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Key Points:

- Replaces previous version dated February 2007

Your rights at work

This factsheet is aimed at people aged 50 and over.

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Introduction

This factsheet is for older people in work or who have recently left work. It covers various employment rights and what a person can do if they feel they are being denied those rights. It also covers retirement planning. It does not cover issues such as pregnancy or parental rights.

Legislation came into force on 1st October 2006 providing protection against age discrimination in employment, training and education for the first time. The new law is mentioned in this factsheet, but for full details see the Age Concern mini-guide *'Calling Time on Age Discrimination'* or Information Sheet 17, *How will the new law on age discrimination affect you?*

For information about looking for a job, starting your own business, or career development, see Factsheet 11, *Help with looking for work or starting your own business.*

Employment law is designed to protect you at work. This factsheet only outlines some points. For further information, consult your trade union if you belong to one, or ACAS (the Advisory, Conciliation and Arbitration Service). The Department for Business, Enterprise and Regulatory Reform publishes a comprehensive range of information explaining employment rights on its website: www.berr.gov.uk. In particular see the booklet *'Individual Rights and Responsibilities of Employees – A Guide for Employers and Employees'*.

Employment agency workers who feel they have been treated unfairly or who need advice can call the Employment Agency Standards Helpline on 0845 955 5105 (lo-call rate).

1. Your rights at work

1.1 Employment status

Most rights referred to in this factsheet only apply to employees and not to self employed people. Some rights apply to “workers”, a term which includes a wider range of people than the definition of employee, including agency and casual workers and some people who would consider themselves as self employed.

Whether you are an employee, a worker or self-employed is determined by several factors, including how much control your employer has over your work, whether there is an obligation for your employer to provide work and for you to carry out the work, how you are paid etc. Even if a contract states that you are self-employed, the reality of the situation may mean you are in fact an employee, with the additional employment protection that status provides. Employment status is a complicated area and you should take expert advice if you are unsure of your status.

1.2 Contractual & statutory rights

Every employee has certain statutory employment rights. In addition, an employee's contract of employment may set out terms and conditions which are more generous than the basic protection. If a contract provides for less than the basic statutory protection, this will be unlawful and the statutory minimum will apply. Apart from some limited exceptions, the employer and the employee cannot exclude the statutory rights; ie, you cannot agree with your employer that you will give up your rights.

You do not have to have a written contract to have contractual rights. If there is no contract in writing, the terms of the contract will be formed by what is agreed verbally between you and your employer, by any terms in the original job advert or offer letter from the employer and by looking at custom and practice – ie, how the relationship between you and your employer actually works.

Some rights depend on the employee having been employed for a certain period. Others are available even before employment begins and after it ends. For example, it is unlawful to discriminate, directly or indirectly, on grounds of age, sex, race, disability, transgender status, marital status or civil partnership status, sexual orientation, religion or belief.

This protection covers all aspects of employment from recruitment, training and promotion, dismissal or redundancy and providing a reference after employment ends.

2. Discrimination

If you are discriminated against on grounds of age, sex, race, disability, transgender status, marital status or civil partnership status, sexual orientation, religion or belief, you are protected by the law.

Discrimination can either be direct or indirect:

Direct discrimination means treating someone less favourably because of their age, gender, race, disability, transgender status, marital or civil partnership status, sexual orientation, religion or belief.

Indirect discrimination means having a policy or practice which puts certain people (eg, women, people of a certain race, or religion etc.) at a disadvantage, compared with other people. This includes practices which are apparently neutral but have an unequal impact on different groups of people. For example, if an employer introduces a new shift pattern which requires staff to work evenings, this may be indirect discrimination against women, as more women than men are single parents who would not be able to meet the requirement to work evenings. Indirect discrimination is unlawful unless the employer can justify it.

In addition discrimination can include harassment and victimisation:

Harassment: The definition of harassment is unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. When considering a complaint of harassment, an Employment Tribunal will look at whether it is reasonable to conclude that the behaviour being complained of would violate someone's dignity, or create an intimidating, hostile etc. environment. This will include considering the perception of the person making the complaint.

It is important to remember that harassment is part of the anti-discrimination law. Harassment is therefore only unlawful if it is on the grounds of age, sex, race, disability, transgender status, marital or civil partnership status, religion or belief or sexual orientation. This means that a person who is being bullied at work but the bullying is not connected to any of the discrimination grounds will not be protected under this law. People in this situation may be able to take action in other ways. See Section 5.3 on bullying at work.

Victimisation: This has a very specific meaning under discrimination law. Victimisation means being treated unfairly as a result of making a complaint of discrimination. The law also covers people who give evidence or provide information in connection with somebody else's allegation of discrimination.

Discrimination laws apply whether you are applying for a job, are in work, or after you have left a job, for example if you are denied a reference.

There are a few limited exceptions in recruitment for jobs where, for example being disabled, being a particular gender, being gay or of a particular religion may be a genuine occupational qualification for the job.

If you think you have been the victim of discrimination, you can contact the Equality and Human Rights Commission (the EHRC). The EHRC is the new body which has replaced the Equal Opportunities Commission, The Commission for Racial Equality and the Disability Rights Commission. It has responsibility for promoting and enforcing the discrimination legislation on gender, race, disability, age, sexual orientation and religion or belief. ACAS is another useful source of advice.

Complaints of discrimination must be received by an Employment Tribunal within three months - seek advice as soon as possible. The three month period begins on the date when the incident you are complaining about happened.

2.1 Disability discrimination

To be covered by protection against discrimination on the grounds of disability, a person must have “a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities”. The definition of disability includes people with Multiple Sclerosis, cancer or who are HIV positive, from the point they are diagnosed, even if their ability to carry out normal activities is not affected.

Employers are required to make reasonable adjustments to a workplace to prevent a disabled worker being at a disadvantage compared to other employees. This could mean physical changes to the workplace, or changes to working practices.

2.2 Age discrimination

On 1st October 2006, new legislation (The Employment Equality (Age) Regulations 2006) came into force in the UK. The law provides protection against age discrimination in employment, education and training, for people of all ages.

The main new rights to be introduced are:

- protection against discrimination on the grounds of age (with some significant exceptions);
- the right not to be forced to retire before age 65 (unless the employer can objectively justify this);
- the right to request to continue working after an employer's suggested retirement date;
- the removal of the upper age limit of 65 for unfair dismissal and redundancy claims.

For further detail of the new law, see the Age Concern mini-guide '*Calling Time on Age Discrimination*' or Information Sheet 17, *How will the new law on age discrimination affect you?*

2.3 Civil partnerships

From 5 December 2005, people in gay or lesbian relationships can register a civil partnership to gain legal recognition of their relationship. Employers must treat workers in civil partnerships in the same way as they treat their married workers. In particular, the civil partner of an employee is entitled to any benefit package that is available to the spouse of an employee. For example, if an employer makes private health insurance available to employees' spouses, it must also be made available to the civil partner of an employee. For more information see Information Sheet 28, *Civil partnership and older same-sex couples*.

2.4 Whistle-blowing

The *Public Interest Disclosure Act* gives employees and workers protection against being dismissed or suffering a detriment as a result of making a disclosure relating to certain types of information.

The type of disclosure that is covered by this law includes where a worker reports that they believe a criminal offence has been carried out, health and safety is at risk, or that the environment is being damaged.

2.5 Union membership

Employees and workers are also protected against discrimination on the grounds of trade union membership (or non-membership) and activities. If you are dismissed because of union activity the dismissal will be automatically unfair.

2.6 Equal pay

The law requires equal treatment for women and men (in the same employment) in pay and other contractual terms if they are doing similar work, the work has been rated as equivalent, or the work is of equal value.

You can make an equal pay claim to an Employment Tribunal, at any time while you are still in employment. Where you have already left employment, the time limit for lodging an equal pay claim is six months from leaving the job.

2.7 Part-time work & fixed-term work

If you work part-time or you are an employee on a fixed-term contract you are entitled to the same employment rights as someone doing the same job as you who is employed permanently full-time.

If you are a part-time worker (including employees, agency workers and casual workers), compared to a full-time worker, you are entitled to:

- the same hourly rate of pay;
- the same access to company pension schemes;
- the same entitlement to annual leave and leave for parental support on a pro rata basis;
- the same entitlement to contractual sick pay;
- no less favourable treatment in access to training.

If you are an employee on a fixed-term contract you should not be treated less favourably than a permanent employee unless this can be justified using evidence. You can compare yourself to permanent employees doing the same or broadly similar work. Your terms and conditions will be considered less favourable either if individual terms or the package as a whole are less favourable.

Protection against less favourable treatment for people on a fixed-term contract only applies to employees, not workers. This means most agency workers are not covered.

Employers are not permitted to roll forward successive fixed-term contracts for more than four years, unless they can justify this with evidence.

Contracts renewed after four years will be treated as permanent contracts. Employers are not allowed to force employees with fixed-term contracts to waive their redundancy rights. Employees on fixed-term contracts also have rights to statutory sick pay. A fixed-term contract can be brought to an end early by either party, only if this is allowed for in the contract. If there is no term allowing this, this would be a breach of contract, unless the contract has been terminated due to gross misconduct on the part of the employee.

2.8 Shopworkers – Sunday working

Certain shop workers, who are 'protected' or 'opted out', cannot be forced to work on Sundays. It is unlawful to subject such an employee to any detriment or dismissal for refusing Sunday work. A dismissed employee may complain to an Employment Tribunal regardless of the length of their service. You are 'protected' or 'opted out' if you were employed in a shop as at 25 August 1994 and you were not employed as a Sunday-only worker. You lose this status for ever if you agree to 'opt in' under the *Sunday Trading Act*.

2.9 Health & Safety

Employers have duties to provide a safe place of work, safe equipment and safe working practices. Employees also have responsibilities for health and safety at work, and each employer should hold information and instructions on how they and their employees implement the *Health and Safety at Work Act 1974* in the workplace.

In limited circumstances, some workers who 'stop the job' on health and safety grounds are given added protection if dismissed. Such a dismissal may be *automatically* unfair.

In these circumstances a worker dismissed on health and safety grounds may make a complaint to an Employment Tribunal regardless of the length of their service.

3. Terms and conditions of employment

3.1 Written statement of terms

Your employer must supply you with a written statement of the main terms of your employment within two months of the start of the job. This must include all the main terms including the date when employment began, the rate and method of payment, hours of work, holiday entitlement, sickness entitlement etc. Technically this statement is not the same as the contract, although the statement of terms is often provided by way of the written contract. An Employment Tribunal would look at a statement of terms as being very good evidence of what the terms of the contract are if there is a dispute.

If your employer refuses to give you a written statement of terms within two months, you can apply to the Employment Tribunal who will determine what terms have actually been agreed.

3.2 Breaks and annual leave

The length of work breaks and holiday entitlement are mostly agreed between employers and workers as part of their contracts.

There is no legal protection from working at weekends or bank holidays, but under the Working Time Regulations there are basic legal entitlements to breaks and leave:

- you cannot be forced to work for more than 48 hours a week. You can agree to 'opt-out' of this limit;
- if you work on average for more than three hours a night between 11pm and 6am you may not work for more than an average 8 hours in each 24 hour period;
- you must receive 11 hours rest between each working day;

- you are entitled to one whole day off each week;
- you are entitled to a 20 minute rest break if you work for more than six hours at a stretch;

A wide variety of occupations are exempt from some of the Regulations' provisions. You can obtain further information about these provisions by calling the Health and Safety Executive's Infoline on 0845 345 0055.

Employees can complain of unfair dismissal, regardless of their length of service, if they are dismissed for reasons relating to the Working Time Regulations. Workers who are not employees can complain that they have suffered a detriment if their contracts are terminated for these reasons.

The minimum paid annual leave entitlement will increase gradually to 28 days by 2010. The minimum number of days' holiday you are entitled to will depend on when your leave year starts from. If your leave year runs from 1 January, in 2008 you would be entitled to 24 days holiday (if you work five days a week). If you work part-time, you can calculate your entitlement by multiplying the number of days per week you work by 4.8, e.g. if you work 3 days a week, you would be entitled to 14.4 days in an annual leave period running from 1 January 2008.

Your annual leave entitlement can include bank holidays.

Your employer can insist that you take your annual leave at a particular time, as long as they give you the correct amount of notice. This will be the amount of notice provided for in a workforce agreement, or if there is no agreement, the employer must give you at least twice as much notice as the amount of leave to be taken. For example if your employer orders you to take one week leave, they must give you two weeks' notice.

3.3 Time off

There are a number of reasons for which you can claim time off. Time off linked to parental support and pregnancy is not discussed in this factsheet.

Representatives of trade unions which are recognised by the employer must be allowed reasonable time off with pay during working hours to carry out those duties and for training. Union members are entitled to reasonable time off for union activities but not necessarily with pay.

Similarly, there is a right to reasonable unpaid time off for public duties, for example, where the employee is a councillor or magistrate.

You are also entitled to time off to deal with domestic emergencies involving someone who is dependent on you, such as your husband, wife or partner, child, parent, or someone living with you as part of your family. Others who rely solely on you for help in an emergency may also qualify as being dependent on you.

An emergency might be where someone:

- is ill and needs your help;
- is involved in an accident or assaulted;
- needs you to arrange their longer term care;
- needs you to deal with an unexpected disruption or breakdown in care, such as a childminder or nurse failing to turn up;
- goes into labour.

You can also take time off if a dependant dies and you need to make funeral arrangements or attend the funeral. Unless it is agreed in your employment contract your employer does not need to pay you for this time off.

An employee who is dismissed or suffers a detriment as a result of claiming or taking time off for a dependant can complain to the Employment Tribunal, which has the power to order compensation. The complaint should be made within three months of the date of dismissal, or the date the detriment occurred.

3.4 Statutory minimum notice

After one calendar month's employment an employee is entitled to a statutory minimum period of one week's notice.

The statutory minimum notice then increases by one week's notice for each whole year's service, up to a maximum of 12 weeks' notice:

1 month's service	1 week's notice
2 years' service	2 weeks' notice
3 years' service	3 weeks' notice
<i>etc....</i>	
12 years' service	12 weeks' notice
13 years' service	12 weeks' notice

This period can either be worked or money can be paid instead (payment in lieu of notice). These provisions do not apply to temporary staff employed for three months or less and those dismissed for gross misconduct.

Your contract of employment may require a longer notice period than that required under the statutory minimum. In this case, it is the period in the contract which applies, not the statutory minimum.

Employees who have been wrongfully dismissed (see below) without proper notice and without being paid in lieu may bring a complaint to an Employment Tribunal (within three months).

The employer has a right to one week's notice from the employee, unless the contract states a longer period is required.

3.5 National Minimum Wage

The National Minimum Wage (NMW) is £5.52 per hour, before deductions, for workers aged 22 and over, and £4.60 per hour for those aged 18-21 (the development rate). The development rate also applies to trainees, ie someone who is in their first six months of employment with an employer and who is in receipt of accredited training.

Employees are protected against unfair dismissal and workers who are not employees are also protected against suffering a "detriment" (loss or disadvantage) by the termination of their contracts, on the grounds that they qualify, or will, or might qualify, for the NMW. In both instances workers (including employees) are also protected from detrimental action or deliberate inaction by the employer, falling short of dismissal.

If you have any enquiries about the National Minimum Wage, call the National Minimum Wage enquiries line on 0845 6000 678 (lo-call rate).

The Department for Business, Enterprise and Regulatory Reform (BERR) produces guidance for employees, employers and advisers.

3.6 Unlawful deductions from wages

Your employer can only make deductions from your wages if you have agreed to it, either in the contract or separately in writing, or if it is required by statute law. For employees working in retail, deductions can be made to make up for cash or stock shortfalls, as long as no more than 10% of the employee's gross pay is deducted on any one day.

If your employer has not paid you wages that are due to you, you can make a claim at the Employment Tribunal for unlawful deductions from wages, within three months of the last deduction. Alternatively you could make a claim for breach of contract at the County Court, where the time limit is six years from the deduction.

3.7 Itemised pay slip

You are entitled to an itemised payslip showing the amount of gross pay, the amount of any deductions and the amount of net pay. If your employer fails to supply an itemised pay statement, or deductions are made which were not notified, you can apply to an Employment Tribunal seeking a declaration and a compensatory award.

3.8 Changing contract terms

Your employer can only change the terms of your contract if you agree this on an individual basis, or a collective agreement is made with employee representatives.

Where there is a change in any of the terms which must be included in the written statement of terms (see above), your employer must notify you within one month of the change. If this has not happened, you may refer the matter to an Employment Tribunal.

If your employer attempts to change a term of the contract, without your agreement, you may have a claim for breach of contract. If you resign as a result of the change, or you are dismissed for not accepting it, you may also have a claim for unfair dismissal. Employees in this situation should seek immediate advice.

3.9 Changing place of work

If your employer wants to change your place of work, whether this is lawful will depend on what is in your contract. There may be a mobility clause, which is a term allowing the employer to change the workplace. If there is a mobility clause, your employer still has a duty to use this reasonably.

If your workplace is closing down, you may be entitled to a redundancy payment.

3.10 Transfer of a business

Employees of a business, or part of a business, which is sold to a new owner have protection under the Transfer of Undertakings regulations. They will automatically become employees of the new owner and they have the right to keep the same terms and conditions of employment.

4. Dismissal, redundancy and retirement

4.1 Written reasons for dismissal

Employees who have been continuously employed for one year are entitled to receive written reasons for their dismissal. If you are not given written reasons within two weeks of requesting them, or if the reasons given are not accepted as being true, you can complain to an Employment Tribunal seeking a declaration of what the reasons actually were and an award of two weeks' pay.

4.2 Unfair dismissal

The law relating to unfair dismissal is complex. If you feel that you have been unfairly dismissed from your job, seek advice immediately from your trade union, Citizens Advice Bureau, solicitor or other similar agency. Complaints alleging unfair dismissal must be lodged with the Employment Tribunal within three months of the dismissal.

Only employees are eligible to claim unfair dismissal. Self-employed people are not protected. However, the distinction between these two groups is often blurred so it is always best to seek advice. Certain occupations such as Crown employees are excluded as are workers who are ordinarily employed outside Great Britain.

You must usually have been continuously employed for one year with the same employer, at the time of dismissal. During the first year of a job, employees have no right to claim unfair dismissal. The exception to this rule is for dismissals which are automatically unfair, see below.

There is no longer an upper age limit for eligibility to claim unfair dismissal.

The Employment Tribunal will consider whether there was a potentially fair reason for the dismissal, for example the conduct or performance of the employee. They will then consider whether the employer was reasonable in dismissing the employee for this reason and whether a correct procedure was used (see Section 5.2 on disciplinary and dismissal procedures).

In some circumstances, a dismissal will be automatically unfair and questions of reasonableness and procedure will not come into it. For example, if someone is dismissed because they are pregnant, they have been involved in union activity, or they have tried to assert a statutory right, the dismissal will be automatically unfair.

If a claim for unfair dismissal is successful, the award will come in two parts. Firstly, there is a Basic Award linked to the length of your service with an employer; this is calculated in the same way as a statutory redundancy payment (see below). Secondly there is a Compensatory Award which is based on your losses and future losses from being dismissed, for example loss of earnings. This part of the award is capped at a maximum of £63,000. The maximum total compensation for unfair dismissal is £72,900.

If the employee and the employer mutually agreed to terminate the contract there would be no dismissal and no claim.

4.3 Constructive dismissal

It is sometimes possible to claim unfair dismissal even if you have resigned. If your employer's conduct towards you has been so bad that it amounts to a fundamental breach of contract, you are entitled to resign without notice. This will be treated as a dismissal and, as long as you meet the eligibility requirements as above, you can claim unfair dismissal. It is important that you do not delay for too long before resigning as this could be seen as an acceptance of the employer's conduct. If you are in this situation, you should seek advice immediately.

4.4 Wrongful dismissal

Wrongful dismissal is different from unfair dismissal. The right not to be *unfairly* dismissed is a statutory right. A *wrongful* dismissal occurs when an employee is dismissed in breach of contract.

The most common example is dismissal without the amount of notice required under the contract. If you are wrongfully dismissed you can make a claim at the Employment Tribunal for any losses you have suffered.

4.5 Redundancy

A redundancy may arise with the closure of a business, closure of a workplace or a reduction in the size of the workforce. Employees with two years' continuous service, have the right to a statutory redundancy payment based on length of service, pay and age. The contract of employment may provide for additional benefits. However, there is no entitlement to a redundancy payment where you unreasonably refuse an offer of suitable alternative employment. There is no longer an age limit for entitlement to a statutory redundancy payment. This used to be age 65, but was removed under the age regulations. But age will still be taken into account when calculating the amount of the payment.

Your employer must give you a written statement, explaining how your redundancy pay is calculated. The statutory amount is based on your age, length of service (up to a maximum of 20 years), and weekly wage (up to a maximum of £330). If your weekly wage varies, an average is calculated over the last 12 weeks. The maximum payment is £9,900.

The method of calculating a redundancy payment will continue to be calculated using the person's age, even though this could be seen as age discrimination. The government has said that it can justify paying older people higher redundancy payments because it will be harder for them to find work again.

If you have worked for your employer for more than two complete years, you are entitled to a redundancy payment.

Statutory notice of redundancy is one week for every year of work completed, up to the maximum of 12 weeks.

A dismissal on the grounds of redundancy may also be an unfair dismissal. If so, an Employment Tribunal will award additional compensation. This may arise, for example, where there was no genuine redundancy; the employer failed to consult the workforce; the worker was unfairly selected for redundancy or the employer failed to offer suitable alternative employment. Where the redundant worker was selected on the grounds of age, race, sex, marital or civil partnership status, sexual orientation, religion, belief, disability or transgender status or because they were pregnant, the potential level of compensation for discrimination is unlimited.

If you have been made redundant but have not received a redundancy payment a complaint may be referred to an Employment Tribunal within six months of the dismissal.

If you believe you have been unfairly selected for redundancy your complaint must be lodged with the Employment Tribunal within three months of the dismissal (see Section 4.2).

If you are owed statutory redundancy pay by an employer which is insolvent, this can be claimed from the National Insurance Fund, either through the receiver or liquidator, or directly from the Fund. Further information can be obtained from the Department for Business, Enterprise and Regulatory Reform Redundancy Payments Office Helpline on 0845 145 0004 (lo-call rate).

4.6 Retirement

There is a difference between retirement age and pension age. There is a state pension age (currently 60 for women and 65 for men, but gradually being equalised to 65 between 2010 and 2020) at which you can draw your state pension, but employees do not have to retire at this age.

Some employers have their own retirement age, at which they automatically retire employees. Other employers have no retirement age at all and work on a more flexible basis. The age regulations introduced the new concept of the 'default retirement age'. This is age 65. The effect of the default retirement age is that forced retirement of employees over age 65 will be lawful, as long as the employer follows the correct procedure. However, this is being challenged in a court case brought by Heyday, part of Age Concern.

The case has been referred to the European Court of Justice (ECJ). If you are forced to retire at or above age 65, and your employer has followed the retirement procedure correctly, you can start a claim for age discrimination and unfair dismissal at the employment tribunal and have this put on hold, until the ECJ gives its decision. If the Heyday case is successful and the law changes, you may then be able to claim compensation. If you are being forced to retire against your wishes, you should seek legal advice. Your local Age Concern or Citizens Advice Bureau may be able to help, or you could contact a local solicitor.

The default retirement age means that it will be unlawful for employers to force someone to retire before age 65, unless they can justify this. The law does not affect voluntary retirement. It will still be possible for a person to choose to retire under age 65 if they wish to do so.

There is a new procedure for employers to follow when retiring an employee:

- employees must be given between 6 and 12 months' notice in writing of retirement;
- employees have a new right to request to continue working;
- employers have a duty to consider the request, holding a meeting with the employee to discuss it, but they do not have to give reasons for refusing a request.

For full details of the new law relating to retirement see the Age Concern mini-guide *'Calling Time on Age Discrimination'* or IS17, *How will the new law on age discrimination affect you?* for further details.

5. Disputes at work

All employers must have minimum procedures for resolving employees' grievances, and to use when considering disciplinary action or dismissal. You must be given details of these procedures within two months of your starting date.

There are procedures set out by law (the statutory procedures) which set out the minimum steps the employer and employee must go through (see below), but an employer's own procedures could include extra steps.

If you have a grievance, or are facing disciplinary action, you may be able to obtain advice and assistance from your Union representative, if you are a union member.

You have the right to be accompanied to a disciplinary or grievance meeting, either by a union official or another colleague.

5.1 Grievance procedure

If an employee has a complaint against their employer, or a colleague, which cannot be resolved informally, they should make an official grievance under this procedure. Firstly, they should inform the employer of the grievance in writing. Secondly, the employer should hold a meeting to discuss the grievance.

Thirdly, the employer should inform the employee in writing of their response and arrange an appeal meeting if this is requested by the employee. The appeal meeting should be held by a more senior manager, if possible.

Unless you have first put your grievance in writing and allowed 28 days to pass, you cannot usually take your matter to an Employment Tribunal based on a grievance, unless the grievance is about dismissal.

5.2 Disciplinary and dismissal procedure.

This applies when the employer is considering dismissal or disciplinary action against an employee (unless the action considered is only a verbal or written warning or suspension with pay).

The procedure applies to all dismissals (except retirements) including redundancies, and the non-renewal of a fixed contract.

The first step is for the employer to provide the employee with written details of the reason they are considering dismissal or disciplinary action.

The employer must then invite the employee to a hearing at a reasonable time and place. After the meeting, the employer must inform the employee about any decision, and offer the right to appeal.

If the employee wishes to appeal, they must inform the employer, who must invite them to a further hearing. Where possible a more senior manager should attend, and the final decision must be communicated to the employee.

A modified dismissal procedure can be used only in the case of gross misconduct dismissals.

5.3 Bullying and stress at work

If you are being bullied at work on the grounds of age, sex, race, disability, transgender status, marital status or civil partnership status, sexual orientation, religion or belief you can claim for harassment at the Employment Tribunal under the relevant discrimination legislation. However, this legislation does not cover people who are being bullied in other circumstances.

The first step to take if you feel you are being bullied or unfairly treated at work would be to use the employer's grievance procedure (see above).

If the situation is so serious that you feel you have no choice but to leave work, and you have exhausted all other reasonable routes, you may be able to claim constructive unfair dismissal. You must have worked for the same employer for at least one year to be able to claim constructive dismissal. (See Section 4.3).

If you have become ill as a result of bullying or stressful working conditions, it may be possible to bring a personal injury claim against your employer. However, it is very difficult to prove that an employer should be liable to pay compensation in a case like this. It is necessary to prove that the employer should have foreseen that you would become ill and that they could have prevented it. Also you would have to prove that you have a clinically recognised psychological or psychiatric condition as a result of the treatment at work. A diagnosis of "stress" is not enough in this situation.

The Andrea Adams Trust is a national charity dedicated to tackling workplace bullying which runs a helpline for people who need support and advice. See Section 10 for details.

5.4 Compromise agreements

Disputes between employers and employees can be settled by way of a compromise agreement. The employee agrees to give up their right to take legal action against the employer in return for financial compensation. Employers often offer compromise agreements to employees who have resigned or been dismissed, as a way of avoiding legal action being taken against them.

A compromise agreement is only valid if the employee has had independent advice from a qualified person, and the advisor has signed the agreement. Employers will often agree to make a contribution to the cost of obtaining legal advice.

5.5 Taking a claim to the Employment Tribunal

There are very strict time limits for issuing a claim at the Employment Tribunal. For most claims the time limit is three months from the date of the event being complained of. A claim must be started by completing a tribunal application form (ET1) which can be obtained from any Employment Tribunal, or filled in online at: www.employmenttribunals.gov.uk.

A claimant can represent themselves at the Employment Tribunal, without any legal assistance. However, if at all possible, you should seek legal advice before starting a claim. There is very limited legal aid available for employment law advice and this does not cover the cost of legal representation at the tribunal. Usually, even if you win your claim, the other party will not be ordered to pay your legal costs.

This means that, if you use a solicitor or a barrister, you will almost certainly have to pay their fees yourself. You may be able to do this under a type of “no win, no fee” arrangement. Usually this will mean you pay a percentage of any compensation you are awarded to your solicitor. You should make sure that you fully understand the agreement before you accept this.

You may be able to obtain free advice and representation from a local law centre, Citizens Advice Bureau or a similar advice agency. Some universities and colleges run schemes where law students offer advice under supervision from their tutors.

Some people may have Legal Expense Insurance which could cover the cost of a tribunal claim. This may be part of a household insurance policy. You should contact your insurer to find out if your claim may be covered.

If you are being represented at an Employment Tribunal you should ensure that any paid representative has the legal authority to act on your behalf. A friend can represent you as long as they are doing so on an unpaid basis, and they are not acting in the course of a business. Any representative acting in the course of a business, for example a claims management company, must be authorised under the Compensation Act 2006. Not for profit advice agencies and charities are exempt from the need to be authorised, as are barristers, solicitors and legal executives.

You can check if a company is authorised, or make a complaint, by contacting the Claims Management Regulation team at the Ministry of Justice.

6. Work and health

6.1 Sick and becoming disabled

If you become sick or disabled it does not necessarily mean that you will have to give up work. All employers, including small businesses now have duties under the *Disability Discrimination Act*. Your employer has a duty to make 'reasonable adjustments' to ensure that you are not put at a substantial disadvantage by their employment arrangements or by any physical feature of the workplace. Examples might include flexibility about your hours, providing modified equipment, providing training or allocating some of your work to someone else.

You may need to stop working for a short time, but then be able to move back into work later. If you are returning to work, but with earnings around 20% less than before, you may be eligible for the disability element of Working Tax Credit. There is a Tax Credits Helpline for further information or to order a claim pack – 0845 300 3900 (lo-call rate).

If you fall ill and are unable to work your employer is required to pay you Statutory Sick Pay (SSP), providing you earn more than £90.00 each week. The upper age limit for entitlement to SSP has now been removed.

Most employers will pay you more than they are required to under the law, but SSP is an important safeguard. Once you have been ill for four days you are entitled to SSP of £75.40 (from April 2008) a week for up to 28 weeks. If you have more than one four day period of sickness within eight weeks this counts towards the same spell of 28 weeks. After 28 weeks SSP will end and you will need to claim Incapacity Benefit if you are a woman under 60 or a man under 65.

If you are over state pension age, you are not eligible for incapacity benefit. You should claim your state pension, and you may also be eligible for Pension Credit. (see Factsheet 18, *A brief guide to money benefits*).

If you are out of work because of ill health and receiving Incapacity Benefit or Income Support, you may be eligible for additional support from Jobcentre Plus, for example New Deal for Disabled People.

If you are able to find a job you may also be eligible for Working Tax Credit if you work for more than 16 hours a week, which will include an extra amount because of your disability (see Section 8 below).

If you have a long-term health condition which is seriously impeding your ability to do your job or has led to a long period of sick leave you may decide to give up work. Alternatively your employer may seek to dismiss you or offer you health-related retirement, although you may be able to challenge this dismissal as unfair. You may have a justifiable claim for unfair dismissal if your employer has not discussed your health problems with you or is unable to prove that you are incapable of doing the job. Your employer will also need to show that there is no alternative job available which you are capable of doing. In many cases you will also have protection under disability discrimination legislation.

6.2 Industrial injuries

Many health problems you may develop could be linked to work, for example back pain, stress, repetitive strain injury or injury following an accident. Your employer has a duty to protect you from health and safety problems at work. Employers should aim to prevent health problems before they arise and help you with rehabilitation if a work-related health condition emerges. The *Health and Safety at Work Act 1974* sets out duties and responsibilities.

If you have been injured at work you may be able to claim compensation from your employer. You will need help from your union or a solicitor to pursue your claim. If you are awarded a compensation payment you may not receive the full amount, as the value of some benefits you already received may be taken into account.

You may also be able to claim industrial injuries disablement benefit. The Department for Work and Pensions (DWP) will arrange for you to be medically examined and the degree of disablement caused by your disease or injury will be assessed. Your local Jobcentre Plus has the claim forms.

There is a different form depending on whether you had an accident or contracted a disease at work. The DWP will contact your employer to get details of the incident that caused your disablement.

7. Work and caring

Many people over 50 are responsible for caring for a disabled person or a dependant adult. This may stop you from being able to work, or limit the hours you can work. If you are caring for someone for more than 35 hours a week and earning nothing or less than £95.00 each week you may be entitled to Carer's Allowance of £50.55 (from April 2008).

The person you are caring for must be receiving Disability Living Allowance care component (at the middle or highest rate), or Attendance Allowance or Constant Attendance Allowance (in respect of industrial or war disablement). Recipients of Carer's Allowance are entitled to support from Job Centre Plus to move back into work.

People caring for an adult now have the right to request flexible working. The right covers employees who are caring for someone with one of the following relationships to them:

- spouse, civil partner, or partner;
- relative (including parents, brothers, sisters, aunts, uncles, grandparents, parents-in-law, brothers-in-law, sisters-in-law, and including step-relatives and adoptive relatives);
- anyone living in the same house.

The right means that employees can request that their employer allows them to work flexible hours. For example, a request could be made to work part-time, work different hours, or work from home. The employer has a duty to consider the request seriously and must give a reason if they are rejecting the request.

8. Working Tax Credit

Tax Credits are administered by HM Revenue & Customs (HMRC). There are two types and they are calculated in a very different way to social security benefits. Child Tax Credit is available to people responsible for children whether they are in or out of work. Working Tax Credit is available to people in work with low or modest earnings, including self employed people. There is no upper age limit. If you are over pension age and drawing your State Retirement Pension you will normally be better off claiming Working Tax Credit than Pension Credit.

It is a complicated system and the amount you receive will depend on your circumstances. If in doubt ask for advice from HM Revenue & Customs (HMRC) helpline or a local advice service such as a Citizens' Advice Bureau.

50-plus element

The higher rate, 50-plus element of Working Tax Credit is available if you are over 50 and return to work after six months on certain benefits.

You must work for 16 hours or more a week and meet the income eligibility requirements. You must have been receiving Jobseeker's Allowance, Incapacity Benefit, Severe Disablement Allowance, Income Support or Pension Credit for at least six months.

The credit is paid at a higher rate as an incentive for returning to work. You are only entitled to this additional support for 12 months. After that you will only receive Working Tax Credit at the normal rate and will not be eligible unless you work for 30 hours or more a week (unless you are a parent or disabled).

If you have a disability, you must work 16 hours or more a week to be eligible. Your Tax Credit calculation will also include an extra amount to reflect the costs of your disability.

You will be eligible if you are disadvantaged by a disability and you are receiving or recently received certain benefits (Disability Living Allowance; Attendance Allowance; Incapacity Benefit, except for the short-term lower rate; Severe Disablement Allowance or another benefit with a disability premium). Even if you have not received these benefits you may be eligible if you have suffered a pay cut after returning to work following at least 20 weeks off work.

For more information or a claim form contact your local Jobcentre Plus office or ring the Tax Credits helpline on 0845 300 3900 (lo-call rate).

9. Planning for retirement

9.1 Approaching retirement

People leave work at the end of their career in a very wide range of ways. It is no longer typical to leave work because you have reached your employer's retirement age.

Some employers have dropped the idea of a retirement age altogether, while others have introduced a more flexible approach.

You may have a completely free choice about the date you leave work. Alternatively you may be forced to leave your job, because you are being made redundant or have reached your employer's retirement age (see Section 4.6 above for details on when forced retirement is allowed). In between these positions, you may choose to give up your job, but would ideally prefer to carry on working if the circumstances were different. For example, many people leave work because of health problems or caring responsibilities.

Some people leave after being offered an early retirement or redundancy package but in an ideal world would choose to stay on. Some large employers offer pre-retirement courses which help you think about these issues a few years before retirement. Life Academy (previously the Pre-Retirement Association) is a major provider of courses.

9.2 Flexible retirement

Flexible retirement is a term for making a gradual transition from work to retirement. Some common options for flexible retirement are listed below.

Reducing your hours or responsibilities

One option is to stay with your current employer, but reduce your hours or responsibility. This option is popular with workers and is valued by many employers who want their older workers to stay to pass on their skills and experience to the younger people who will replace them. You may be able to take on a mentoring role to coach junior colleagues.

If you are considering this, check the implications for your income and occupational pension. If you have a final salary pension, shedding some responsibilities and taking a pay-cut could reduce your pension.

If you move to part-time work with the same employer, in most cases you are not currently able to draw any of your pension. Tax rules relating to pensions changed in April 2006, so you can now draw some or all of your company pension whilst working full or part-time for the same employer, depending on the rules of the scheme. You should check the pension scheme rules. You will need to be sure that you can live on your reduced income if you move to part-time work.

Secondment

Your company may be willing to transfer you (for a fixed-term - say three months to three years) to a community organisation, such as a charity or an enterprise agency. Companies sometimes second senior staff who are approaching retirement and who may have skills of value to the community organisation. Business in the Community is frequently used by companies and charities to arrange secondments. For further information contact your Human Resources Department or Business in the Community.

Working beyond your employer's normal retirement age

Under the age discrimination law, your employer has a duty to consider a request from an employee to continue working after the employer's intended retirement date. Your employer must tell you of your right to make a request, at the same time they give you notice of your retirement date. You can then make a request in writing, and your employer must hold a meeting with you to discuss this. Your employer does not have to agree to the request, and does not have to give reasons for refusing it. When making a request you could point out the potential benefits to your employer of allowing you to continue working; for example retaining your experience and skills, or saving on the cost of recruiting and training your replacement.

If you are working beyond retirement age, check the implications for your occupational pension, particularly if you are in a final salary scheme.

Pension schemes may not allow you to make additional contributions nor offer an 'uplift' on your pension to reflect the reduced length of your retirement. If this is the case, you might want to consider saving or investing in a personal pension.

9.3 State Pension and other benefits

If you are over State Pension Age (60 for women and 65 for men) the main benefits you may be entitled to are State Pension, Pension Credit, Housing Benefit and Council Tax Benefit. You can claim all of these whether you are in work or out of work.

You can draw your State Pension if you satisfy the contributions conditions. It will not be affected by the amount you earn or the number of hours you work. However the State Pension will count as part of your taxable income, so if you are working and paying tax, your tax code will be adjusted to take into account the amount of pension you receive.

Once you reach State Pension age you don't have to pay National Insurance contributions. You need to get a certificate of exception to give to your employer who will still have to pay contributions for you. The certificate is CA4140 and available from your nearest Inland Revenue National Insurance Contributions Office. You will need to provide evidence of your age. If you have any problems getting hold of this, your employer should be able to assist.

You may be entitled to an additional pension, paid under the State Earnings Related Pension Scheme (SERPS) which started in April 1978 and Graduated Pension (a scheme which existed from April 1961 to April 1975). See Age Concern Factsheet 19, *The State Pension*. If you are under 60 you may like to get further advice about benefit entitlement from a local advice centre such as a Citizen's Advice Bureau.

9.4 Occupational and private pensions

The longer you are able to work, the more opportunity you will have to build up a pension. Working longer may also increase your income because occupational and private pensions are often adjusted to take account of the length of time you will need to rely on an income.

Take good advice when you are planning pensions and savings close to retirement.

You won't have much time to make up if you make the wrong decisions and you may have to live with the results throughout your retirement. If a large sum of money is involved it may be advisable to seek the advice of a pension consultant. If you have a problem with your occupational pension that you cannot sort out with your employer the Pensions Advisory Service or local Citizens Advice Bureau may be able to help.

Lump Sums

On retirement or redundancy many people receive a lump sum. Seek sound investment advice to ensure that the maximum benefit is obtained. Make sure the person or organisation you consult for investment advice is registered with their appropriate professional body. Contact the Financial Services Authority.

10. Further information - organisations to contact

Advice UK, tel: 020 7407 4070, website: www.adviceuk.org.uk. For help locating an independent advice agency in your area.

Advisory Conciliation and Arbitration Service (ACAS), tel: 08457 474 747 (lo-call rate), textphone: 08456 061 600 (lo-call rate), website: www.acas.gov.uk. Advice on employment policies, practice, dispute resolution.

Age Positive, Department for Work and Pensions, Room W8d, Moorfoot, Sheffield S1 4PQ. Promotes age diversity in employment, shares good practice with employers, researches into older workers in the employment market, website: www.agepositive.gov.uk.

The Andrea Adams Trust, Hova House, 1 Hova Villas, Hove, East Sussex, BN3 3DH, helpline tel: 01273 704 900. Offers advice and support to employees who are experiencing workplace bullying.

Business in the Community, 137 Shepherdess Walk, London N1 7RQ, tel: 0870 600 2482 (national call rate), website: www.bitc.org.uk. Has over 700 UK companies as members, committed to improving their positive impact on society. Events, programmes, campaigns.

Citizens Advice Bureau, www.citizensadvice.org.uk. Free information and advice, including employment advice. Your local phone book will list your nearest bureau.

Community Legal Advice (previously called **Community Legal Service Direct**). A Government funded service providing free advice, including on employment matters, to people eligible for legal aid. Helpline: 0845 345 4 345. Free information and a directory of local legal advice services is available on the website: www.communitylegaladvice.org.uk.

Department for Business, Enterprise and Regulatory Reform, website: www.berr.gov.uk produces leaflets on employment rights. Redundancy helpline tel: 0845 145 0004 (lo-call rate).

Employers Forum on Age (EFA), Floor 3, Downstream Building, 1 London Bridge, London, SE1 9BG, tel: 0845 456 2495 (lo-call rate), website: www.efa.org.uk. Independent network of employers who recognise the business value of attracting and retaining experienced employees - regardless of their age.

Advice and practical support on managing the skills and age mix of their organisation. Campaigns on issues ranging from improving flexible retirement policies to influencing the forthcoming age discrimination legislation.

Employment Tribunals Line, tel: 0845 795 9775 (lo-call rate) for local office contacts, website: www.employmenttribunals.gov.uk. Explains procedure for tribunal.

Equality and Human Rights Commission, Helpline, Freepost RRL- GHUX-CTRX, Arndale House, Arndale Centre, Manchester, M4 3EQ, tel: 0845 604 6610. If your enquiry is about disability discrimination, contact the EHCR disability helpline at Freepost MID02164, Stratford-upon-Avon, CV37 9BR, tel: 08457 622 633. An independent public body responsible for enforcing discrimination and human rights legislation, including giving information on your rights.

Financial Services Authority (FSA), 25 The North Colonnade, Canary Wharf, London E14 5HS, consumer helpline tel: 0845 606 1234 (lo-call rate), textphone: 08457 300 104 (lo-call rate), website: www.fsa.gov.uk. Independent non-governmental body, given statutory powers by the *Financial Services and Markets Act 2000*. Advice and consumer help about rights, financial products and planning.

Health and Safety Executive, Caerphilly Business Park, Caerphilly CF83 3GG, Infoline tel: 0845 345 0055 (lo-call rate), textphone: 0845 408 9577 (lo-call rate), website: www.hse.gov.uk. Information and advice about health and safety in the workplace, regulations, reporting incidents, safety initiatives.

HM Revenue & Customs Tax Credits helpline: 0845 300 3900 (lo-call rate), textphone: 0845 300 3909 (lo-call rate), National Minimum Wage helpline tel: 0845 6000 678 (lo-call rate), website: www.hmrc.gov.uk.

Law Centre Federation, Duchess House, 18 - 19 Warren St, London W1T 5LR, tel: 020 7387 8570, website: www.lawcentres.org.uk. Provides a free, independent professional advice service within their local areas.

Life Academy (previously the Pre-Retirement Association), 9 Chesham Rd, Guildford, Surrey GU1 3LS, tel: 01483 301170, website: www.life-academy.co.uk.

Ministry of Justice, Claims Management Regulation Team, 57-60 High Street, Burton upon Trent, Staffordshire, DE14 1JS, tel: 0845 450 6858, website: www.claimsregulation.gov.uk

National Minimum Wage Line, tel: 0845 6000 678 (lo-call rate). For enquiries about the NMW, or to make a complaint if you think you are not being paid the NMW.

www.over50.gov.uk, Government website for people over 50 including information on employment, learning and pensions.

The Pensions Advisory Service (TPAS), 11 Belgrave Rd, London SW1V 1RB, tel: 0845 601 2923 (lo-call rate), website: www.pensionsadvisoryservice.org.uk.

PRIME, a linked charity with Age Concern England, Astral House, 1268 London Road, London SW16 4ER, helpline tel: 0800 783 1904 (free call), websites: www.primebusinessclub.com and www.primeinitiative.org.uk. National organisation dedicated to helping people aged over 50 set up in business.

Public Concern at Work, Suite 301, 16 Baldwins Gardens, London EC1N 7RJ, tel: 020 7404 6609, website: www.pcaw.co.uk. Independent authority on whistle-blowing, which is the term given to raising issues about bad practice or danger in the workplace.

Stonewall, tel: 020 7593 1850, textphone: 020 7633 0759, website: www.stonewall.org.uk. National organisation that campaigns for legal equality and social justice for lesbians, gay men and bisexuals. Website includes an information bank on a range of issues and employment guides for employers and employees to the Employment Equality (Sexual Orientation) Regulations 2003. *They cannot take up individual cases.*

Tax Credits helpline: 0845 300 3900 (lo-call rate).

The Age & Employment Network, 207-221 Pentonville Road, London N1 9UZ, UK, tel: 020 7843 1590, website: www.taen.org.uk. TAEN is committed to better opportunities for mature people to continue to learn, work and earn. The Network has a membership of 250 organisations and groups across the country that represents the leading UK expertise in helping older people to overcome barriers of discrimination and realise their aims and ambitions.

11. Further information from Age Concern

The following factsheets may be relevant:

Factsheet 11	<i>Help with looking for work or starting your own business</i>
Factsheet 15	<i>Income Tax</i>
Factsheet 17	<i>Housing Benefit and Council Tax Benefit</i>
Factsheet 18	<i>A brief guide to money benefits</i>
Factsheet 19	<i>The State Pension</i>
Factsheet 21	<i>The Council Tax</i>
Factsheet 30	<i>Leisure and learning</i>
Factsheet 48	<i>Pension Credit</i>

If you would like:

- to find your nearest Age Concern
- any additional factsheets mentioned (up to a maximum of 5 will be sent free of charge)
- a full list of factsheets and/or a book catalogue
- to receive this information in large print

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB30375), Ashburton, Devon TQ13 7ZZ. For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

Age Concern factsheets and other information materials can be downloaded free from our website at: www.ageconcern.org.uk. To receive a free e-mail notification when new and updated factsheets are published, please contact the Factsheet Subscription Service on 020 8765 7200.

Age Concern provides factsheets free to older people, their families and people who work with them. If you would like to make a donation to our work, you can send a cheque or postal order (made payable to Age Concern England) to the Personal Fundraising Department, ACE Freepost CN1794, London SW16 4BR.

Find out more about Age Concern England online at: www.ageconcern.org.uk.

Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age Concern.

Whilst every effort is made to ensure accuracy, Age Concern cannot be held responsible for errors or omissions.

No factsheet can ever be a complete guide to the law, which also changes from time to time. Therefore please ensure that you have an up-to-date factsheet and that it clearly applies to your situation. Legal advice should always be taken if you are in doubt. *Age Concern England is unable to give legal or financial advice.*

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