesn't have to be paid - it depends on their employment contract.

1.2. Daily rest

- Workers have the right to 11 hours rest between working days, e.g. if they finish work at 8pm, they shouldn't start work again until 7am the next day.

1.3. Weekly rest

- Workers have the right to either:
 - an uninterrupted 24 hours without any work each week
 - an uninterrupted 48 hours without any work each fortnight

5. **The maximum number of working hours in a week averaged over a 17 week period.**

Not in Legislation

Rationale:

- a) Allows for a work leisure time balance and reduces work-related stress.
- b) An opt-out clause for employees provides flexibility to work longer hours, e.g. in tourism seasonal type work and when there is a shortage of skilled and suitable workers.

In the UK³

A worker can't work more than 48 hours a week on average - normally [averaged over 17 weeks](#). A worker can choose to work more than 48 hours a week on average if over 18. This is called 'opting out'. An employer can ask a worker to opt out, but they can't be sacked or treated unfairly for refusing to do so. A worker can opt out for a certain period or indefinitely. It must be voluntary and in writing.

Examples of workers who can't opt out - airline staff, a worker on ships or boats, a worker in the road transport industry.

6. **The maximum number of working hours to be worked by night workers in any 24 hour period.**

Not in Legislation

Rationale

- a) To reduce the risks of restlessness, sleepiness on the job, fatigue, decreased attention.
- b) To reduce disruption of the body's metabolic process.

² <https://www.gov.uk/rest-breaks-work#:~:text=Workers%20have%20the%20right%20to,depends%20on%20their%20employment%20contract.>

³ Working Time Regulations 1998 <https://www.legislation.gov.uk/uksi/1998/1833/contents/made>

In the UK⁴

The minimum wage applies to night workers but there is not a higher night working rate.

Night workers must not work more than an average of 8 hours in a 24-hour period.

The average is usually calculated over 17 weeks, but it can be over a longer period of up to 52 weeks if the workers and the employer agree - for example, by collective agreement.

Regular overtime is included in the average, but not occasional overtime. Workers cannot opt out of the limit.

Sleep-in shifts

The number of hours a worker gets paid the National Minimum Wage for a 'sleep-in' shift depends on whether they're expected to sleep or work for most of it.

Workers who are expected to work for most of a sleep-in shift (for example, a care worker) will usually get the National Minimum Wage for the whole shift. They will get it for the whole shift even if they're allowed to sleep between tasks.

Workers who are expected to sleep for most of a sleep-in shift will get the National Minimum Wage only when they are woken up to perform tasks. They must be given somewhere suitable to sleep.

7. The minimum period of paid annual leave to which an employee is entitled.

In legislation.

Leave Entitlement

Regulations, 2015

Under these an

employee is during

each annual leave cycle

entitled to a minimum

of five days paid annual

leave; and up to five

days paid sick leave.

Rationale:

- a) For physical and mental health - to rest and be re-energized.
- b) Employees who take regular holidays can be more motivated about their work and perform more effectively than those who do not.

In the UK⁷

Almost all workers are legally entitled to 5.6 weeks' paid holiday a year (known as statutory leave entitlement or annual leave).

This includes:

- agency workers
- workers with irregular hours
- workers on zero-hours contracts

An employer can include bank holidays as part of statutory annual leave.

Most workers who work a 5-day week must receive at least 28 days' paid annual leave a year. This is the equivalent of 5.6 weeks of holiday.

Part-time workers are entitled to at least 5.6 weeks' paid holiday, but this will amount to fewer than 28 days. For example, if they work 3

days a week, they must get at least 16.8 days' leave a year (3 × 5.6).

People working irregular hours (like shift workers or term-time workers) are entitled to paid time off for every hour they work.

Comment

- Five days paid annual leave is very minimal. According to Wikipedia – with the exception of the USA – St Helena is the worst in the world.⁵
- ILO recommends three weeks⁶.

⁴ <https://www.gov.uk/night-working-hours#:~:text=Staff%20who%20regularly%20work%20at,must%20be%20agreed%20in%20writing.>

⁵ In the USA there is no federal or state statutory minimum paid vacation or paid public holidays. Paid leave is at the discretion of the employers to its employees.

https://en.wikipedia.org/wiki/List_of_minimum_annual_leave_by_country

⁶ https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170703.pdf

⁷ <https://www.gov.uk/holiday-entitlement-rights>

Statutory paid holiday entitlement is limited to 28 days. For example, staff working 6 days a week are only entitled to 28 days' paid holiday. Bank or public holidays do not have to be given as paid leave.

An employer can choose to include bank holidays as part of a worker's statutory annual leave.

An employer can choose to offer more leave than the legal minimum. They do not have to apply all the rules that apply to statutory leave to the extra leave. For example, a worker might need to be employed for a certain amount of time before they become entitled to it.

Workers have the right to:

- get [paid](#) for leave
- build up ('accrue') holiday entitlement during maternity, paternity and adoption leave
- build up holiday entitlement while off work sick
- request holiday at the same time as [sick leave](#)

8. The right of an employee to unpaid parental leave for the purpose of caring for a child.

Leave Entitlement Regulations, 2015.

An employee is entitled to two weeks paid parental leave.

Comment

This is different to what parental leave in the UK provides for. It was aimed at providing paternity leave. Therefore there is no law for unpaid parental leave in St Helena.

Rationale:

- a) To provide more time for parenting e.g. to settle children into childcare arrangements and to care for them when sick.

In the UK⁸:

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).

It must be taken as whole weeks (e.g. 1 week or 2 weeks) rather than individual days, unless the employer agrees otherwise or if the child is disabled. Parental 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 employer needs 21 days' notice.

9. The right of an employee to unpaid leave to attend to or care for a dependant in prescribed circumstances.

Not in Legislation.

Rationale:

- a) An [employee](#) is allowed time off to deal with an emergency involving a dependant.

In the UK⁹:

A dependant could be a spouse, partner, child, grandchild, parent, or someone who they depend on for care. The right is for a reasonable amount of time off to deal with the emergency, but there is no set amount of time as it depends on the situation. There are no limits on how many times an employee can take time off for dependants. Time is not allowed off under this right if an employee knew about a situation beforehand.

10. The right to paid or unpaid sick leave.

In legislation.

Leave Entitlement Regulations, 2015

Under these an employee is during

Rationale:

- a) To address health needs.
b) Paid sick leave reduces the financial stress which people may be under if losing their pay.

⁸ <https://www.gov.uk/parental-leave/entitlement>

⁹ <https://www.gov.uk/time-off-for-dependants>

each annual leave cycle entitled to a minimum of five days paid annual leave; and up to five days paid sick leave.

Comment

Unlike in the UK where SSP is paid by the state to the employer (whose policy may exceed this and pay more than SSP), in St Helena the employer bears any wage costs or the employee applies for IRB.

In the UK¹⁰

An employee is entitled to £109.40 per week Statutory Sick Pay (SSP) if they are too ill to work. It's paid by the employer for up to 28 weeks. The employee must have been earning an average of at least £123 per week and have been ill or self-isolating for at least 4 days in a row (including non-working days).

If an employee has regular periods of sickness, they may count as 'linked'. To be linked, the periods must:

- last 4 or more days each
- be 8 weeks or less apart

An employee is no longer eligible for SSP if they have a continuous series of linked periods that lasts more than 3 years.

How many days a person can get SSP for depends on why they are off work.¹¹

11. The circumstances under which an employer shall permit an employee to take time off during the employee's working hours for the purpose of performing the duties of any public office.

Not in Legislation

Rationale:

- a) To allow for time off work for certain public duties.

In the UK¹²

Employers can choose to pay them for this time, but they don't have to. The amount of time off should be agreed between the employee and employer beforehand, based on:

- how long the duties might take
- the amount of time the employee has already had off for public duties
- how the time off will affect the business

The employer can refuse a request for time off if they think it's unreasonable. They can't refuse their staff time off to do jury service. Staff can't ask for time off work for public duties if they're:

- agency workers
- members of the police service or armed forces
- employed on a fishing vessel or a gas or oil rig at sea
- merchant seamen
- civil servants, if their public duties are connected to political activities restricted under their terms of their employment

All workers can ask for time off to do jury service.

12. The right of an employee to paid or unpaid maternity or paternity leave.

In legislation.

Leave Entitlement Regulations, 2015

A female employee is entitled to 14 weeks maternity leave, four weeks paid, which may be taken at any time

Rationale:

- a) To provide for the health and social welfare of a child and the mother and father.
b) To make arrangements for the good of a child.

In the UK¹³

Statutory Maternity Leave is 52 weeks. It's made up of:

- Ordinary Maternity Leave - first 26 weeks

¹⁰ <https://www.gov.uk/statutory-sick-pay>

¹¹ <https://www.citizensadvice.org.uk/work/sick-leave-and-sick-pay/check-if-you-can-get-sick-pay/>

¹² <https://www.gov.uk/time-off-work-public-duties>

¹³ <https://www.gov.uk/maternity-pay-leave/leave>

during the period commencing three months before her expected date of delivery of the child and ending one year after the date of the child's birth.

Comment

Unlike in the UK where SMP is paid by the state to the employer (whose policy may exceed this and pay more than SMP), in St Helena the employer bears the cost.

Amongst the low paid how common is it to resign/ lose a job and apply for IRB. Women have right to ask for unpaid maternity leave or a return to part-time working.

Paternity leave in the UK = parental leave in St Helena.

- Additional Maternity Leave - last 26 weeks
- An employee does not have to take 52 weeks but must take 2 weeks' leave after the baby is born (or 4 weeks if they work in a factory). They may be entitled to take some leave as [Shared Parental Leave](#).

Statutory Maternity Pay (SMP) is paid for up to 39 weeks:

- 90% of average weekly earnings (before tax) for the first 6 weeks
- £172.48 or 90% of average weekly earnings (whichever is lower) for the next 33 weeks

SMP is paid in the same way as wages. Tax and National Insurance are deducted.

To qualify for SMP an employee must:

- earn on average at least £123 a week
- have worked for their employer [continuously](#) for at least 26 weeks continuing into the 'qualifying week' - the 15th week before the expected week of childbirth

Paternity leave

An employee can choose to take either 1 or 2 weeks. They get the same amount of leave if their partner has a multiple birth (such as twins). They must take their leave in one go. A week is the same amount of days that they normally work in a week. Leave cannot start before the birth. It must end within 56 days of the birth (or due date if the baby is early).

They may also be eligible for [Shared Parental Leave](#) (SPL) but they cannot take Paternity Leave after taking SPL.

An employee can take unpaid leave to accompany a pregnant woman to 2 antenatal appointments if they are:

- the baby's father
- the expectant mother's spouse or civil partner
- in a long-term relationship with the expectant mother
- the intended parent (if the baby is through a surrogacy arrangement)

They can take up to 6 and a half hours per appointment. They employer can choose to give you longer. They can apply for leave immediately if they are a permanent employee. They will need to have been doing a job for 12 weeks before qualifying if they are an agency worker.

Rationale:

- a) To provide for the health and social welfare of a child and the mother and father.
- b) To make arrangements for the good of a child.

In the UK¹⁴

Statutory Adoption Leave is 52 weeks. It's made up of:

- 26 weeks of Ordinary Adoption Leave
- 26 weeks of Additional Adoption Leave

Only 1 person in a couple can take adoption leave. The other partner could get [paternity leave](#) instead.

If you get adoption leave, you can also get paid time off work to attend 5 adoption appointments after you've been matched with a child.

Adoption leave can start:

Leave Entitlement Regulations, 2015

An employee is entitled to two weeks paid adoption leave.

Comment

Women have right to ask for unpaid maternity leave or a return to part-time working

¹⁴ <https://www.gov.uk/adoption-pay-leave>

- up to 14 days before the date the child starts living with you (UK adoptions)
- when the child arrives in the UK or within 28 days of this date (overseas adoptions)
- the day the child's born or the day after (if you've used a surrogate to have a child)

Statutory Adoption Pay is paid for up to 39 weeks. The weekly amount is:

- 90% of their average weekly earnings for the first 6 weeks
- £151.97 or 90% of their average weekly earnings (whichever is lower) for the next 33 weeks

It's paid in the same way as they wages (for example monthly or weekly). Tax and National Insurance will be deducted.

13. Right to Redundancy Pay

Not in legislation

Comment

Anecdotal information suggest a lot of people are let-go according to the needs of an employer. But fixed term contracts could provide more security for employees, at least they would know the situation.

Rationale:

- a) To compensate employees in the event of them losing their job as a consequence of the decision of their employer, and not through any fault of their own.

In the UK

Redundancy payments refer to termination payments that arise from terminating a worker on economic grounds, such as redundancy or restructuring. The notion of "redundancy" refers to what happens when an employer no longer wishes the job an employee was doing to be done, by anyone. Thus, restructuring of a business, for instance, may lead to redundancy of a job or position. And so, to termination of employment. However, redundancy (and thus termination) can also occur outside a context of collective dismissal.¹⁵ An employee is entitled to statutory redundancy pay if they have been working for their current employer for 2 years or more.

They get:

- half a week's pay for each full year they were under 22
 - one week's pay for each full year they were 22 or older, but under 41
 - one and half week's pay for each full year they were 41 or older
- Length of service is capped at 20 years.

Weekly pay is the average they earned per week over the 12 weeks before the day they got their redundancy notice.¹⁶

¹⁵ <https://eplex.ilo.org/redundancy-and-severance-pay/>

¹⁶ <https://www.gov.uk/redundancy-your-rights/redundancy-pay>

14. Application of Transfer of Undertakings in Employment (TUPE)

Not in Regulations.

1.4. Rationale:

- a) To strike a balance between the protection of employee's rights when transferring to a new employer and the need for an incoming employer to implement measures and make necessary revisions to meet the operational needs of their business.

1.5.

1.6. In the UK¹⁷

1.7. Rights under TUPE

Applies only to employees and if the part of the organisation that's transferring its business or changing its service provision (outsourcing, insourcing, retendering) is in the UK

Applies to all sizes of organisations.

Every TUPE transfer may be different, but the usual process involves the following:

- the old and new employers identify who is affected by the transfer
- the old and new employers inform, and in some cases consult, employees who are affected by the transfer
- the old employer provides the new employer with information about the employees who are transferring, for example their age and identity
- the employees who are transferring transfer to the new employer along with their employment contracts and length of service.

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¹⁷ <https://www.acas.org.uk/employee-rights-during-a-tupe-transfer>