Resources for Gig Workers

This resource was produced during a virtual Vacation Scheme in June 2021. The information and guidance reflects policy at the time and may be subject to change. Whilst this document provides legal information, this does not amount to legal advice.

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I. Introduction

A. Purpose of this paper

This document is composed to outline the area of law that governs the employer-workers relationship. It shall highlight the recent rise of the gig economy where temporary, flexible jobs are commonplace. This paper will explain how gig workers fit into the categorisations of employment and the important information needed to protect your rights. It acknowledges the power imbalances and reduced bargaining power of a gig worker and provides legal recourse to empowering and safeguarding gig workers. The most notable aspect to this document is its depth and length. Dissimilar to the expectation that the niche of "gig worker" indicates a document covering an aspect to employment law, it addresses the entirety. Hence, this document is intended as a resource for the Justice Hub incorporating the LAC, to enable advisors in understanding the relevant debates and the conflicting decisions between "workers" and "self employed" (the case on Uber and Deliveroo) as the appropriate status of gig worker further lends itself to a necessity in understanding the scope of Employment Law as a whole.

B. Contextual Background

Have you found yourself driving for Lyft or delivering food as a Grab Rider to writing code or freelance articles? These works exemplify the wide variety of positions that fall into the category of a gig. Technological advancement and social distancing restrictions due to the pandemic has resulted in increased redundancies and individuals resorting to their phone as a means of hunting for job opportunities. These works that are a swipe away, seemingly convenient, pose great vulnerabilities to unknowing individuals. Thus questions surrounding (ii) Status, (iii) Classification of Rights, (iv) Employers Duties & Obligations, (v) Covid-19 Implications are addressed herewith.

C. Main sources of law

The main source of law included are the:

1. Employment Rights Act 1996; covering the rights of employees in situations such as unfair dismissal, paternity leave, maternity leave and redundancy.
2. Employment Relations Act 1999; setting out a number of rights at work for trade union recognition, derecognition, and industrial actions.
3. Trade Union and Labour Relations (Consolidation) Act 1992

II. Status

A. Identification of Worker, Employee, or Independent contractor/agency worker

There are commonly three types of employment. Employees, workers and independent contractors. Only the two first are protected under employment law. **The Employment Rights Act (ERA) 1996** has provided the legal definition for employees and workers.

Employees

S230(1) ERA 1996 states an employee is an individual who has entered into or works under a contract of employment and **s230(2) ERA 1996** states contract of employment of employment is a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

Gig workers may be considered as employees if:

- A Manager or supervisor oversees their workload and how they work should be done
- They're required to work regularly; they are entitled to paid leave
- They can expect work to be consistently available
- They cannot refuse to do the work
- They're employed to do the work themselves (personally)

Workers

S230(3) Employment Rights Act 1996 states worker is an individual who has entered into or works under

- A contract of employment *(i.e. everyone who is an employee is also entitled to rights afforded to 'workers');* or
- Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer or any profession or business undertaking carried on by the individual

Gig workers may be considered as workers if:

- Their work for the organisation is more casual, for example if their work is less structured or not regular
- They're employed to do the work themselves
- They're not offered regular or guaranteed hours by their employer

- They are paid for services provided and work they have agreed to, not just their availability for work
- The benefit of the work is primarily for the employer
- The worker is burdened with the risk of not working

Independent contractors

Gig workers are likely classified as independent contractors if they:

Are responsible for how and when they work (i.e. they run their own business)

- They are the owner of a company or a freelancer
- Invoice for your pay instead of getting a wage
- Get contracts to provide services for your clients
- Are able to send someone else to do the work for themselves (i.e they send a substitute), if appropriate
- Are able to work for different clients and charge different fees
- Runs their own business and takes the risk of profit and loss

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B. Employees (Tests and elements to status):

An employee is defined by **s(1) 230** as an: '(...) individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment'. A contract of employment 'means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.'

As the statutory definition is vague, the following judicial tests are relevant:

Control test

— *Walker v Crystal Palace Football Club [1910]*

Under the modern version of the test, if the business has the right to control an individual, the individual may be classified as an employee.

The business does not necessarily have actual control over the individuals, as long as they have the right to exercise 'control'. That is:

- managerial power to give orders and issue directions
- presence of duty to obey orders;
- whether the employer
    - sets hours of work,
    - and supervises mode of working: *White v. Troutbeck*

Integration (Business organisation) test

— *Stevenson, Jordan & Harrison v MacDonald & Evans [1952]*

This test is about the degree of integration of the individual in the workplace. Substantive integration and Organisation integration are required.

Substantive integration	**Organisation integration**
We first have to look at the main economic activity of business, then the major work of the individual and see whether the individual is the integral part of the business.	Whether the individual is part of the organisation. Does the individual enjoy any benefits scheme? Is he subject to disciplinary procedure or grievance procedures? Can he receive bonus, sick pay or retirement pension?

Economy reality test

This test raises the question of whether the individual is in business on his own account. An employee should work for somebody else but not their own.

— *Stringfellow Restaurants Ltd v Quashie [2013]; Uber BV v Aslam [2018]*

Who will be burdened with the financial risk if the individual does not work. The lower the degree of financial risk the individual has to take, the more likely to be classified as an employee.

The following need to be considered:

- Who will bear the financial risk if the individual does not work
- Payment method (Wage or Commission)
- Does the individual pay income tax and National Insurance contributions as an employee instead of VAT on the provision of his/her services?
- Does the business provide premises / equipment / uniform to the individual?
- Substitution / delegation clauses
    - — *Express and Echo publications v Tanton 1999*
      If the contract allows for the individual to provide a substitute, he is generally not an employee as there is no personal service
    - Exception
      — *Macfarlane v Glasgow city council 2001*
      Providing substitutes only from a list of persons approved by the employer and only when unable to work is employees

Mutuality of obligation test

Is the individual paid for the work done or for the availability of work. An employer should be paid for his availability.

Multiple / multifunctional test
— *Ready mixed concrete (south east) v Minister for pensions and national insurance*
The multiple test takes into account a variety of factors from all the different tests.

A contract of services exists if 3 conditions are fulfilled

- The servant agrees that, in consideration for a wage or other remuneration, he will provide his own work and skill in the performance of some task for his master
    - Obligation of personal services + the element of neutrality of obligations
    - Put skills and get wage in return
- He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master
- The other provisions (full factorial nexus) of the contract are consistent with it being a contract of service

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C. Workers (Tests and elements to status)

Identify a contract to perform personal services (work for payment or reward)
This shows there is mutual obligation between gig workers and the employer (*Costswold Development v Willians*), whether express or implied and (if it is express) whether oral or in writing. Following the mutuality of obligation test above, a worker should be paid by the work actually offered and done instead of the availability to work.

An obligation for personal service
That means you cannot offer others to do the work for you.

No Substitution Clause
— *Express & Echo v. Tanton, Wilson v. Circular Distributors, Consistent Group Ltd. v. Kalwak.*
The exception discussed above re substitution clauses applies here as well.

The individual must not be in business on their own account
Instead, they should work for somebody else.

The emphasis used to be on Subordination and on the control test (Uber also made use of this). However case law seems to be moving towards assessing who primarily benefits after the work.

THE GREAT DEBATE ON GIG WORKERS' RIGHTS: THE *UBER* AND *DELIVEROO* DECISIONS

As a gig worker, it is important to be aware of how you are employed in order to know your rights. For example, two important cases concerning gig work, namely *Uber BV and others (Appellants) v Aslam and others (Respondents) 2021* and *Independent Workers' Union of Great Britain (IWGB) v RooFoods Ltd (t/a Deliveroo) [2018]* came to different conclusions on what constituted a worker or an independent contractor. The very recent June 2021 decision in the *Deliveroo case* officially classified Deliveroo drivers as self-employed, and as such they do not enjoy 'worker' status. This is a step-back from the previous Uber decision, and the effects of the decision remain to be seen. However, Coulson LJ in the ruling did confirm that *'it may be thought that those in the gig economy have a particular need of the right to organise as a trade union'* and that decision on whether particular groups of gig-workers will be considered to fall under the scope of employment law should be taken on a case by case basis, on the facts and arguments available in each case.

Therefore, although your contract might classify you as an independent contractor (or 'partner', 'buddy' etc.) this does not constitute the end of the matter. The ruling in *Autoclenz LTD (appellant) v. Belcher and others (respondents) [2011]* made it clear that the contract, or its terms, did not signify the end of how the courts will interpret it.

THE TWO IMPORTANT CASES IN FAVOUR OF GIG WORKERS: *UBER* AND *AUTOCLENZ*

The *Uber BV and others (Appellants) v Aslam and others (Respondents) 2021* is the main authority for sustaining your claim that as a gig worker, you fit within the legal meaning of 'worker' (as per **s(3) 230 ERA 1996**). The Supreme Court (SC) decided Uber drafted the terms and conditions (called 'Services Agreement') in such a way that it excluded drivers from protections, such as the entitlement to National Minimum Wage and holiday pay.

The SC looked at a few factors including:

- The fact that Uber set the fares
- That a contract existed between Uber and the passengers, but not between the drivers and passengers
- That the drivers only offered a pool of work for Uber to choose from
- The label of contract was not required definitely

And such, building upon the ruling of *Autoclenz*, the SC applied the relevant factors nexus and ruled that Uber drivers were indeed workers.

The second case is that of *Autoclenz LTD (appellant) v. Belcher and others (respondents) [2011]* proves that courts will not limit themselves to the words of the contract when interpreting the intentions of the parties. The facts of the specific case, very much like in Uber, concern a company which tried through its terms to take advantage of its workers.

The courts were ready to accept that written agreement might not reflect the reality of the relationship, and that employers might try to include terms that will avoid statutory protections (para 21-25, Lord Clarke). There is no requirement to show that there was intention to mislead, the threshold is to show that the terms do not represent the intention of the parties.

The main question that needs to be answered is what was the true agreement between the parties. This is done by looking at: the terms, the context of the agreement and the conduct of the parties (para 31-33).

The court also distinguished employment contracts from commercial contracts. In doing so, it reinstated the doctrine or principle that in employment law, the employee typically has lower bargaining power then the employer as compared to a bargain between two companies on equal footing. And as such, it must be taken into account when deciding upon the true meaning of any written agreement (para 34-35).

III. Classification of Rights

A. Employee's Rights

The legal instrument overseeing employees' rights is the **Employment Rights Act (ERA) 1996.**

Minimum Wage

As an employee, you have the right to the National Minimum Wage under **s.1(2)(a) of the 1998 act of the same name.**

Redundancy (dismissal)

In the case of redundancy, employee's have the right to a minimum period of notice by virtue of **s.86**, wherein:

- An employee working for less than two years is entitled to a one week's notice; the same applies for employees working under twelve years
- An employee working over twelve years is entitled to no less than twelve weeks notice

Concerning redundancy even further, as an employee, you are entitled to inquire about the reasons for your dismissal under **s.92.** In the case you consider you were unfairly dismissed, s.94 covers your statutory right to bring action against your employer.

Health and Safety

The **Health and Safety at Work etc. Act 1974** covers your employer's duties to create a working environment which is safe for all the workers. For further information, see *Section IV*. In the same vein of healthcare rights, you are entitled to statutory sick pay under s.151 of the **Social Security Contributions and Benefits Act 1992**.

By virtue of **s.44 and s.100 of the ERA 1996**, you are entitled to deny going to work where the conditions are a threat to you health or the health of members of your household.

Non-discrimination and Equality

Universal to all forms of employment is the right to not be discriminated against, as the **Equality Act 2010** states. This includes freedom from being discriminated on the basis of:

- age
- gender reassignment
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability

- race including colour, nationality, ethnic or national origin
- religion or belief
- sex
- sexual orientation

Paid Holidays
Another entitlement is that of benefitting from paid holidays as per the **Working Time Regulations (1998)**.

Industrial Action
Finally, you have the right to join or form a union, as well as being protected for whistleblowing. This will further be examined in *Section VI*.

B. Worker's Rights (Gig Workers).

The **ERA 1996** is the main legal instrument for worker's rights as well. A worker is defined by **s(3) 230 ERA 1996** as 'an individual who has entered into or works under (or, where the employment has ceased, worked under)', a contract of employment or any other contract whether it is express (oral, writing) or implied.

These rights comprises:

Minimum Wage Workers are also entitled to the National Minimum Wage under s.54(3) ERA 1996.	Freedom and Equality The **Equality Act 2010** covers discrimination for all forms of employment, and therefore worker's rights as well.	Paid Holidays Workers are entitled to paid holidays under the *Working Time Regulations* (1998).	Industrial Action Workers hold the same rights to form or become part of a union and whistleblowing (see *Section VI*).

C. Independent Contractor's Rights

An Independent Contractor is a self-employed person or company which is contracted for services by another company as a nonemployee. Due to this, Independent Contractors have no rights under labour law with only some exceptions (particularly in relation to anti-discrimination legislation). Therefore, at law, there is no right to the Minimum Wage,

or paid vacation or sick work. Because the **Equality Act 2010** applies to all forms of employment, it is therefore your right as an Independent Contractor not to be discriminated against. However, you have no right under **ERA 1996** to be entitled to a notice for dismissal, nor for reasons for dismissal. As you are considered to be self-employed, you also do not enjoy sick pay or paid holidays and you must ensure you are covered by private insurance in the case of work accidents.

Table of Rights

Employee	Worker	Independent Contractor
Full rights under **Employment Rights Act 1996**	Some rights under **Employment Rights Act 1996**	No statutory employment rights
Minimum Wage **(s.1(2)(a) National Minimum Wage Act 1998)**	Minimum Wage **(s.54(3) National Minimum Wage Act 1998).**	
Notice period for redundancy **(s.86 ERA 1996)**	Anti-discrimination **(Equality Act 2010)**	
Unfair dismissal **(s.94 era 1996)**	Paid Holidays **(Working Time Regulations (1998)**	
Health and Safety **(Health and Safety at Work etc. Act 1974)**	Industrial Action	
Statutory Sick Pay **(s.151 of the Social Security Contributions and Benefits Act 1992)**		
Anti-discrimination **(Equality Act 2010)**		
Paid holidays **(Working Time Regulations (1998)**		
Industrial Action		

IV. Employers Duties & Obligations

Employers must ensure that there are systems and procedures in place which uphold their duties in line with worker rights.

To provide written documents

Employers have a legal obligation to provide workers and employees with a document which outlines the terms and conditions of their employment. **This only applies to workers who have started their job after the 6th April 2020**, yet you may still ask your employer for these documents where work has started prior to this date. As stated in the case of *System Floors (UK) Ltd v Daniel (1982)*, it is significant to note that this does *not* form the employment contract, unless you have signed it as such (*Gascol Conversions Ltd v J W Mercer (1974)*). The employer must perform this obligation as it presents a strong indication of the contractual terms of the employment relationship.

The legal term for this document is the 'written statement of employment particulars'. This is governed under **section 1, Employment Rights Act 1996**.

In light of the 2020 additions, the document is required to provide the following:

- The named parties to contract, the employee and employer;
- date employment began;
- date continuous employment began;
- payment (amount and dates on which it is received; bonuses/commission);
- holidays;
- hours of work, workdays, whether these are variable/how variation is to be determined
- job title (or employer's name and address)
- fixed term of employment; any relevant collective agreement; probation period
- sick/paid leave, occupational pension rights, any other benefits
- disciplinary and grievance procedures
- Any training entitlement/requirement

Changes must be notified within one month but this may be done in another document.

Written documents must be provided to you on or before your first day of work. Where the document exists but has not been provided, you may make a formal 'subject access request'. However, where your employer has not complied with this obligation at all, the employment tribunal may make a declaration of non-compliance under **sections 11 and**

12 of the ERA 1996. Here, the employment tribunal may determine what particulars ought to have been included or referred to in a statement so as to comply with the written document requirements.

To remunerate in accordance with the National Minimum Wage

There is a statutory obligation that employers must pay workers the national minimum wage at the least. This is found under **section 1, National Minimum Wage Act 1998** which states that 'a person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage'.

Under **s.1(2)(a)-(c) of the 1998 Act**, you may qualify for the national minimum wage if you are a worker who is working in the United Kingdom under your contract, and has ceased to be of compulsory school age. Subsection 3 states that the national minimum wage shall be a single hourly rate as the Secretary of State may from time to time prescribe.

Where you are not getting paid the correct National Minimum Wage rate, you can try resolving the issue with your employer. When doing so, you may bring a copy of your payslips or written documents, as well as a copy of calculations using the National Minimum Wage calculator (link is available here). If this is not resolved, you need to make a claim to the employment tribunal, in which your most recent National Minimum Wage underpayment within 3 months minus one day from when you suffered the last underpayment (subject to ACAS Early Conciliation time extensions).

To provide holiday pay

Employers have an obligation to provide holiday pay to workers. The domestic method of calculating holiday pay is set out in the **Working Time Regulations 1998** and the **Employment Rights Act 1996**.

The right under the **WTR 1998** is a total of 5.6 weeks annual leave consisting of:

- 'basic entitlement' to a minimum of four weeks' annual leave (20 days for a regular full-time worker) each leave year, implementing the right to annual leave under **Directive 2003/88/EC**, and the **Working Time Directive**;
- 'additional entitlement' to 1.6 weeks' annual leave (eight days for a regular full-time worker) each leave year.

It is up to your employer as to when you can take leave, so long as this entitlement has been given at some point during the year. There is no statutory obligation, however, to

provide paid leave for public holidays such as bank holidays. Paid public holidays may be regarded as forming part of the 5.6 holiday entitlement under the **1998 Regulations**.

Employers may give workers a contractual right for paid time off, or where this arises through custom and practice. Confirmation as to when the leave year begins and ends may be found under the written document. This is commonly from 1 January until 31 December or 1 April until 31 March. Where your employer has not indicated this, then it is taken as the date of when you had started your working.

Basic entitlement of holiday pay derives from **Directive 2003/88/EC,** however as calculation is left to national legislation, the **WTD 1998** will have a significant impact on how tribunals approach the calculation of holiday pay for these four weeks. **Regulation 16** provides that **ss.221 to 224 of the ERA 1996** applies for the purposes of calculating a week's pay for each week of leave. Holiday pay calculations can be based on the days or hours you have worked for per week. Where work has no fixed hours, with effect from 6 April 2020, a week's pay is calculated under **s.224 ERA 1996** using the average weekly remuneration (including commission and bonuses) over the previous 52 complete weeks.

In order to calculate your holiday entitlement, you can click here.

To provide payslips

Employers have the legal obligation to provide workers payslips, also known as ‘itemised pay statements’ on or before the day you are paid. The relevant legislation is found under section 8(1) of the **Employment Rights Act 1996**. The significance of this derives from the need for workers to have sufficient information as to their pay statement and understand the method behind calculation of their net pay. Payslips may be in the form of a paper document, email attachment, or in an online system.

This must include the following:

- total pay before deductions ('gross amount')
- total pay after deductions ('net amount')
- amounts of any 'variable deductions', where the amounts depend on the amount of pay such as tax, National Insurance, Student Loan repayments and pension schemes
- breakdown of how the wages will be paid if more than one payment method is used, such as bank transfer and cash
- amounts of any fixed deductions, for example union subscriptions

‘Variable hours’ are where hours may differ from one pay period to the next, in which the total number of variable hours must be set out in the payslip. Section 8(2)(e) ERA 1996 applies to workers whose pay varies depending on the time worked. The hours can be shown as either a single total of all such hours in the pay period, or broken down into separate figures for different types of work or different rates of pay. Further guidance has been provided by the Department for Business, Energy and Industrial Strategy (BEIS) and can be accessed here.

Where there has been an error within the payslip and the employer has not resolved this, you may raise a formal complaint known as a ‘formal grievance’ in accordance with your workplace grievance policy. Where this has not been successful and your employer fails to produce pay records, you may bring a claim to an employment tribunal within three months minus one day of the date on which the records should have been produced. If the claim succeeds, the tribunal will make a declaration to that effect and award you compensation.

To ensure that unlawful discrimation has not taken place

It is paramount that employers perform their duties and obligations in a non-discriminatory way. Direct and indirect discrimination is goverend under the **Equality Act 2010**.

The statutory protected characteristics are as follows:

- age
- disability
- gender reassignment
- marriage or civil partnership
- pregnancy or maternity
- race (including colour, nationality, ethnic and national origin)
- religion or belief
- sex
- sexual orientation

The prohibition of direct discrimination revolves around no less favourable treatment between otherwise similarly situated workers on grounds of a protected characteristic e.g. between a man and woman. In light of this, during the process of recruitment, employers must not ask questions about any of the protected characteristics.

Cases where an employer is legally allowed to do so are the following:

- a decision they take helps a disadvantaged or under-represented group (positive action)
- they have a good business reason to discriminate (objective justification)
- the protected characteristic is essential for the job (an occupational requirement)
- they're asking if they need to make their workplace more accessible (reasonable adjustments)
- they want to find out about the diversity of their workforce to help make it as inclusive as possible

On the other hand, the prohibition of indirect discrimination looks at substantive equality and considers situations which appear neutral on their face, but may have a disproportionately adverse impact upon people of a particular protected characteristic. However, a defence is available if the employer can prove a good business reason for the rule or arrangement ('objective justification') otherwise known as a proportionate means of achieving a legitimate aim.

In order to prevent discrimination, an employer may take certain steps such as:

- an up-to-date equality policy
- providing regular anti-discrimination training to workers
- providing a clear process as to complains where discrimination arises
- regular meetings to help build positive working relationships

If discrimination has occured against you, this can be done informally by raising this with your employer or making a claim to the employment tribunal. If you are a member of a trade union, please refer to section VI on how this can help your situation.

V. Covid-19 Implications

The Coronavirus pandemic poses grave risk to public health and has particularly serious consequences for one's personal health, including the risk of serious illness and death. While the Coronavirus pandemic continues to spread across the country employees will be understandably very concerned for their own health and safety, particularly while at work. The workplace provides a source of potential risk because the disease is highly contagious, meaning there is a risk of contracting the virus from colleagues, or others within the workplace. However, legislation, Government schemes and other additional protections have been implemented to ensure the safety of employees and workers throughout the pandemic.

Legislation

Legislation only provides protection through the job retention scheme to those who are classified as workers.

Specific protection has been granted to employees by s.44 of the **Employment Rights Act 1996 (ERA).** In particular. **s.44(1)(d) and (e) ERA** provides that as an employee, you have the right not to be subjected to any 'detrimental' act, or failure to act, by your employer on the basis that you left or refused to return to work or took appropriate steps to protect yourselves because you believed that you were in serious and imminent danger.

This protection is qualified in several ways. In order for the protection to apply:

- You must have reasonable belief
- That you, or other persons, were in serious or imminent danger
- Which you could not reasonably have been expected to avert.

It is important to note that whilst **s.44** provides a right not to be subject to detriment where you act in circumstances of danger reasonably believed to be serious and imminent, it does not provide employees with a right to withdraw from and refuse to return to a workplace that is unsafe.

S.100 of the ERA 1996 provides that an employee will be considered unfairly dismissed if they are dismissed due to leaving the workplace in circumstances of danger which they reasonably believe is serious and imminent and where the employee reasonably believes that they cannot avert that danger. S.100 does not however give you an absolute right to withdraw your labour if you feel the workplace is unsafe

A. Government Schemes

If your employer cannot maintain their workforce because their operations have been affected by COVID-19, they can place you on furlough and apply for a grant to cover a percentage of your usual monthly wage.

All employers with a UK, Isle of Man or Channel Island bank account and a UK PAYE scheme can claim this grant. Employers do not need to have previously claimed for you before 2 March 2021.

Employers can furlough employees for any amount of time and with any working pattern, and can still claim the grant for hours not worked. Your employer is responsible for claiming through the job retention scheme on your behalf and for paying you what you're entitled to. You cannot apply for the scheme yourself.

<u>Check your eligibility for the scheme</u>

You can be on any type of employment contract including:

- Full-time
- Part-time
- Flexible
- With an agency
- zero-hour

Foreign nationals who meet the eligibility criteria above may also be furloughed.

<u>Other types of employees that can be claimed for</u>

Employers can claim grants for other types of employees, as long as they are paid through Pay As You Go (PAYE). Your employer can claim for you if you are:

- An agency worker
- A company director
- a contractor in scope of the off-payroll (IR35) working rules, engaged with either:
- The public sector
- A medium-sized organisation or a large-sized organisation (client organisation)
- A salaried member of a limited liability partnership
- A Limb (b) worker
- An office holder

Coronavirus Job Retention Scheme
To find out more about the types of employees who can be claimed for:

https://www.gov.uk/government/publications/individuals-you-can-claim-for-who-are-not-employees.

Statutory family-related payments for furloughed workers
If you're entitled to Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay, your statutory pay will be based on your full pay and not the furlough rate.

If you're off work sick

What you're entitled to be paid when you are off sick varies across different jobs and there are also different sick pay schemes in operation. If you're off sick, find out what your rights are for sick pay here.

Statutory Sick Pay (SSP)
Changes have been made to Statutory Sick Pay (SSP) if you are having to self-isolate as a result of COVID-19.

If you cannot work because of coronavirus, you could get SSP if you're self-isolating because:

- You or someone in your household has COVID-19 symptoms or has tested positive for COVID-19.
- The NHS or Public Health Authorities have notified you that you've been in contact with someone with COVID-19
- Someone in your support buble has COVID-19 symptoms or has tested positive for COVID-19.
- A doctor or healthcare professional has advised you to self-isolate before going into hospital for surgery

You could get SSP for every day you're off work.

If you are self-isolating
because you have just entered or returned to the UK and there are no other reasons for your self-isolation, you will not be entitled to SSP.

If you do not have a COVID-19 related illness,
you can get SSP from the fourth day you are off work sick.

If you're not eligible for Statutory Sick Pay (SSP),
because you are self-employed or earning below the Lower Earnings Limit of £120 per week, you might still be able to claim for Universal Credit or Contributory Employment and Support Allowance.

You have the right to take time off work to look after a dependant and this is referred to as ‘'compassionate leave'

B. Termination of Employment

If you've lost your job, or have had your hours reduced because of COVID-19, advice and support is available, your employer could re-employ you and pay 80% of your wages.

VI. Empowerment and Protection of Rights

There are three ways to protect your rights as a worker:

Join a **trade union** and through support of other members, exert collective industry efforts to persuade employers.	↳ If all efforts to resolve the situation have been unsuccessful, then we can contact **ACAS**, on your behalf to begin the **conciliation process**.	↳ Finally if ACAS conciliation has been unsuccessful we can advise you on your claim and organise **representation at Tribunal** for you.

A. Trade Unions

Under the **Trade Union and Labour Relations (Consolidation) Act 1992, s.1** a trade union is defined as:

'an organisation, whether temporary or permanent which either fulfils these two conditions:

- it consists wholly or mainly of workers of one or more descriptions
- its principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations

OR:

- which consists wholly or mainly of:
    - constituent or affiliated organisations which fulfil the two conditions set out above (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions)
    - representatives of such constituent or affiliated organisations

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<u>The principal purposes</u>

This includes the regulation of relations between workers and employers or between workers and employers' associations, or the regulation of relations between its constituent or affiliated organisations'.

It aims to:

- negotiate agreements with employers on pay and conditions
- discuss major changes to the workplace such as large scale redundancy
- discuss members' concerns with employers
- accompany members in disciplinary and grievance meetings

- provide members with legal and financial advice
- provide education facilities and certain consumer benefits such as discounted insurance

A trade union is said to be recognised once an employer has agreed to negotiate with it on pay and working conditions on behalf of a particular group of workers.

↳ **Trade Union Recognition**

The subsequent negotiation process is known as collective bargaining, with the group of workers the union represents referred to as the bargaining unit.	→	<u>Voluntary</u> The most common way a union can gain recognition for collective bargaining purposes is by the employer simply agreeing to recognise it voluntarily.	→	<u>Statutory</u> If an employer and trade union find they are unable to come to a voluntary recognition agreement, a trade union can make an application for statutory recognition.

Employers which recognise a union will negotiate with it over members' pay and conditions. However, there are workers who are concerned with potential consequences or employers who expressly prohibit trade union membership.

↳ **Trade Union Prohibition**

Per the **Trade Union and Labour Relations (Consolidation) Act 1992 s.146**, a worker has the right not to be subjected to detriment due to relations with a trade union.	→	Furthermore, it is also illegal for an employer to refuse a worker employment just because he/she is a union member, per **Trade Union and Labour Relations (Consolidation) Act 1992 s.137(1)(a)**	→	In addition to this, any dismissal due to Trade Union membership is also prohibited under **Trade Union and Labour Relations (Consolidation) Act 1992 s.152**

The main way for workers to empower themselves through trade unions is through collective bargaining and industrial action

Collective bargaining and industrial action

Section 178 defines collective bargaining as negotiations relating to, or connected with, one or more of a number of work-related matters, i.e., terms and conditions of employment, disciplinary matters and termination or suspension of employment of one or more workers

Workers in a trade union can negotiate these matters as a group giving strength in numbers - one key way in which collective bargaining is effective is through industrial action.	→	Industrial action should not happen right away, instead the trade union should negotiate with the employer about the dispute, if this is not resolved, then industrial action may need to be undertaken	→	Industrial action is the process of workers withdrawing their labour and striking in order to put pressure on the employer so that workers rights and protected and upheld

Breach of Contract

As employment is stipulated by a contract between the workers and the employees, withdrawing your labour will result in a breach of contract which is unlawful and could give rise to potential liability.

However, when this act is done in contemplation or furtherance of a trade dispute, there are statutory provisions granting statutory immunity from liability under the **Trade Union and Labour Relations (Consolidation) Act 1992**, **s219(1).**

The effect of those immunity provisions is that, if done in contemplation or furtherance of a trade dispute, an act will not be actionable in tort merely because it:

- induces another person to breach a contract, or
- interferes, or induces another person to interfere, with the performance of a contract, or
- consists of a threat to do any of the above

A trade dispute is defined under the **Trade Union and Labour Relations (Consolidation) Act 1992, s.244** as:

'A dispute between workers and employers over any of the following reasons:

- Terms and conditions of employment
- the physical conditions in which any workers are required to work
- engagement or non-engagement, or termination or suspension of employment, or the duties of employment, of one or more workers

- allocation of work, or the duties of employment, between workers or groups of workers
- matters of discipline
- a worker's membership or non-membership of a trade union
- facilities for officials of trade unions
- machinery for negotiation or consultation, or other procedures, relating to any of the above matters, including the recognition by employers of the right of a trade union to represent workers in such negotiation, consultation or other procedures'

It is imperative that this dispute be between **workers** and **employers**

However, during industrial action, the employer is not obligated to pay the worker during the period they are striking (per *Miles v Wakefield MDC [1987] IRLR 193*) Industrial action can be a key tool in collective bargaining, it can put pressure on the employer and highlights the importance of the employee's. This can encourage employers to fairly treat workers and protect their rights from the more powerful employer.

B. Mediation and Arbitration: ACAS (Advisory Conciliation Arbitration Services)

ACAS (Advisory Conciliation Arbitration Services) is an independent public body, funded by the government, which aims to resolve disputes between employees and employers. This can be done by the following four methods:

- Early conciliation
- Mediation
- Collective conciliation
- Arbitration

You can contact ACAS and benefit from their services at the following webpage: https://www.acas.org.uk/

Mediation

Making a claim to the Employment Tribunal against your employer is free of charge as per the ruling in *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)*. Before going to court, however, both parties will be encouraged to try to come to an agreement through negotiation, directed by an impartial third party. This is called *mediation*.

The mediator (the impartial third party) will conduct a meeting with each of the parties. Due to Covid-19, mediation can be done by telephone call or Zoom, but it also can take place at a neutral venue or at work.

Before meeting with the mediator, you should note down the relevant facts of what happened and be ready to present your side.

After the mediation has met with both of the parties, a joint meeting will take place where you can negotiate together for a beneficial outcome.

Mediation is also available for collective conciliation cases, namely where a dispute arises between an employer and a group of employees. Although, note, that collective conciliation and mediation cannot happen simultaneously.

Some of the benefits of mediation are:

- Avoiding going to court
- Avoiding the fees (in case you lose your case, you must pay the legal costs of the other party, as well as the costs of taking the case to court as well).
- Avoiding mental strain
- It's **free**
- Confidentiality
- Saves time
- No need for formal paperwork
- **Voluntary** Mediation is applicable

Some of the issues which can be resolved by mediation are:

- annual pay reviews
- other pay issues
- contract terms and conditions
- changes in working practices
- discipline and dismissal, if an employee representative or a group of people are involved
- redundancy consultation and redundancy selection
- trade union recognition

Arbitration

In the case where mediation does not work, and neither party decides to come to an agreement, the following step is *arbitration*. Arbitration is the process wherein the employee(s) and the employer disagree upon a matter, which will be judged by an impartial third party who will make a decision. It is important to note that compared to mediation, arbitration is **binding** upon the parties. You must give your consent that you will be bound by the arbitrator's decision *before* the arbitration can take place.

The procedure is the same for individual and collective arbitration, with a few differences regarding individual arbitration*.

↳ **Before the hearing**

You will decide upon a date for the hearing with your arbitrator and the other party.	→	you must write a statement which will be compiled with any other supporting documents you have.	→	You must send this bundle to both the arbitrator and the other party.

↳ **At the hearing,**

Each party will take turns explaining their case. Questions will be asked and the case will be discussed with both sides.

↳ **After the hearing,**

the arbitrator will make their decision in writing. This is formally referred to as an 'award'. While this is not a legally binding decision, it is binding in honour. The parties cannot go to court to have the decision changed.

Individual arbitration

In the case of individual arbitration, you can ask for arbitration only in *unfair dismissal* and *claims under the flexible working legislation* cases.

C. The judicial route: Employment Tribunal

Employment Tribunals holds statutory jurisdiction under **The Employment Tribunals Rules of Procedure 2013** to make judgements on employment law disputes between employers and persons providing their services in England and Wales, ranging from:

- Unfair dismissal
- Constructive dismissal
- Incorrect redundancy procedure
- Breach of contract
- Issues regarding equal pay
- Discrimination (race, age, sex, sexual orientation, religious belief, physical or mental disability)
- Failure to follow correct procedure during a disciplinary or grievance process

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<u>To start a claim</u>

In accordance with **s.8(1)** outlines a claim shall be started by presenting a completed claim form (using a prescribed form) in accordance with any practice direction made under **regulation 11**.

1. <u>A claim may be presented in England and Wales</u>
   if it fulfills the requirements under **s.8(2).**

2. <u>Two or more claimants may make their claims on the same claim form</u>
   if their claims [give rise to common or related issues of fact or law or if it is otherwise reasonable for their claims to be made on the same claim form].

<u>After you make a claim</u>

The respondent usually has to reply to your claim in writing within 28 days of getting your claim form. They will give their side of the case.	→	Once they've replied, the tribunal will decide whether there will be a full hearing to decide on your case.	→	If they do not reply, the tribunal may decide on your case without you having to go to a hearing.

↳ **Accepted**

Where the Tribunal accepts the response it shall send a copy of it to all other parties.	→ Decisions may be made <u>without a hearing</u> following **s.60**; or <u>at or following a hearing</u> following **s.61.**	→ A preliminary hearing may be directed by the Tribunal on its own initiative [at any time].
		↓
The reasons given for any decision shall be proportionate to the significance of the issue, decisions other than judgments may be very short.	← The Tribunal shall give reasons for its decision on any disputed issue, whether substantive or procedural.	← The Tribunal shall give the parties not less than 14 days' notice of the date of a final hearing.

↳ **Rejected**

An application that has been rejected (in whole or in part) may apply for a reconsideration on the basis that either— (a) the decision to reject was wrong; or (b) the notified defect can be rectified.	→ <u>As the claimant</u> section 13 enables reconsideration for claims rejected under rule 10 or 12. <u>As the respondent</u> section 19 enables reconsideration for claims rejected under rule 17 or 18.	→ The application shall be made in writing and presented to the Tribunal within 14 days of the date that the notice of rejection was sent.
		↓
If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.	← If your employer does not request a hearing, or an Employment Judge decides, on considering the application, that the claim shall be accepted in full, the Judge shall determine the application without a hearing.	← It shall explain why the decision is said to have been wrong or rectify the defect and if the claimant/ respondent requests a hearing.

Tribunal information

Relevant documents provided by the HM Courts & Tribunals Service are provided below:

A. Forms and further guidance
B. Procedure rules
C. Practice directions and guidance (England and Wales)
D. Practice directions and guidance (Scotland)
E. Directions for individual cases
F. Published decisions
G. Complaints procedure
H. Get an Employment Tribunal fee refund

General enquiries (England and Wales)

There have been fraudulent calls from telephone numbers mimicking genuine court or tribunal numbers. To contact the central Employment Tribunal administered by the HM Courts & Tribunals Service, the official point of contact is as below:

Employment Tribunal Customer Contact	
Centre: PO Box 10218 Leicester LE1 8EG United Kingdom	Telephone: 0300 123 1024 Textphone: 18001 0300 123 1024

Find your nearest tribunal

This includes local addresses and contact details for employment tribunal offices and hearing centres in England, Wales and Scotland.

➔ Employment tribunal offices and venues

Coronavirus (COVID-19) advice and guidance

This section contains the latest advice and guidance from the judiciary in relation to the coronavirus pandemic. It is updated when there are significant developments and you should check the page on a regular basis to ensure you are kept informed of the latest position.

➔ Coronavirus (COVID-19) advice and guidance

VII. Glossary

Word	Meaning
arbitration	a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute
arbitrator	an independent person or body officially appointed to settle a dispute.
breach of contract	an act of breaking the terms set out in a contract.
claim	means for a plaintiff to show the court how the actions of the defendant had caused the plaintiff to suffer some sort of loss either in the past or one they expect to experience in the future.
collective conciliation	talks aimed at resolving disputes between representative groups (most typically trade unions) and employers—facilitated by an independent third party
constructive dismissal	the changing of an employee's job or working conditions with the aim of forcing their resignation
dependant	Someone who depends on you for financial support
detrimental' act	if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work
disclination	treating a person or particular group of people differently, especially in a worse way from the way in which you treat other people, because of their skin colour, sex, sexuality, etc.:
early conciliation	a service offered by ACAS to allow potential claimants and employers to try to settle a dispute before employment tribunal proceedings are issued.
employment Rights Act 1996	An Act to consolidate enactments relating to employment rights.
employment tribunal	is a court of first instance responsible for judging individual disputes related to a work or apprenticeship contract, between employers and employees or apprentices

factors nexus	All connecting factors
legal advice	professional advice provided by a lawyer.
legal aid	payment from public funds allowed, in cases of need, to help pay for legal advice or proceedings.
mediation	the process whereby an independent mediator facilitates an agreement between disputing parties.
mediator	a person who attempts to make people involved in a conflict come to an agreement
PAYE	PAYE stands for 'Pay As You Earn'. If you are an employee, you normally pay tax through PAYE.
redundancy	a situation in which someone loses their job because their employer does not need them
remunerate	To pay someone for work or services
rights	Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory
trade unions	an organization that represents the people who work in a particular industry, protects their rights, and discusses their pay and working conditions with employers
unfair dismissal	is when an employee is dismissed from their job in a harsh, unjust or unreasonable manner
whistle-blower	a person who tells someone in authority about something illegal that is happening, especially in a government department or a company