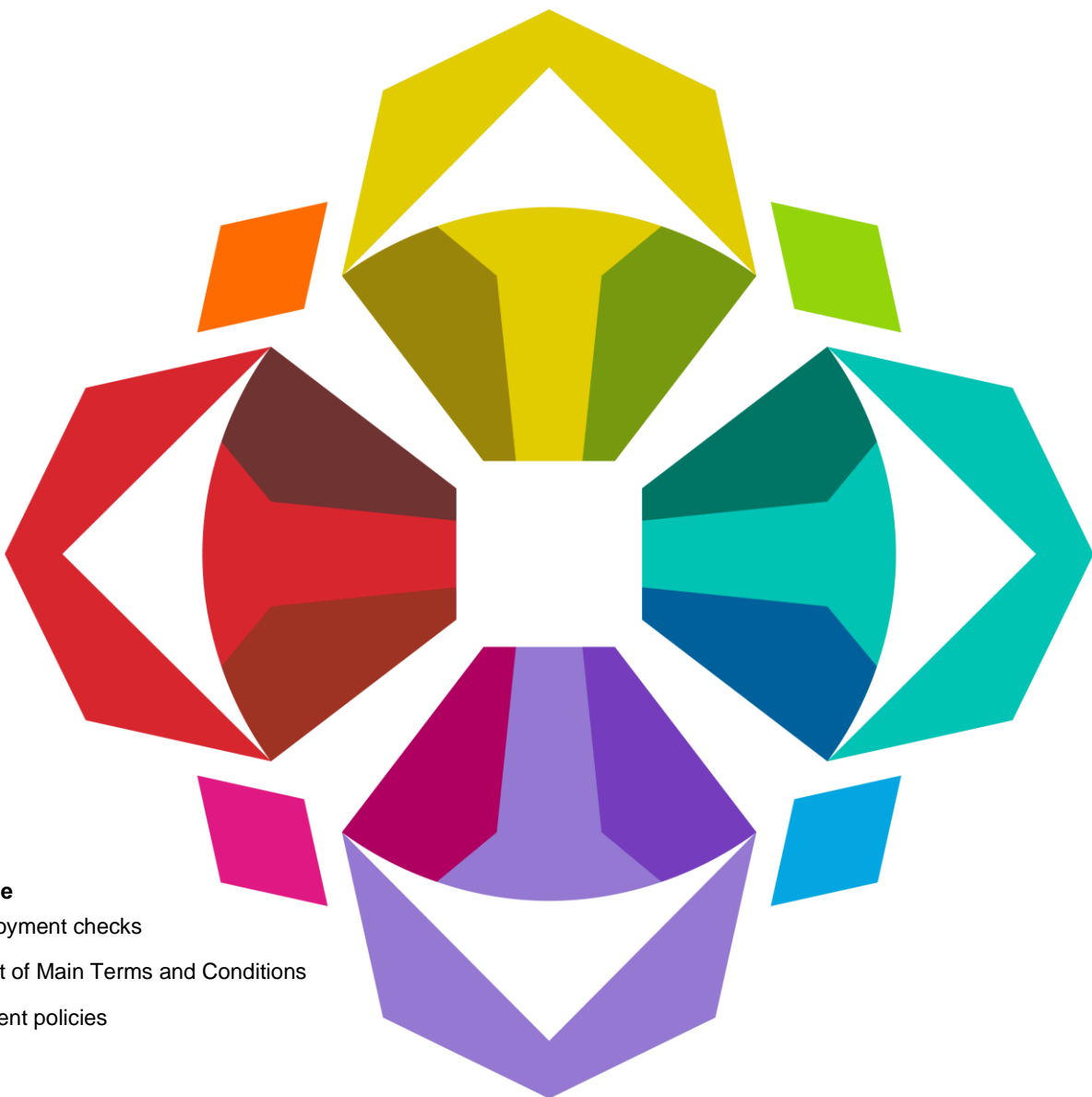


Compliance requirements for new employers in Great Britain



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When setting yourself up as an employer in Great Britain it is important to ensure that you understand and follow all the relevant rules. This Inbrief summarises the main legal obligations and administrative requirements that apply to new employers.

Please note that this Inbrief does not cover Northern Ireland, where many of the principles are the same but specific laws may be different.

Pre-Employment Checks

Immigration

It is a criminal offence to knowingly employ an illegal worker, or to have reasonable cause to believe this is the case. There is a civil penalty regime for employing someone who does not have permission to work in the UK. An employer must also ensure they do not employ a person outside of any restriction on the type of work they can do, or the amount of hours per week they can work.

An employer is responsible for checking that all its employees have the right to work in the UK, even if they will be working at home. If the employer has performed the checks correctly, it will have a statutory excuse against liability for a penalty of up to £20,000 if a person turns out to be an illegal worker. The employer must carry out right to work checks in line with the Home Office document, [Right to work checks: an employer's guide](#). It is important to note that the employer will not have an excuse if it knowingly employs an illegal worker or has reasonable cause to believe it is doing so, regardless of any document checks carried out before or during a person's employment.

Depending on the circumstances of the individual, a right to work check should normally be carried out as a digital, online or manual check. The Home Office [Employers' right to work checklist](#) covers the process for each of these. Where indicated in the Employer's right to work checklist, or where an individual has an outstanding application, administrative review or appeal, the employer should use the [Employer Checking Service](#) and obtain a Positive Verification Notice.

Immigration law is complex, particularly where a person has restrictions on their right to work or is a

sponsored worker, and there are significant penalties for getting it wrong. Advice should be sought if required, and our team of immigration specialists would be very happy to assist with any questions that you may have.

Other Checks

Employers usually take references from former employers and often check the prospective employee's qualifications. Rules about rehabilitation of offenders and data protection laws mean that criminal record checks can only be used in limited circumstances.

Statement of Main Terms and Conditions of Employment

When an employer first employs someone, it is required to give them a statement of the main terms and conditions of their employment no later than the beginning of their employment. The contents of the statement are determined by statute. For more information see our [Inbrief on Contracts of Employment](#).

Employees also have a number of minimum rights which should be reflected in their contract, including:

- ▶ to be paid at least National Minimum Wage;
- ▶ to be given sufficient rest breaks;
- ▶ 5.6 weeks' paid holiday each year;
- ▶ a right to minimum statutory notice on termination of employment.

Employment policies

Employers are required to have certain policies and procedures. Some are a minimum legal requirement, while there are many other policies that it is good practice to have in place. Legally required policies are:

- ▶ disciplinary policy;
- ▶ grievance policy;



- ▶ suite of data protection compliant personal data policies, including Privacy Notice, Record of Processing, Breach Policy, Workplace Responsibilities Policy, External Privacy Notice;
- ▶ equal opportunities/diversity policy (not strictly a legal requirement, but an essential element of a defence to a discrimination claim);
- ▶ health and safety policy statement; and
- ▶ if turnover is greater than £36 million in a financial year, a statement on modern slavery.

Other policies that it may be useful to have include:

- ▶ harassment and bullying policy;
- ▶ sickness absence policy;
- ▶ flexible working policy;
- ▶ home working policy;
- ▶ whistleblowing policy.

Payroll

Pay As You Earn (PAYE) is the system that HM Revenue & Customs (HMRC) uses to collect Income Tax and National Insurance contributions (NICs) from employees' pay as they earn it. An employer has to register with HMRC and set up a payroll system. Once registered, the employer receives their Employer PAYE reference and links to the HMRC website where it can download all the forms and information needed to operate PAYE.

Employers are required to deduct tax and NICs from employees' pay each pay period and to pay Employer's Class 1 NICs if they earn above a certain threshold. These amounts are paid to HMRC monthly or quarterly. If the correct amounts are not sent, or are sent in late, interest may be payable. In order to make such deductions from an employee's pay the employer needs their employer PAYE reference, the employee's tax

code and the employee's National Insurance number. The employee will be able to supply their National Insurance number. The employee's tax code is usually available from their P45 or P46. The employee's gross pay, deductions and net pay must be outlined in an itemised payslip.

After the end of the tax year (which runs from 6 April to 5 April every year) an employer must send HMRC an Employer Annual Return (form P35 and forms P14). Almost all employers are required to file this online.

Pension Auto-Enrolment

All employers in the UK must automatically enrol eligible jobholders in a qualifying pension scheme or the National Employment Savings Trust (NEST), unless they are already members of a qualifying scheme. For more information see our [Inbrief on Pension auto-enrolment](#).

Record Keeping

An employer's main legal obligations in relation to record keeping are:

- ▶ Payroll and wage records must be kept for six years from the financial year-end in which payments were made.
- ▶ PAYE records must be kept for not less than three years after the end of the tax year to which they relate.
- ▶ Sickness records required for the purposes of statutory sick pay must be kept for three years after the end of the tax year in which payments are made.
- ▶ Maternity records must be kept for three years after the end of the tax year in which the maternity pay period ends.
- ▶ Any report of a reportable accident, death or injury in connection with work must be kept for at least three

years from the date the report was made.

- ▶ Records in relation to hours worked and payments made to employees must be kept for six years beginning with the end date of the following pay reference period.
- ▶ Immigration checks must be kept until two years after the termination of employment.

Working Time

All employers must comply with the Working Time Regulations 1998, which set out limits on working time together with employees' entitlements to rest breaks and holidays. Employers are responsible for managing employees' working time. For more information see our [Inbrief on the Working Time Regulations](#).

The main obligations for employers in relation to employees who work during the day are:

- ▶ Take all reasonable steps to ensure that each worker's average working time (including overtime) does not exceed 48 hours per week. The averaging is performed over a 17-week period.
- ▶ Give workers "adequate" rest breaks where the pattern of work is such as to put their health and safety at risk, in particular where work is monotonous.
- ▶ Keep and maintain records showing whether the limits on average working time and provision of health and safety assessments are being complied with in the case of each worker.
- ▶ Allow workers the following rest periods unless they are exempt (in which case compensatory rest will usually need to be given):
 - 11 hours' uninterrupted rest per day;



- 24 hours' uninterrupted rest per week (or 48 hours per fortnight); and
 - a rest break of 20 minutes when working more than six hours per day.
- ▶ Allow workers 5.6 weeks' paid holiday a year (equivalent to 28 days for a full-time worker including the usual eight UK bank holidays).

There are special rules for young workers and night workers.

Health and Safety

Employers are responsible for the health and safety of their employees while they are at work.

Recommended steps

- ▶ Appoint a "competent person". This could involve appointing a specific employee to undertake particular responsibilities as a mobile Health & Safety Manager, or use an external consultant as and when required.
- ▶ Have a written health and safety policy statement (all employers with five or more employees are legally required to have such a statement).
- ▶ Manage health and safety risks in the employees' workplace. In the case of homeworkers, this will involve carrying out a risk assessment and taking appropriate measures in light of that assessment. This may involve a health check of employees if deemed necessary.
- ▶ Consult all employees on health and safety and provide them with training and information relating to health and safety. There is certain information that employees must be provided with before starting or as soon as practicable after they have started. Please see the Health and Safety Executive (HSE)

site (linked below) for further information.

- ▶ Employees must also be informed if there are changes that may have health and safety implications (please see the HSE site).
- ▶ Protect the safety and health of employees, including people with disabilities, and provide welfare facilities. "Welfare facilities" are those that are necessary for employees' well-being, such as washing, toilet, rest and changing facilities, and somewhere clean to eat and drink during breaks. The employer is responsible for providing employees with personal protective equipment free of charge where such equipment is necessary, and paying for eye and eyesight tests for those who use computers.
- ▶ Make appropriate arrangements for first aid, accidents and ill health.

Record-keeping and reporting obligations

Employers have record-keeping and reporting obligations to the HSE in relation to work-related deaths, injuries, cases of disease, or near misses involving employees no matter where they are working. Further information can be found on the HSE website.

Employers who have ten or more employees (regardless of location) must maintain an Accident Book, to record all work related injuries, accidents and near misses. This should record:

- ▶ the name and address of the person injured or involved in the incident;
- ▶ what happened, when and where;
- ▶ who witnessed the incident; and
- ▶ any other relevant details.

Employers' Liability Insurance

Employees may be injured at work or they, or former employees, may become ill as a result of their work while in employment. They might try to claim compensation from their employer if they believe it is responsible. Employers are obliged to have at least a minimum level of insurance cover against any such claims.

Modern slavery statement

If turnover exceeds £36 million in a financial year, an employer needs to publish a Modern Slavery Act Transparency Statement on their website. This must set out steps taken to ensure slavery and human trafficking is not taking place in its supply chain or any part of its own business (or must state that the business has not taken any steps, though this is unlikely to be an attractive option). The statement must be approved and signed off by senior management before publication on the website. For more information see our [Inbrief on the Modern Slavery Act](#).

Registration with the Information Commissioner's Office

A prospective employer needs to notify the Information Commissioner's Office (ICO) that it intends to process personal information before processing any personal data about employees, and pay a small data protection fee.

The [ICO's Employment Practices Code](#) considers data protection in employment records and makes a number of recommendations that an employer should consider when deciding on the retention of employee records, balancing an employer's need to keep records and a worker's right to respect for their private life.



The Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR) contain the key record-keeping requirements in respect of UK law. The [ICO's guide to the UK GDPR](#) is a helpful starting point. For more information see our [Inbrief on Data Protection in Employment](#). Our team of data specialists would also be very happy to assist with any questions that you may have.

Useful resources

- ▶ Right to work checks:
 - [Use the Employer Checking Service - GOV.UK \(www.gov.uk\)](#)
 - [View a job applicant's right to work details - GOV.UK \(www.gov.uk\)](#)
 - [Right to work checks: an employer's guide - GOV.UK \(www.gov.uk\)](#)
 - [UK Visas and Immigration - GOV.UK \(www.gov.uk\)](#)
- ▶ Payroll:
 - [PAYE and payroll for employers: Introduction to PAYE - GOV.UK \(www.gov.uk\)](#)
- ▶ Working time guidance:
 - [The Working Time Regulations \(hse.gov.uk\)](#)
- ▶ Health & safety obligations and guidance:
 - [A competent person \(hse.gov.uk\)](#)
 - [Health and Safety Made Simple: The basics for your business \(hse.gov.uk\)](#)
- ▶ Reporting requirements:
 - [How to make a RIDDOR report - RIDDOR - HSE](#) or by telephone on 0845 300 9923
 - [Reporting accidents and incidents at work \(hse.gov.uk\)](#)
- ▶ Employer's liability insurance guidance:
 - [Employers' Liability \(Compulsory Insurance\) Act 1969: A guide for employers HSE40](#)
- ▶ Registration with the ICO office:
 - [Data protection fee | ICO](#)
- ▶ Record keeping – data protection guidance:
 - [The employment practices code \(ico.org.uk\)](#)
 - [Guide to the UK General Data Protection Regulation \(UK GDPR\) | ICO](#)

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