

Unions today – your friend at work

At times we all need advice or support at work.

Everyone has the right to join a union – it costs less than you think and your employer doesn't need to know you are thinking of joining up. The average cost of being in a union is only 92p a week for part-timers and about £2 for those working full-time.

To find out more about how to join a union and which union is the right one for you, phone the TUC's *Know Your Rights* helpline on **0870 600 4 882**, or visit www.worksmart.org.uk/unionfinder



Trades Union Congress

Congress House,
Great Russell Street,
London WC1B 3LS
Tel: 020 7636 4030
www.tuc.org.uk



made@home

The TUC is calling for rights and respect for homeworkers, through our *made@home* campaign. The campaign is supported by Oxfam and the National Group on Homeworking. The NGH has a 2004 advice line on **0800 174 095**; Oxfam has a website devoted to fair trade and homeworking www.maketradefair.com; and you can also find out more at www.tuc.org.uk/ontheedge



www.worksmart.org.uk

– the one-stop site for everyone at work. This website provides a range of information about working life and your rights at work – whether you are a union member or not. The full text of this leaflet, plus the whole range of rights materials, is on the site – just a click away!

Everyone at work has some basic rights.

Thanks to campaigning by unions and other organisations such as the National Group on Homeworking, rights for homeworkers are improving, though there is still a long way to go.

This leaflet tells you where you stand.

Your as a rights homeworker



workSMART

Know
Your
Rights

www.worksmart.org.uk

Get off to a good start

Searching for work

Be careful about replying to any homeworking adverts that ask you to send money in advance, for example a 'registration fee' or 'deposit'. Often these are scams.

If you have been ripped off by a company offering bogus homework you should tell your local Council's Trading Standards Department. They can check whether the company is acting fraudulently.

Before starting work

When you are interviewed or offered work you should make a note of any arrangements discussed and terms agreed. Ask for these to be confirmed in writing by the work provider.

Try to find out the following details and keep a note of them:

- the type of work you will be doing;
- how long the work will last;
- how much you will be paid for each item completed or for each hour worked;
- who will be responsible for paying your tax and National Insurance. (If the employer says that this is your responsibility, then ask them why and write down what they say. You may need to seek further advice from an advice agency in this situation.);
- when and how you will be paid;
- when and how work will be delivered and collected;

- how to do the work, and what training you will receive, particularly if the work has to be done in a certain way or to a specified standard of quality;
- whether you will be provided with all the necessary materials, components, tools and equipment;
- whether you are entitled to holiday pay, sick pay and paid maternity leave (see pages 7-9 for more information on this);
- whether there is a stakeholder pension scheme that you can join;
- whether the supplier of work has insurance that covers you and the materials and equipment;
- whether there are any health risks associated with the job, and if so, what advice does the company offer on working safely?

It is important to keep a record of these details, because there is no law that says your work provider must put them in writing, unless you become an employee (see the next page where we explain the difference between a worker and an employee).

Once you have started the work

As soon as you start work make sure you keep a record of work done, hours taken to complete the work, and the agreed rate for each different job. Keeping a record will help if you ever have a dispute with your employer/supplier of work.

Worker or employee?

Your rights will depend on whether you are classed as a 'worker' or an 'employee'. 'Employees' enjoy extra rights to those of 'workers' – see page 11 for more information about employees' additional rights.

Most homeworkers are not employees of the company that gives them work and so do not have a contract of employment. Instead the agreement they have with them is called a contract for services and they are classed as workers.

Your employer may say that you are self-employed. This is another way of saying that you are not an employee.

There is no easy test that can tell you whether you are an employee or a worker. Ultimately only a court or employment tribunal can decide. Even if your employer says that you are not an employee a court may disagree.



Look at the table on the next page. If you answer 'yes' to most of the questions in the employee column you are probably an employee. If you answer 'yes' to most of the questions in the worker column you are probably a worker.

Employee

- Does your employer require you to work specific hours and pay you for these whether or not there is work to be done?
- Does your employer control what you do and lay down how and when you do it?
- Does your employer say you have to carry out the work personally and cannot provide for another worker to carry it out on your behalf?
- Does your employer supply the tools or other equipment for the job?
- Does your employer pay tax and National Insurance on your behalf (although many 'workers' also have tax and NI deducted from their pay so this alone does not prove that you are an employee)
- Do you have a written agreement with your employer that includes the phrase "contract of employment"

Worker

- Does your employer only offer and pay for work when they need it?
- Can you decide when you will work, and even turn down work when offered?
- Can you provide another worker to carry out the work in your place if you want?
- Do you have to provide your own tools?
- Are you left to pay your own tax and National Insurance?
- Do you have a written agreement with your employer that includes the phrase "contract for services"?

However, as this area is so complicated, you should always check your agreement with your employer. If you are not sure of your employment status, you should seek further advice from the National Group on Homeworking (NGH), from your union or from an advice agency such as a Citizens Advice Bureau or Law Centre.

Your rights as a worker

All workers are entitled to some basic rights at work, and as a homeworker you will generally be entitled to the following rights from the day you start:

- to be paid at least the National Minimum Wage (NMW);
- to refuse to work more than 48 hours a week (unless you sign an agreement saying that you are willing to work longer hours);
- to have a rest break of 20 minutes where your working day is longer than six hours. If you are under 18, you are entitled to a 30-minute break after working four and a half hours;
- to have four weeks' paid annual leave;
- to health and safety protection;
- to protection from discrimination (you have the right not to be treated less favourably by the employer on the grounds of sex, pregnancy, race, disability, sexual orientation and religion or belief. From 2006 onwards, it will also be against the law for employers to discriminate against workers and job seekers because of their age.);
- to join a trade union of your choice.

Here are more details about some of these rights:

Pay and tax

I haven't been paid!

You must be paid for work you have done. If you are not paid for the work, you can bring a claim to an employment tribunal for the money you are owed.

If you are in this situation, you should seek advice immediately as there are strict time limits on taking a claim to an employment tribunal. The National Group on Homeworking (NGH) may be able to assist, sometimes by negotiating with your employer, or by helping you to apply to a tribunal or to the small claims court to recover unpaid wages. Your union will be able to help if you are a member, or an advice agency such as the local Citizens Advice Bureau.

The National Minimum Wage (NMW)

All homeworkers must get at least the national minimum wage rate for each hour that they work. If your employer says that you are not entitled to the NMW because you are 'self-employed', it is up to them to prove why you are not an employee or a worker. Even if you are classified as self-employed for tax and National Insurance purposes, you may still be entitled to the NMW. If in doubt, seek advice.

There are currently two NMW rates: one for workers aged 22 and over and a lower rate for those workers aged between 18 and 21. From October 2004 there will be a third rate for workers aged 16 and 17 as well.

The rates are:

- if you are aged 22 or over you must be paid at least £4.50 per hour, rising to £4.85 in October 2004;
- if you are aged 18-21 you must be paid at least £3.80 per hour, rising to £4.10 in October 2004;
- if you are aged 16 or 17, from October 2004 you must be paid at least £3.00 per hour.

Workers aged 22 or over may be paid the lower rate of £3.80 per hour but only where they are receiving accredited training during the first six months of a job. After this they must be paid the full adult rate even if the training is continuing.

Hourly pay for the NMW is worked out as an average over your 'pay period'. If you are paid weekly, your pay period is a week. If you are paid daily, then the pay period is a day. Dividing gross pay for the pay period by the number of hours worked gives the hourly rate.

But many homeworkers are paid by not by the hour but by what they produce (their output), or paid on completion of a specific job.

The existing 'fair estimate agreements' with employers, which set out how long a particular task is likely to take (no shorter than four-fifths of the time that it would take the average worker to complete the task), can be used to calculate hours, but these agreements have been much abused by employers, and workers are usually reluctant to complain for fear of losing work.

This abuse has led the Government to replace fair estimate agreements with a new system of 'fair piece rates'. From October 2004, an employer will either have to pay the worker the minimum wage for all hours worked or will have to pay 100% of the minimum wage for the number of hours it takes an average worker to complete an agreed block of work. This will go up to 120% in 2005.



The employer will have to carry out tests to establish the time it takes an average worker to complete the work. For example, if the tests show that for a particular job, the average worker can complete 10 pieces an hour, the employer must pay the workers at least 45 pence per piece in order to pay the current national minimum wage rate of £4.50 per hour ($10 \times £0.45 = £4.50$).

If you think that you are not being paid the NMW you can make a complaint directly to the NMW Helpline on **0845 6000 678** (England, Scotland or Wales) or **0845 6500 207** (Northern Ireland). You can also seek further advice from the National Group on Homeworking, your union if you are a member, or an advice agency.

Tax and National Insurance

You may have to pay tax and National Insurance if you are earning above a certain limit, called a 'threshold', which is set each year and is £79 a week until April 2005. You should contact NGH or the tax office to find out what the current thresholds are. If your earnings fall below the lower earnings level (LEL) you will not have to pay tax or National Insurance. These levels usually change in April at the start of each new tax year.

The tax and National Insurance contributions that you pay depend on whether you are classified as an employee, a worker or self-employed.



If you are an employee, and sometimes if you are a worker, you will have your tax paid

The advantage for you is that your employer or supplier of work is responsible for tax and National Insurance contributions. If you earn enough to pay these, they should be deducted from your pay and shown as itemised amounts on your pay slips. If you are earning enough to pay tax and NI, your contributions will be contributing towards entitlement to benefits such as Jobseekers' Allowance, Statutory Maternity Pay (SMP), and the state pension. If you do not earn above the threshold, you should not have to pay tax and NI, but this means you will not be building up your contributions record, which is used to determine entitlement to these benefits.

If you are self-employed, you have to pay your own tax

The main advantage for you is that you can claim your work-related expenses against the tax that you have to pay. This may mean that although your earnings are over the threshold, by the time your expenses are deducted, you may be below the threshold and may not need to pay tax. If you are responsible for paying your own tax and National Insurance, you should keep simple accounts of incoming wages and outgoing expenses relating to your work. If you are self-employed you will need to buy a self-employed or Class 2 'stamp'. This is a weekly flat-rate payment and will give you an entitlement to benefits such as Maternity Allowance, Incapacity Benefit and basic state retirement pension.

Tax credits and allowances

If you get Income Support, you may earn a certain amount before losing benefit. This is called an Earnings Disregard. If you are working for 16 hours or more per week and you have children, you may be able to claim the Working Tax Credit instead. Depending on your circumstances, you might be entitled to other tax credits or allowances and you should seek further advice on this from an advice agency such as a Citizens Advice Bureau (CAB).

It is very important to keep a record of all work done, time taken to carry out the work and wages paid to you. Also try to keep a record of any work-related expenses.

Entitlement to maternity pay and sick pay

Statutory Maternity Pay

You will be entitled to SMP from your employer if they deduct tax and National Insurance from your pay, through PAYE, and you qualify under the following rules:

- you have worked for the same employer for at least 26 continuous weeks by the end of the 15th week before the week in which your baby is due (this is known as the 'qualifying week') and you are still working for this employer in the qualifying week (you do not have to work a full week for the week to count); and
- you earn at least the Lower Earnings Limit: that is, you have average earnings of at least £79 a week (before tax) in the eight weeks (if weekly paid) or two months (if monthly paid) before the end of the qualifying week; and
- you stop work because of your pregnancy on or after the 11th week before the week in which your baby is due.

If you qualify for SMP you will receive maternity pay for 26 weeks and this will be paid at 90% of your average pay for the first six weeks and then at a flat rate for the remaining 20 weeks. The flat rate SMP is currently £102.80 per week (from April 2004).

If you do not qualify for SMP, you may be able to claim Maternity Allowance from your local Benefit Agency/ Department for Work and Pensions office. The TUC *Maternity Leave and Pay* leaflet has further details. You can get this free from the TUC *Know Your Rights* line on **0870 600 4 882**.



Statutory Sick Pay (SSP)

To be entitled to statutory sick pay, you must cross several hurdles, in particular:

- you must be in work;
- you must be aged between 16 and 65 when your sickness began;
- you must be earning enough to pay National Insurance contributions (£79 per week from April 2004). If your pay varies, your entitlement depends on your average pay over the last eight weeks; and
- you must be absent from work due to illness for at least four consecutive days.

You will not qualify if you are self-employed or have not started work yet.

If you qualify for SSP, it is normally paid in the same way as your wages.

It is paid at a flat rate (£66.15 a week from April 2004) and can be paid for up to 28 weeks, if your sickness lasts that long. It is not paid for the first three days that you are on sick leave; these are called 'waiting days'. Employers can ask for reasonable evidence of incapacity. In practice, this means a self-certification form for the first seven days of absence (including the first three waiting days) and a doctor's certificate after that.

Working time rights

These cover rest breaks, holidays and holiday pay, night work and how many hours you can work each week. There are leaflets that cover these rights available from the TUC's *Know Your Rights* line on **0870 600 4 882**. See also page 3 for information on the hours you can work.

Holiday entitlement

Everyone at work is entitled to a minimum of four weeks' paid holiday a year.

The position is complicated for homeworkers who often do not have any set hours, or are paid on 'piece-work', or have hours that vary considerably over time. Weekly holiday pay should be the average weekly pay that you earned over the last 12 weeks. Any week during the last 12 in which no pay is received is replaced by the week before, until you have a total of 12 weeks on which to work out your average weekly pay.

Note that employers can quite lawfully count Bank Holidays towards your four weeks' paid leave entitlement.

Some employers try to get out of paying holiday pay by saying that your hourly pay rate already includes holiday pay and that they therefore do not have to pay you if you take a holiday. If in doubt about your entitlement, seek further assistance from your union, from NGH or from an advice agency such as the CAB, as there are clear legal rules on what employers can and can't do when it comes to calculating your holiday pay. At the very least, your contract must clearly state that your pay includes a sum for holiday pay and must say exactly what amount of pay is actually holiday pay.

Protection from discrimination

You have the right not to be treated less favourably than other workers on the grounds of sex, race, disability, pregnancy, sexual orientation and religion or belief. From 2006 it will also be unlawful for employers to discriminate against workers and job seekers on grounds of age.

Health and safety

If you are worried that your home work may be affecting your health or safety, or that of your family, contact your union, NGH or an advice agency. As a homeworker, you have certain rights under Health and Safety laws.

Employers must carry out a risk assessment of the work activities carried out by a homeworker. This assessment includes identifying any hazards, who is at risk, then taking action to remove the hazards or to reduce them as far as possible. The employer must write down the results of the risk assessment, do follow-up checks from time to time and take further action if necessary.

Some common hazards that homeworkers face are:

- using electrical equipment;
- using certain substances (e.g. glue/adhesives);
- working extensively with VDUs;
- not taking appropriate breaks (pressures to get work completed);
- working in isolation;

- risks to children from work equipment; and
- security threats – as a result of having expensive equipment stored in the home or giving out home telephone numbers to clients or customers of the business.

The Health and Safety Executive (HSE) has produced a booklet called *Homeworking: Guidance for Employers and Employees on Health and Safety*. It gives useful information on the steps that employers should take to protect the health and safety of their homeworkers. The leaflet is free from the HSE Books publications line on: **01787 881165** and you can also download it from the HSE website: **www.hse.gov.uk**

Union membership

You are allowed to join a union. You do not have to tell your employer if you are a member. You cannot be discriminated against for being a union member.

If your employer recognises a union already, then it makes sense to join that one, as it will be in a strong position to look after you at work.

Even if your employer does not recognise a union, it can still be worthwhile joining one as the union can offer invaluable legal advice and assistance if you run into problems at work. For example, union representatives have a legal right to accompany their members to formal grievance and disciplinary meetings and to support them.

See the back page on how to join up.

Additional rights for employees

Some important employment rights are only available to those who are classed as 'employees'. These include:

- the right to claim unfair dismissal at an employment tribunal, if you feel you are sacked without notice or good cause (and if you have worked for the same employer for a continuous period of one year*);
- the right to redundancy pay (if you have worked for the same employer for a continuous period of two years);
- the right to take maternity, paternity and parental leave and to request flexible working;
- the right to paid time off for antenatal care; and
- the right to a written statement of main terms and conditions of employment, including pay, hours, job description, notice period, and details of grievance procedures.

**does not apply in certain cases*



Dismissal and redundancy rules are complicated and you should always take advice in these situations, from your union, the NGH, or a CAB. There is a TUC booklet *Facing Redundancy* which you can get free from the TUC *Know Your Rights* line **0870 600 4 882**. The line also has free booklets on *Maternity Leave and Pay*, *Paternity Leave and Pay* and *Flexible Working for Parents*.



Contacts

National Group on Homeworking

Office 26
30-38 Dock Street
Leeds LS10 1JF
Advice line: 0800 174 095
T: 0113 245 4273
E: admin@homeworking.gn.apc.org
www.homeworking.gn.apc.org

Health and Safety Executive

The HSE can provide advice and information on health and safety issues.
T: 08701 545 500 (8am-6pm)

National Minimum Wage Helpline

T: 0845 600 0678

Advisory, Conciliation and Arbitration Service (ACAS)

ACAS is a public body that promotes good workplace relations. Their national helpline answers employment questions and provides general advice on rights at work for employees and employers.
T: 08457 47 47 47 (9am-4.30pm)

Citizens Advice Bureau (CAB)

You can find your nearest CAB from www.nacab.org.uk or a telephone directory.

Employment Tribunal Service Enquiry Line

Information about making a claim or tribunal procedures
T: 08457 959 775

If you think your problem may have a discrimination aspect then you might find the following helpful:

Equal Opportunities Commission

T: 0845 601 5901
www.eoc.org.uk

Commission for Racial Equality

T: 020 7939 0000
www.cre.gov.uk

Disability Rights Commission

T: 08457 622633
www.disability.gov.uk

Lesbian and Gay Employment Rights

T: 020 7704 6066
www.lager.dircon.co.uk