

# 50 ways to keep your business out of an Employment Tribunal



**THE SECRETS  
REVEALED!**



## INTRODUCTION

Employment law is a constantly changing landscape. Whether you have one employee or several hundred, as an employer you have numerous procedures to follow and legislation to adhere to. If you fail to do so, you could find yourself facing an Employment Tribunal, a financially and reputation damaging situation to be in.

From the moment you start advertising for a new recruit, through to selection, training and promotion, you have rules to follow concerning fair treatment. Anti-discrimination laws dictate that everything from your recruitment advertisement onwards must not disadvantage any candidate or employee on the grounds of ethnicity, religion, nationality, age, sex, disability or sexual orientation. Do you know the law on this subject well enough to avoid a claim?

Policies, procedures and a written statement of employment terms and conditions must be provided to every staff member and kept up to date as your business and employment legislation changes. Written particulars allow you to lawfully terminate an employment contract should the terms be breached. Do you know what constitutes a legal set of written particulars?

Thanks to the abundance of information readily available online, employees are rarely in much doubt as to their employment law rights. If you are unlawful in any of your actions, it is likely employees will take action against you.

Could you afford to defend your business at an Employment Tribunal? If you were ordered to pay compensation, how would your business fair financially? Would your reputation stand up if you were accused of unfair treatment or discrimination?

If you are keen to keep your business out of an Employment Tribunal, these 50 tips will help you understand your responsibilities, reduce risk and avoid costly action.

Contact one of the Employment team below to discuss any of the issues raised in this guide:

**William Addis**  
01689 887834  
william.addis@cwj.co.uk



**Rosa Brennan**  
01689 887872  
rosa.brennan@cwj.co.uk



**Pritti Bajaria**  
01689 887846  
pritti.bajaria@cwj.co.uk



**Yasmin Awan**  
01689 887805  
yasmin.awan@cwj.co.uk





## RECRUITMENT

1

**Advertising:** Be careful not to discriminate against potential candidates. You may not make requests for a specific age or gender, for example, so limit your advertisement to the skills, knowledge and qualifications required. Don't forget, requesting a certain number of years experience could be construed as stipulating an age requirement.

2

**Interview:** Make sure any disabled applicants can access the interview location otherwise you could be accused of discrimination. To avoid bias and make the interview more balanced, use two or more interviewers.

3

**Selection:** Choose candidates based on their ability to do the job, and nothing else. Make sure your selection process is fair, use a team approach in making selection decisions, and be consistent in all recruitment campaigns.

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**Job offer:** Offer terms must be fair and any special conditions clearly set out. If you require satisfactory references and the return of any other checks, ensure this is stated. Follow data protection and confidentiality rules when making checks.

## STATEMENT OF TERMS, CONTRACT OF EMPLOYMENT AND STAFF HANDBOOK

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**Written Statement of Terms:** All members of staff should receive a written statement detailing the particulars of their employment within two months of their start date.

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**Contract of Employment:** A written contract, tailored to the employee and their role, should be provided to protect both parties. Should the particulars of the employment vary if there are changes within your business or the law, the contract will need to be updated.

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**Staff Handbook:** Combine all your business wide policies and procedures into a staff handbook so that employees have a clear reference point on issues such as disciplinary and grievance procedures, redundancy and dismissal, health and safety, discrimination, bribery and rights on things like leave and flexible working.

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## DISCRIMINATION

**Discrimination Grounds:** Direct or indirect, discrimination is unlawful and could result in an Employment Tribunal. Consider how actions you take, decisions you make and opportunities you offer – or fail to offer - could be considered discriminatory. No matter the age, marital status, sexual orientation, gender, race, religion, belief, mental or physical ability of an employee, they are entitled to fair and consistent treatment across recruitment, selection, promotion, salary reviews and every other aspect of employment.

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**Employee Claims:** Employees who believe they are not receiving the same treatment as their colleagues are likely to take legal advice and lodge a claim. Beware: claims can be costly, and often cause irreparable business damage and loss of valuable management time.

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**Equality Act 2010:** The Equality Act 2010 consolidates the many anti-discriminatory laws in the UK such as the Race Relations Act and the Equal Pay Act. It demands equal treatment across the entire scope of employment. In the case of gender, pregnant women have special considerations and where disability is concerned, employers must make reasonable workplace adjustments to ensure there is no less favourable treatment.

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**Anti-Discriminatory Culture:** Ensure managers and supervisors are all trained to follow procedures and adopt your anti-discriminatory policy so that it cascades down through the entire organisation. Introduce a training programme for managers so they can detect and prevent emerging issues.

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## HARRASSMENT AND BULLYING

**Recognise Harassment:** Any unwanted or malicious action - verbal, non-verbal or physical – which intimidates, humiliates, violates a person's dignity or creates a hostile environment is considered harassment.

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**Know your Responsibilities:** Subjecting employees or recruitment candidates to harassment is unlawful, as is allowing the harassment of employees or candidates by other members of staff. Your responsibility extends to the behaviour and actions of every person within your organisation and you, as well as them, could face action.

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**Implement an Anti-Harassment Policy:** Clearly state your policy on how bullying or harassment will be dealt with by including a written statement within your staff handbook. Set out a simple and confidential reporting procedure and train managers and supervisors so that policies are adopted from the top down.

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### PAY, BENEFITS AND HANDBOOK REVIEW

**Keep written particulars up to date:** Employment law changes regularly. Ensure all written particulars of employment and company-wide policies are updated in line with new legislation, otherwise it's as good as having no policies at all.

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**Watch Statutory Pay Changes:** Maternity, Paternity and Adoption Pay, Statutory Sick Pay and annual leave entitlements all change regularly. Failure to meet statutory requirements could lead to a claim.

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**Meet the Minimum Wage:** Failure to pay the National Minimum Wage at the prevailing rate will result in costly action. Know the rates for the various age groups and don't make the mistake of thinking temporary workers are excluded.

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**Know what the Equal Pay Act 1970 means:** This Act prohibits treating a worker, or a group of workers, or a particular sex more favourably than another of a different sex, concerning pay and terms. Benefits, leave entitlement and bonuses are also included so take care when making awards not to exclude any employees on unfair grounds.

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### DISMISSAL, DISCIPLINARY AND GRIEVANCE PROCEDURE

**Read the Employment Act 2008:** This Act covers all the dismissal, disciplinary and grievance procedures with which employers must comply. The ACAS statutory Code of Practice is also an important piece of legislation with which to be familiar.

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**Implement a Written Policy:** Include written policies clearly setting out procedures for dismissal, disciplinary and grievance issues within your staff handbook. The policies must be in line with the Employment Act 2008 and

ACAS statutory Code of Practice. Conduct regular reviews to ensure procedures are up to date.

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**Monitor your Policies:** There is no point drafting policies if they are not implemented throughout the business and followed by everyone. If you, or any member of your organisation, fail to follow set procedures on dismissal, disciplinary and grievance issues, the result could be an Employment Tribunal. Don't forget it is ultimately your responsibility so ensure managers and supervisors follow your guidelines.

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**Deal carefully with long term sickness and poor performance:** Ensure you follow the correct procedures to avoid unfair dismissal and disability discrimination claims. If you have issues with employees on extended sick leave, or are concerned about performance, seek professional advice before taking action.

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### TUPE

**Know TUPE:** When a business undergoes a transfer to a new employer, the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply and are in place to protect employees' rights. TUPE also applies to a change in contract service providers.

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**Know how TUPE works:** A business transfer does not automatically terminate employees' employment contracts where TUPE applies. Employees transfer with the business and are acquired by the new employer, retaining their terms of employment.

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**Inform Employees:** Whether you are buying the business or selling it, you have a duty to consult with employees so they are aware of how the transfer will affect them.

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**Seek Professional Advice:** There are strict guidelines to follow concerning TUPE. Whether you are set to acquire a new set of employees, or are transferring them with your business to a new employer, taking advice at the earliest opportunity could save you time and money long term.



## HEALTH AND SAFETY

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### **Know your Obligations under the Health and Safety at Work Act:**

A visit to the Health and Safety Executive website: [www.hse.gov.uk](http://www.hse.gov.uk) will demonstrate just how much there is to comply with and what you are duty bound to do as an employer. Where possible, engage the services of an outside health and safety agency to ensure full compliance with the Health and Safety at Work Act 1974.

# 28

**Ensure Staff Safety:** Employers have a statutory duty to ensure, so far as is reasonably practicable, the health and safety of all employees whilst they are engaged in their duties, no matter what industry they operate in. Don't assume health and safety law only applies to industrial or manual labour environments.

# 29

**Assess Risk:** It is an offence to fail to conduct a workplace risk assessment. Equipment, working practices and workplace environments must all be assessed for potential hazards that could cause injury or ill health. Without a risk assessment, it is impossible to implement health and safety policies and procedures specific to your business.

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**Monitor Frequently:** Make sure your health and safety policy is a working policy that is updated as issues emerge, new equipment is introduced or working practices updated.

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**Provide Adequate Training:** Identify the skills required for staff to carry out their tasks safely then implement adequate training and ongoing support and supervision. Include emergency procedures in this training.

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**Conduct Regular Inspections:** Conduct regular inspections to detect emerging issues and liaise directly with all staff concerned, encouraging open reporting of any concerns early on. If an incident occurs, conduct an emergency inspection and new risk assessment immediately, do not wait until your next scheduled inspection.

## REDUNDANCY

# 33

**Take Legal Advice:** When considering redundancies, seek legal advice at the outset so you can be sure you are working within the law. Whether a job redundancy where a business is closing, a workplace redundancy where a

branch is closing or relocating, or employee redundancy where the need for work of a specific type has diminished, you can avoid costly claims by working under the guidance of a legal expert.

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**Consider all your Options:** Before you take action, think: are redundancies necessary, or is there another way?

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**Make it Fair:** When selecting employees for redundancy, implement a fair process and identify the correct pools of employees for selection. Follow the same procedure with everyone affected, otherwise you could face unfair dismissal or unfair selection for redundancy claims.

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**Get the Timing Right:** If your redundancies total between 20 and 99 employees, the consultation process must be started at least 30 days before a decision on termination of employment is made. For redundancies of 100 or more employees, begin the process 90 days in advance.

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**Tell the Secretary of State:** The Secretary of State must be notified of any proposed redundancies within a minimum of 30 or 90 days before notice is given to employees. The notice period depends on the number of employees, as stated above.

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**Consult with Representatives:** If 20 employees or more are being made redundant within a 90 day period, their appropriate representatives must be consulted with. Failure to properly consult could lead to a 'protective award' where each affected employee would be entitled to a payment of up to 90 days salary.

## PART TIME / AGENCY WORKERS

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**Give Fair Treatment:** Unless there are special circumstances, part-time workers should receive the same treatment as full time workers in comparable positions. Rates of pay, annual leave, benefits, training, promotional opportunities and statutory leave rights should not vary just because a worker is not full time. Unfairly treated part time employees could bring a discrimination claim.

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**Be aware of the Agency Workers Regulations 2010:** These regulations, in force from 1 October 2011, change the law concerning temporary workers who now have the same rights as permanent staff if they have worked for the same company for more than 12 weeks. They are entitled to the same

basic employment conditions, annual leave, benefits, salary and opportunities as permanent staff. Failure to extend standard conditions to temporary workers could result in an Employment Tribunal claim.

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**Ensure Agency Worker Contracts are Legally Sound:** Agency Workers should be provided with tailored and legally sound contracts of employment to protect both parties. It is common for disputes to arise between employers and agency workers so consider a professionally drafted contract an insurance policy.

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## STRESS

**Appreciate the Seriousness of Workplace Stress:** According to the Health and Safety Executive (HSE), in 2009-10 around 9.8 million working days were lost due to work-related stress. Each person took on average 22.6 days off work - the equivalent of 0.42 days lost per worker per year. If your business cannot afford to lose valuable working days, take action to prevent or efficiently handle stress.

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**Honour your Duty of Care:** Employers have a duty of care to protect the health of their employees and this includes taking reasonable steps to prevent subjecting them to stressful situations which could result in psychiatric illness.

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**Implement a Stress Policy:** Steps to prevent stressful situations and procedures for dealing with issues should be set down in a written policy and implemented company-wide. Managers and supervisors should receive specific training in preventing and detecting stress. Don't forget it is your ultimate responsibility; if a worker is creating a stressful situation for a colleague, it will be you facing a potential claim.

45

**Keep a Close Eye:** Any employees who have raised a stress related issue should be carefully monitored. Hold regular meetings with the employee and their direct supervisor to check progress and carefully document proceedings. If there is a relapse, or no progress being made, seek professional advice on the next steps to take.

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**Make it Easy and Safe to Report Stress Related Issues:** Employees should feel comfortable in bringing matters concerning stress to the attention of the appropriate person. Make it clear how reporting procedures work and that all matters are dealt with in strict confidence.

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## PRACTICALITIES

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**Implement an Email, Internet and Social Media Policy:** The connotations of the misuse of internet, email and social media can be very serious and it has been known for businesses to experience reputation damage and discrimination or harassment claims due to carelessness or abuse of electronic communications and social media platforms. Clearly state guidelines in a written policy and lawfully police online and email usage. Educate employees in what may be considered offensive by recipients of messages or viewers of postings. Take care also to protect your confidential business information from being 'socially shared' across public platforms.

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# 48

**Take Care with Staff Hospitality:** Any staff hospitality, whether a Christmas party, summer outing or celebratory gathering, should be subject to its own risk assessment just like any regular work activity. Standard disciplinary procedures apply so make staff aware. Employees are your responsibility whether on or off workplace premises and you will be liable for any unruly behaviour that offends or causes physical damage.

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# 49

**Introduce Robust Anti-Bribery and Corruption Procedures:** The Bribery Act 2010 makes it a criminal offence for any UK commercial organisation or individual to accept or offer a bribe in return for a specific reward, for example a contract, sale or approval. The Act applies to all types of business from sole trader upwards and prosecutions will lead to unlimited fines and up to 10 years imprisonment. Implement a strict written anti-bribery and corruption policy and instil a company-wide anti-bribery culture, because it is the business owner who will bear the brunt of any action.

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**Be Consistent and Keep Comprehensive Records:** Your decision making and actions should be consistent across the organisation. If you appear to favour one particular member of staff, team or department over another, you could be accused of unfair treatment or discrimination. Keep detailed records of all employee matters: requests, complaints, issue reporting, staff meetings and disciplinary and grievance matters. Comprehensive records can be invaluable should you need to defend a claim. Accurately monitoring hospitality expenses claims will also go a long way towards mitigating any bribery or corruption issues.

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“This certainly illustrates just how many mines there are in the minefield of Employment Law”.

**Oonagh Morris**

*HR Representative, Grayson Automotice Services Limited*

“Full of practical advice that takes away the initial confusion of Employment Law, highly recommended”.

**Adrian Litchfield**

*General Manager, Global Metal Trading Limited*



**Clarkson Wright & Jakes Ltd**  
Solicitors and Notaries

Valiant House  
12 Knoll Rise  
Orpington  
Kent  
BR6 0PG

T: 01689 887887  
E: [cwj@cwj.co.uk](mailto:cwj@cwj.co.uk)

