

Atypical Workers Factsheet



Introduction

'Atypical workers' refers to individuals who work under a different type of arrangement compared to traditional employment. This category includes casual workers, bank workers, zero-hours contracts and covers many workers engaged in the gig-economy. In this factsheet we will use the generic term 'workers' to describe people working under a contract in one of these categories.

When we talk about the 'employer' in this factsheet, we use that term in the broadest sense to mean the company or entity which engages the worker.

Although workers do not usually qualify for the full range of employment protection rights from which employees benefit, workers do benefit from a range of rights. The key rights that apply to workers in the UK are set out below.

The distinction between employee and worker status is outside of the scope of this factsheet. Whether someone is a 'worker' or an 'employee' is a legal question which depends on the nature of their engagement. Although what is written in the contract may be a good starting point, how the engagement operates in practice will be more determinative. The employment tribunal will consider a variety of factors as part of their assessment of employment status, including the nature and length of the engagement.

If you are undertaking casual or irregular work, it is more likely that you are a worker. However, if in practice, you have worked regular hours for an extended period of time and both you and your employer expect that to continue, then it is possible that you could be an employee, though no single factor would be conclusive, and the tribunals would consider the engagement as a whole.

See [Gov.UK](#) and [What is my employment status? Employee, worker or self-employed?](#) for more information on worker or employee status.

National Minimum Wage

Workers are entitled to be paid at an hourly rate of pay which is at least the rate of the National Minimum Wage. Workers who are 21 or over and who meet the eligibility criteria will be entitled to receive the National Living Wage.

The rate of the National Minimum Wage and the National Living Wage increases on 1 April every year. The current rates can be seen on [Gov.UK](#).

The value of accommodation provided by your employer can be taken into account in calculating the minimum wage (up to a maximum permitted amount). No other kind of company benefit (such as food, a car, childcare vouchers) counts towards the minimum wage.

You can use the [Government calculator](#) to check if you are getting the correct minimum wage.

There are limited exceptions to the right to receive the minimum wage which can be seen on [Gov.UK](#).

Protection against unlawful discrimination

The Equality Act 2010 provides workers with the right to equal treatment and opportunities, regardless of their protected characteristics.

Specifically, workers are protected against discrimination based on the protected characteristics of age, sex, race, disability, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity and religion or belief.

There are different types of discrimination that apply to these protected characteristics:

- ♥ **Direct discrimination** – where an employer treats a worker less favourably than the employer treats or would treat others because of a protected characteristic. E.g Sex, pregnancy and maternity, age and disability to name a few.
- ♥ **Indirect discrimination** – broadly speaking this occurs where an employer operates a practice, criteria or provision (PCP) which applies to all workers but has the effect of disadvantaging a group of people with a particular protected characteristic. For example, requiring all workers to work particular full-time hours can disadvantage women because women as a group share a greater proportion of childcare responsibilities and are therefore less likely to be able to comply with the requirement. If the employer could not objectively justify the need for the particular full-time hours, the requirement could amount to indirect sex discrimination. As of the 1 January 2024, it may now be possible to argue indirect sex discrimination for a male, who has caring responsibilities. However, caution should be taken when

arguing this, as it has not been tested in our courts as yet. See [Flexible working and discrimination](#).

- ♥ **Harassment** –is unwanted conduct which is either related to a relevant protected characteristic or of a sexual nature, which has the purpose or effect of either violating the worker's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the worker. It also includes less favourable treatment because of a worker's rejection of or submission to harassment of a sexual nature or harassment related to sex or gender reassignment.
- ♥ **Victimisation** – where an employer subjects the worker to treatment because the worker has done a protected act (which includes bringing, alleging or giving evidence in connection with a discrimination claim) or the employer believes that the worker has done or may do a protected act.
- ♥ **Disability related discrimination and the duty to make reasonable adjustments** – disabled workers (which includes physical or mental impairments) and job applicants benefit from additional protections. This includes, an employer's duty to make reasonable adjustments where a disabled person is placed at a substantial disadvantage by an employer provision, criterion or practice, or a physical feature of the employer's premises or an employer's failure to provide an auxiliary aid.

For more information see our guides – [Discrimination, harassment and victimisation: Overview](#) and [Disability discrimination in the workplace](#).

Working Time

Under the Working Time Regulations 1998, workers are generally entitled to certain rest breaks and limits on their working hours.

In most cases workers are entitled to:

- ♥ 11 hours' uninterrupted rest per day;
- ♥ 24 hours' uninterrupted rest per week (or 48 hours' uninterrupted rest per fortnight);
- ♥ a rest break of 20 minutes when working more than six hours per day; and
- ♥ average working time (including overtime) calculated by reference to a 17-week period, which does not exceed 48 hours per week (note: workers can opt out of this limit).

Additional protections apply where the worker does night work.

Holiday and holiday pay

Holiday entitlement

Most workers have a right to a minimum of 5.6 weeks' paid annual leave in each leave year. A week's leave should allow workers to be away from work for a week. It should be the same amount of time as the working week. For example, if a worker works 5 days per week they are entitled to 28 days holiday per year and if they work 3 days per week, they are entitled to 3/5ths of this entitlement, which is 16.8 days. However, for statutory purposes there is a cap

of 28 days, meaning that a worker who works a 6-day week is entitled to 28 rather than 32 days.

If the amount of leave accrued includes a fraction of a day other than a half, this fraction should be rounded up to a half-day where it is less than a half-day and to a whole day where it is more than a half-day. In the example above, the part-time worker would be entitled to 17 days of leave (rounded up from 16.8).

Irregular hours

Different rules apply to the calculation of holiday entitlement and pay for irregular hours workers (meaning those whose number of paid hours worked in each pay period during the term of their contract is wholly or mostly variable) and part-year workers (meaning those who work only part of the year and, within that year, there are periods of at least a week during which they are not required to work and for which they are not paid. E.g Teaching assistants).

Please note that where a worker is paid an annualised salary (i.e. their pay is spread across 12 months), there must be at least one week for which they are not paid during the year in order for them to be classed as a part-year worker for holiday entitlement and pay purposes. The Department for Business and Trade has published [guidance](#) which explains the categories of irregular hours and part-year workers in more detail and provides examples.

For irregular hours and part-year workers, holiday is calculated in hours and accrues on the last day of each pay period. It is calculated using a rate of 12.07% of hours worked during the relevant pay period (or across a 52-week reference period where an employee takes sick or family leave during the pay period). Fractions of an hour are rounded down if less than 30 minutes and up if 30 minutes or more.

In all cases, time off for bank and public holidays, can be counted against a worker's annual statutory holiday entitlement. Workers do not, however, have a statutory right to take bank or public holidays off, but employers can require workers to use their entitlement on such days (or any other day) provided they give necessary notice.

Holiday pay

It is necessary for your employer to determine the rate that you are entitled to be paid for any holiday which you take, as well as the amount of holiday that you are entitled to. In simple terms, workers are entitled to a week's pay for a week's leave. In the majority of circumstances, your employer will calculate your holiday pay by finding the average rate of all remuneration you had earned in the previous 52 weeks, or the number of complete weeks you have been employed (if less than 52). Weeks in which no remuneration was due are ignored, as are any weeks spent on sick, maternity, paternity, adoption, parental, shared parental, or parental bereavement leave for any part of the week. Earlier weeks are then brought into account, up to a maximum of 104 weeks. Regularly paid overtime, payments intrinsically linked to the performance of tasks you are contractually required to perform (e.g. commission) and payments relating to length of service, seniority or professional qualifications will be included in the calculation.

For irregular hours and part-year workers, employers can either:

- (a) pay holiday when it is taken, calculating the rate of pay in the same way as is set out above; or
- (b) pay 'rolled-up' holiday pay, which is an uplift of 12.07% to the worker's remuneration for work done in each pay period. Rolled up holiday pay is paid with every payslip (and must be itemised as such) as opposed to when holiday is actually taken.

The use of rolled up holiday in cases other than irregular or part-year workers may be open to challenge. If this is the case for you, you may wish to ask your employer to review the calculation of your holiday pay.

Health and safety

Employers have a duty to provide a safe and healthy working environment and to manage risks to the health and safety of their workers and others.

If you have a concern about a health and safety matter, you may wish to raise it with your employer. Workers have the right not to be subjected to a detriment for refusing to attend work or taking other appropriate steps to protect themselves or others in circumstances where they reasonably believe there is a serious and imminent danger to their health and safety.

Raising a health and safety concern can also amount to a protected disclosure which means that workers may have protection from detrimental action by their employers under whistleblowing legislation.

See also our guide on [health and safety rights for pregnant women and new mothers](#).

Whistleblowing

It is unlawful for an employer to subject a worker to a detriment on the grounds that they have made a 'protected disclosure'. This is known as whistleblowing. Ending a worker's contract is a form of detriment.

In order to qualify for this protection, the worker must make a qualifying disclosure of information which the worker reasonably believes tends to show that a certain wrongdoing has occurred or is likely to occur. The worker must also reasonably believe that the disclosure of information is in the public interest.

The potential categories of wrongdoing are: (i) a criminal offence; (ii) breach of a legal obligation; (iii) miscarriage of justice; (iv) danger to the health and safety of an individual; (v) damage to the environment; or (vi) the deliberate concealing of information about any of these matters.

In most cases, it is necessary for the worker to have made the disclosure to their employer in order to benefit from this protection.

Statutory Sick Pay (SSP)

If a worker meets eligibility criteria, they will be entitled to receive SSP for periods of sickness or incapacity. Currently, the eligibility criteria includes being classed as an employee (meaning, for these purposes, anyone whose earnings are liable for Class 1 National Insurance contributions), an average earnings requirement of at least £123 per week and a requirement to have been ill for at least 4 days in a row. It is worth noting that the government has announced an intention to remove the latter two requirements, but at present they continue to apply.

The current rate of SSP is £116.75 per week. SSP is payable for a maximum period of 28 weeks.

If you are not eligible for SSP, you may be able to apply for Universal Credit or New Style Employment and Support Allowance (NS ESA). See [Government guidance, Universal Credit](#) and [What can I claim if I am too sick to work?](#) for more information.

Part-time workers - protection against less favourable treatment:

Worker who are part-time have the right not to be treated less favourably as compared to a full-time worker on the ground of their part-time status (unless the employer can demonstrate that the difference in treatment is necessary and appropriate to achieve a legitimate objective).

In order to establish less favourable treatment, a part-time worker must identify an appropriate full-time worker as a comparator. The full-time worker must be employed on the same type of contract, which means that the part-time worker cannot compare themselves to a full-time person who is an employee. In practice this is likely to mean that there is limited opportunity for workers who are engaged on casual contracts to bring a claim on this basis. See [Part time workers - protection against less favourable treatment](#).

Family leave (maternity, paternity, adoption and shared parental pay)

Workers will be entitled to receive statutory maternity pay, statutory paternity pay, statutory adoption pay and shared parental pay, if they meet the qualifying criteria.

Use the [Government's maternity and paternity pay checker](#) to see if you qualify for statutory maternity pay or statutory paternity pay. If you are a pregnant woman who does not qualify for statutory maternity pay, then you may qualify for maternity allowance instead.

Check [Gov.UK](#) for information regarding entitlement to statutory adoption pay. If you are the primary adopter and you do not qualify for statutory adoption pay, then you may be able to

get support from your local council instead.

Check [Gov.UK](#) and [Shared Parental Leave: Overview](#) for information regarding entitlement to statutory shared parental pay.

Family leave (statutory parental bereavement pay)

Workers will be entitled to statutory parental bereavement pay (but not Statutory Bereavement Leave, which is an employee right) if they meet the qualifying criteria. Check [Gov.UK](#) and [Parental Bereavement Leave \(Jack's law\)](#) for information regarding the qualifying criteria and pay amount..

Pension

Workers who meet the qualifying conditions must be automatically enrolled in a qualifying workplace pension. You must be over the age of 22 and earn at least £10,000 per year to qualify. See the [Government guidance](#) for more information.

Zero hours and low paid workers – ban on exclusivity.

If you are engaged on a zero-hours contract or you are a low paid worker then your employer cannot stop you from working for other employers. In addition, your employer cannot treat you unfavourably or terminate your contract because you have worked for another employer.

A low paid worker is a worker who earns below the lower earnings limit. For the 2024/25 tax year, the lower earnings limit is £123 per week. The limit changes on 6 April each year and you can check the latest limit on [Gov.UK](#).

Right to request a predictable work pattern

The Government has announced its intention to give workers the right to request a predictable work pattern. Under the new law, if a worker's existing working pattern lacks predictability (e.g. in terms of the hours they work, the days/times that they work or the contract is fixed term for a period lasting 12 months or less), they will be able to make a formal application to change their working pattern to make it more predictable.

The new law is expected to come into force in September 2024.