

Embark

Business Start Up Pack

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ENDEAVOUR PARTNERSHIP 
Business Lawyers

Westminster, St. Mark's Court, Teesdale Business Park, Teesside, TS17 6QP
T: 01642 610 300 **DX:** 723015 Stockton 10 **W:** www.endeavourpartnership.com

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BUSINESS START UP PACK

Introduction

We hope that you find the contents of this Business Start Up Pack a useful guidance as you embark upon your new business venture. The pack is intended to highlight key areas which you should consider when setting up in business, although it is not intended to be a replacement for professional advice.

We offer a discounted one-off 30 minute consultation with a legal expert from one of our specialist departments within the firm. Please refer to the contacts sheet at the back of this pack for contact details.

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CHOOSING THE RIGHT STRUCTURE FOR YOUR BUSINESS

Sole Trader, Partnership, Limited Liability Partnership or Limited Company?

When deciding on the right structure for your business it is important to consider all of the available options because there are a number of advantages and disadvantages to each of them.

Sole Trader

If you intend to be sole owner and responsible for the running, managing and developing your business, possibly with the help of employees, then the sole trader option is the most straightforward and least expensive way of setting up in business.

The advantages of operating as a sole trader are:

- Few formalities. There are no basic registration requirements although you must keep accounts because you must disclose any profit to the Inland Revenue and you must register for VAT if your turnover exceeds £73,000.
- You are entitled to all of the profits of the business.

The disadvantages of operating as a sole trader are:

- You are responsible for all of the debts of your business so if your business fails you could lose all of your personal assets including your home and any savings you have.
- The status of a sole trader compared to that of a limited company can, in some instances, be regarded by customers and suppliers as inferior which in turn could affect your ability to secure contracts, restrict growth, secure funding etc.

Partnership

Where you have two or more people that wish to set up in business together then a partnership is one option. With the exception of certain professional partnerships, such as solicitors or accountants, the maximum number of partners that a partnership can have is 20.

The advantages of operating as a partnership are:

- Low set up costs.
- Few formalities. Again, there are no registration requirements. It may be desirable to enter into a Partnership Agreement which sets out the partners' duties but this is not compulsory. In the absence of a Partnership Agreement, the Partnership Act 1890 governs the relationship of the partners.
- Partners can bring a greater combination of skills and practical knowledge and experience to the business.
- All of the partners take part in the management of the business and any risks or losses that are incurred are shared by all of the partners.

The disadvantages of operating as a partnership are:

- The partners and the partnership are one and the same, therefore, each partner has joint unlimited personal liability for the debts of the partnership and is liable for the actions of the other partners.

It is possible to have a limited partnership, as opposed to a limited liability partnership which is discussed in more detail below, where the limited partner(s) contribute capital but are not liable for the

debts of the partnership. A limited partner cannot, however, take part in the management of the business and there must be at least one partner who has unlimited liability and runs the business. A limited partnership must be registered at Companies House.

- Technically, a partnership ceases to exist if there is a change in its membership.

Limited Liability Partnership

The advantages of operating as a limited liability partnership are:

- The protection of limited liability, whilst allowing the partners to take part in the management of the business.
- A limited liability partnership, like a limited company, has its own legal personality distinct from those of its members, therefore, any change in membership has no effect on the partnership's existence.
- Any profits are shared amongst the members of the LLP who pay income tax on their shares.

The disadvantages of operating as a limited liability partnership are:

- Greater Legal Requirements. A limited liability partnership must register with Companies House and then file its accounts and an annual return annually together with details of any changes in its membership etc as and when they arise.
- There must be at least two "designated members". Designated members have greater responsibilities than other members. If the LLP does not specify who are the designated members then all members are classed as such.

Limited Company

The advantages of operating as a limited company are:

- There is no limit on the number of members that a company can have.
- The liability of the members for the company's debts is limited and does not extend to the personal assets of each member unless a member has provided a personal guarantee or acted fraudulently.
- There is better access to funding. Companies are often regarded as a more attractive proposition by lenders. A company can also issue new shares to raise capital.
- The resignation, death or insolvency of a member does not affect the company's existence.
- Separation of ownership and management. Generally, decisions are based on the will of the majority of the members and the day to day running of the company is left to the directors of the company as opposed to the members although, in some instances, these may be one and the same.

The disadvantages of operating as a limited company are:

- Public disclosure of company information e.g. the annual accounts.
- More complex regulatory regime. A limited company is governed by its constitutional documents ie its Articles of Association and by statute, chiefly, the Companies Act 2006.
- Increased Administration. Companies House must be kept up to date on any changes that occur whether these be in relation to the company's membership, its directorship, its authorised share capital, its constitutional documents and a whole host of other things.

CHOOSING A BUSINESS NAME*

There are a number of things that you need to take into account when choosing the name for your business.

- Will the name you choose create the right impression with customers?
- Is it easy to remember?
- Will customers associate the name with your business?
- Does it say what you do?
- Could it help or hinder the future growth and development of your business?
- Do you intend to trade under a business name? If so, it must be compliant with the requirements of the Part 41 of the Companies Act 2006, and the requirements of the Company and Business Names (Miscellaneous Provisions) Regulations 2009
- Is your company's corporate name compliant with the requirements of the Companies Act 2006?
- Does any one else already trade under the same or a similar name or does it infringe a registered trade mark?

Creating the right impression

If you decide to set up a business selling fresh home-made produce then the name BERT'S FAST FOODS will do little to help promote the image you want, nor does it let customers know what you really do.

Looking to the future

Including the location of your business in the name, for example THORNABY STATIONERS can help let customers know where you are, but if you decide to move or things go well and you want to open a new business in another town, the name THORNABY STATIONERS can then become a liability.

What's a business name?

If an individual does not trade under his own name, for example:

- *Fred Smith trading as Fred's Butchers*

OR

in the case of a partnership in the names of the partners, for example

- *L Wright, G Robson and P Smith trading as WRS Farm Supplies*

OR

if a limited company trades under a name which is different to its corporate name

- *North-East Way Motor Company Ltd trading a NEW Motor*

then the business is trading under a business name and must comply with the requirements of Part 41 of the Companies Act 2006, and the requirements of the Company and Business Names (Miscellaneous Provisions) Regulations 2009 (the "Regulations"), as amended.

Is your business name compliant with the Companies Act 2006 and the Regulations?

Certain business names need the approval of the Secretary of State, for example, if it is likely to mislead the public or gives the impression that it is connected with Her Majesty's Government or a local authority. Also a business name must not end in the words limited or plc.

There are also a number of disclosure requirements. Since the public cannot tell from a business name who the actual owners of the business are, the Act requires the name of either an individual or the partners or the corporate name and a contact address for each to be disclosed in a prominent place at the business's premises and on business stationery such as letters, orders, invoices and receipts.

Non-compliance with Part 41 of the Companies Act 2006 (re business names) is a criminal offence.

Is your company's corporate name compliant with the Companies Act 2006

A company's corporate name is also subject to restrictions. This is currently governed by Part 5 of the Companies Act 2006.

As discussed below, the name must not be the same as or too similar to an existing name, or must it contain the words unlimited, limited or plc except at the end of the name. It must not be offensive nor must it constitute a criminal offence.

As with business names, there are certain words that can only be used with the consent of Companies House or some other body and the name must not suggest a connection with Her Majesty's Government or a local authority.

The name I've chosen already exists

A register of company names is maintained by Companies House.

Companies House will reject any name that is the same as that for an existing company but not one that is similar. Under section 69 of the Companies Act 2006, any 'person' can complain to a company names adjudicator if a company's name is the same as a name associated with the objector in which he has goodwill, or if it is sufficiently similar that it is likely to mislead.

A new business may be liable for "passing off" when it registers either a company or trading name which is too similar to an existing one, if it causes confusion to the general public. The existing business may seek an injunction to stop the new business from using the name and if the breach persists, it may seek damages.

It is also important to do a trade mark search to make sure the name does not infringe a registered trade mark, otherwise, if you trade under that name, proceedings may be commenced for infringement.

The Regulations specify which letters and symbols can be used in a company name, they also specify a standard style or format for a name, and specify the maximum length of a company name. The Companies Act 2006 has introduced a new power to allow the Secretary of State to direct a change of a newly registered name if it is "too like" a name on the index pursuant to section 67 of the Act.

Trading disclosures

Under the Companies Act 2006 and the Companies (Trading Disclosures) Regulations 2008 the registered name of the company must be clearly displayed at the registered office, at any other premises at which it carries on business, and at any location at which it keeps its records available for inspection.

The company is also required to display its registered names in: business letters, notices and official publications; bills of exchange, promissory notes, endorsements and order forms; cheques and orders signed by or on behalf of the company; invoices, demands for payments, receipts, letters of credit and bills of parcels; its website; applications for licences to carry on trade or activity; and all forms of business correspondence and documentation.

A company is also required to display the following information on all stationery (including emails) and on the company's website, namely: its name; registered number; registered office; the part of the UK in which it is registered; the fact that it is a limited company (if it is exempt from using the word 'limited' or if it is a community interest company); the fact that it is an investment company (if it is such a company); and if the company's business letter includes the name of a director (other than in the text or as a signatory) the letter must disclose the name of every director .

All displays must be in characters that can be read by the naked eye.

TAXING TIMES

Corporation Tax

Corporation tax is payable on the profits that a company makes. Penalties and/or interest charges will be incurred if you do not inform HM Customs & Excise that you are liable to pay corporation tax, if you complete your tax return late or you fail to pay any amount due on time.

Rates of corporation tax are fixed for each year (6 April to 5 April). The rate for 2011/2012 is 21% for companies with profits of up to £300,000 per year (small profits rate). The full rate of 26% is for companies with profits over £1.5 million. There is a sliding scale between the lower and upper rates known as "marginal relief".

Income Tax and National Insurance

Sole traders and partners are required to complete an annual self assessment income tax return form and contribute Class 2 and Class 4 National Insurance contributions at the current rates.

The Inland Revenue must be informed that you have become self-employed either as a sole trader or a partner within 3 months of setting up.

Company directors (because they are normally employees of the company) are also liable to pay income tax and national insurance but this is done through the PAYE system.

VAT

VAT applies to most business transactions involving the sale of goods and services. Once turnover reaches £73,000 per annum you must register for VAT. The standard rate of VAT has increased from 17.5% to 20% as from 4 January 2011 and accordingly any sales of standard rate goods or services made on or after 4 January 2011 you must charge VAT at 20%. There is also a reduced rate of 5% and a zero rate that applies to certain goods and services. Some goods and services are also exempt.

The business pays VAT on its purchases (input tax) and charges VAT on its sales (output tax). If the amount that the business receives in output tax is greater than the amount that it pays in input tax, the difference is paid to HM Customs & Excise. If the amount is less then HM Customs & Excise will refund the difference.

Businesses with a turnover of less than £73,000 per annum can voluntarily register for VAT. The advantage of doing this is that input tax can then be reclaimed. The disadvantage is the increase in administration brought about by the need to issue VAT invoices and the need to keep detailed accounts of the input tax that the business pays and the output tax that it receives. If your customer is not VAT registered or exempt it also increases the cost of your goods and services to them by 20%.

INTELLECTUAL PROPERTY

What is it?

Every business has its own intellectual property ('IP') such as its name, logo it uses, ideas and designs, know-how, secret formula and procedures etc..

The IP of every business is usually a very important asset as it helps your business to stand out from the crowd. There are many businesses nationwide and worldwide which we recognise immediately by their trade mark, logo or name and as a result of this their IP has become a very valuable asset. Examples include Coca Cola, Pepsi, BT, Kelloggs etc.

How is IP created?

Intellectual property can automatically arise and is protected by law BUT there are ways in which you can register and protect your IP which can greatly assist you in preventing others from infringing it, (i.e. using it without your consent) and generate revenue either by way of royalties or by selling your IP.

Protection of IP

IP can be split into four different categories, as follows:-

Patents

This covers inventions, processes, what they do, what they are made of etc. The Government grants a patent to an inventor for an invention. This gives the inventor the right to stop others making or using the invention. The invention becomes the property of the inventor and the inventor can sell it or rent it to others.

A patent will only be granted if:-

- the invention is new;
- it can be used or made in some kind of industry; and
- it involves an inventive step

An invention is not patentable if it's:-

- a discovery, scientific theory or a mathematical method;
- an aesthetic creation, or a literary, dramatic musical or artistic work;
- a scheme or method for performing a mental act, playing a game or doing business;
- a computer programme; or
- the presentation of information.

The UK Patent Office can give the holder rights in the UK and the right to stop others importing into the UK.

Trade mark

A trade mark can include a name, a sign, a logo, a picture, or a combination of any of these.

A trade mark can only be registered if:

- it is distinctive to the type of goods which you are registering it for;
- it is not contrary to law or morality;
- it is not deceptive; and
- it is not similar or the same as a current trade mark for the same or similar goods or services

If you want guidance as to whether a trade mark will meet the criteria for registration then you should contact a solicitor who specialises in Intellectual Property.

Design rights

A design is a monopoly right for two or three dimensional products taking in different lines, colours, shapes, textures, material etc..

To qualify for registration the design must be new and have individual character. It must not be the same as a design already available to the public.

A design cannot be registered if:-

- it deals only with how products work;
- it is parts of a product which are normal visual in normal use; or
- it is contrary to law or morality

Copyright

Copyright arises immediately as soon as a 'work' is created.

Copyright can be claimed on the following:-

- original literary works (novels, manuals, computer programmes, newspaper/ magazine articles, song lyrics);
- original dramatic works (dance, mime);
- original musical works;
- original artists works (paintings, sculptures, engravings etc.)
- sound recordings;
- films,
- broadcasts

Copyright cannot protect ideas only, it protects the way the idea is expressed.

How to protect it

Patents, trade marks and design rights can all be registered at the Patent office. This can offer protection for a set period (which is different for patents, trade marks and designs) and for a fee. There are certain requirements and conditions which must be met before you are able to register each of these.

Copyright protection arises automatically and is an unregistered right but there are things which you can do in order to prove the date on which the work (and the copyright) was created. Although you don't have to, it is probably a good idea to mark your work with the © symbol and state your name and year that the work was created.

We would recommend that legal advice is obtained as to how to go about protecting your IP so that any potential difficulties can be identified BEFORE THE FEE FOR REGISTERING IS INCURRED.

You may also want to register a domain name if your business has dealings via the internet.

Just as you would like to protect your IP other businesses would do likewise and therefore you will need to check that you are not infringing the IP of anybody else. Searches can be made at the Patent office and other search providers before you incur the costs of either registering OR using the IP in your business (i.e. logos on stationery etc.). If you do infringe you could be found guilty of committing a criminal offence!

IP created in the course of employment

The general rule is that any IP created by an employee of the business in the course of and relating to their employment is the property of the employer. However, we would recommend that a clause to this effect is explicit in the contract of employment, and that legal advice is obtained as to the drafting of that clause.

An employee will usually retain any moral right to any work which he has created. This means that they have the right to be named as the author of any work, and to approve/ reject any proposed changes to that work which the employer wants to make!. This again may be something which you would like to cover as a term in their employment contract- that they are giving up any moral right which they would have.

The situation when IP is created on your behalf by an independent individual/ firm may be different and therefore further advice on this should be sought.

DATA PROTECTION

Data protection is a very wide and detailed area of law. This guidance note is intended to provide a very general view and to make you aware of the principles only. If you have any queries relating to data protection then we suggest that you contact either the Information Commissioner's office, or a lawyer who specialises in Data Protection.

Introduction

The Data Protection Act 1998 (the 'DPA') is concerned with the protection of data. It is essentially concerned with the protection of data/ information which your business holds about identifiable living individuals, both held on a computer and a manual filing system (provided that manual filing system is organised into a relevant filing system). Data includes name, address, tax information, employee records, medical records etc.. It also includes facts and opinions about them along with your business's intentions towards them. What it does not include is lists of simply names and addresses of business (except sole traders).

Data goes further than just the written word and includes also things such as DNA samples, photos, CCTV images etc.

The definition of "data" was considered in the case of *Durant v Financial Services Authority*. In this case, the Court of Appeal looked at 'data which relate to' and they concluded that data will only relate to an individual if it is "information that affects a person's privacy, whether in his personal or family life, business or professional capacity". Therefore simply because a person's name appears in a document won't necessarily mean that it is 'personal data' about that individual.

They also considered what is meant by 'a relevant filing system' and concluded that it means information relating to an individual which is structured either by reference to individuals, or another criteria but is structured in such a way that the information is readily accessible. It therefore won't cover files which have no clear filing structure, or which are simply arranged in chronological order. It also does not cover information which is not biographical, a simple mention of a person's name in a document or letter will not be covered if the document or letter is not about that person.

Who does the act apply to?

The DPA applies to virtually every business in the UK. Basically, if your business is processing data (i.e. obtaining it, recording it, holding it, adapting it, altering it, retrieving it, consulting or using it, blocking erasing or destroying it) then the act applies to you.

The Information Commissioner

One of the main functions of the Information Commissioners Office is to ensure that organisations that are processing data are doing so in line with the obligations that are placed upon them by various pieces of legislation such as

- The Data Protection Act;
- Freedom of Information Act; and
- Privacy and Electronic Communications Regulations.

There are eight data protection principles in the Data Protection Act 1998. Except to the extent that any data controller is able to claim an exemption from any one or all of them, all of the principles apply to all data controller who must comply with them. A data controller is a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are or will be processed. The term comprises not only individuals but also organisations such as companies and other corporate and unincorporated bodies of persons.

A data controller is also required to register details of their data processing with the Information Commissioner.

The Information Commissioner maintains a public register of data controllers. Each register entry includes the name and address of the data controller and a general description of the processing of personal data by a data controller. Individuals can consult the register to find out what processing of personal data is being carried out by a particular data controller. "Notification" is the process by which a data controller's details are added to the register. "Notification" is the process by which a data controller's details are added to the register. The Data Protection Act **requires every data controller who is processing personal data to notify unless they are exempt.**

Failure to notify is a criminal offence.

Exemptions from having to notify are possible for:

1. Some not for profit organisations.
2. Processing of personal data for personal, family or household affairs (including recreational purposes).
3. Data controller to only process personal data for maintenance of a public register.
4. Data controllers who only process personal data for:
 - Staff administration (including payroll);
 - Advertising, marketing and public relations (in connection with their own business activity); and
 - Accounts and records

If you do not fall within one of the exemptions and you are processing personal data you must register notification with the Information Commissioners Office.

In order to notify a notification form must be completed by one of three ways:

1. By Internet. (Follow the step by step guide on the Information Commissioners website www.ico.gov.uk).
2. Telephone. Direct to the IC office on 01625 545740.
3. Completing a request for a notification form.

The form takes the following format:

The form must be sent by post (even if completed on the Internet). You will be deemed to be notified on the day the Information Commissioners Office receive the correctly completed form. Completing the form involves answering certain questions and providing information as follows:

1. Providing information about the data controller who is notifying i.e. name, address and contact details.
2. A general description of the processing of the personal data being carried out. A particular template is selected for your particular type of business and the purpose for which personal data is processed.
3. Provision of additional information i.e. security statement and statement of exempt processing. (Note: part of this information is mandatory and failure to complete this renders the notification invalid.
4. The declaration must be signed and returned to the Information Commissioners Office with the fee of £35 or direct debit instructions.

The notification period is one year. The renewal fee is £35. (Any change to the fee is advised by the Information Commissioners Office). Once registered the Information Commissioners Office will write to you before the expiry date of your register entry in order that your yearly renewal notification can be made on time.

A notification will expire unless it is renewed every year.

Outsourcing

A lot of businesses choose to outsource some of their business to third parties, for example many businesses have an external organisation dealing with payroll, or have a third party as an internet provider. If you have such an arrangement in place then the third party to whom you send data will be known as the 'Data Processor'. The DPA does recognise that this scenario does exist and therefore have set out guidelines as to what you need to do in that scenario. You should ensure that you have in place a contract with the Data Processor and there are certain clauses which you need to cover in such a contract.

You should also satisfy yourself that the Data Processor has appropriate security measure in place to protect the data.

Monitoring e-mails

You have to ensure that you have the consent of your employees to monitor their e-mails. You should have a clause to that effect in their employment contract and ensure that you have a policy in place on this which your employees are aware of.

EMPLOYMENT

Employment law can be a minefield! It is therefore important to be aware of the law in this area and put in place procedures and policies. This guidance note is intended to provide a very brief overview of the law so that you have a general awareness of the essential requirements. We recommend that you seek advice from a lawyer who specialises in employment law when drafting employment contracts, policies or procedures, or if you receive a claim/grievance, or potential claim/grievance, from an ex-employee or current employee.

The Employee's status

For some businesses, it will be obvious who their employees are, but it is possible for some businesses inadvertently to be forced to assume employment responsibilities for others, for example, agency workers or "self employed" subcontractors as if they had been employees. There have been many cases decided on this point, and most turn on their own circumstances so it is impossible to give general advice. The minimum requirement for an employment relationship to arise is that the employer is obliged to give the work to the employee and the employee is obliged to do it (i.e. unable to refuse that particular work). Other matters which the courts have taken into account, to determine whether or not a person is an employee include whether the business is:-

- giving orders to that person;
- providing the tools that they are using;
- determining the hours which they work;
- paying their wages including tax and national insurance

If the answer is yes to some or all of these, then it may be that they are considered to be your employee!

If you are at all in doubt, seek legal advice.

Written statement of terms

Evidence of the terms of a contract of employment can be found in:-

- job adverts;
- a written offer letter;
- something which you have agreed orally;
- a written statement;
- an employee handbook; and
- grievance procedures and disciplinary procedures (or any other procedure that you may have in place)

However, by law you have to provide an employee with a written statement of terms within the first two months that they are with you. This will then set out the terms on which they have been engaged (which may be useful evidence if a claim is brought by the employee regarding their terms). If you fail to provide a written statement then if an employee did bring a claim (for any reason) then your failure to provide the written statement can increase any compensation that they are awarded.

A statement of terms must cover the matters with an asterisk and should cover the others:-

- *full name and address of both the employee and the employer
- *commencement date and date of continuity of employment
- *principal place where they are employed
- *job title (and often, though not obligatory, a job description);
- *hours of work;
- *salary - including provisions for salary review, and frequency of payment. It should also cover whether they are paid extra for overtime or working on bank holidays;
- *holiday entitlement;
- entitlement to sick pay if they are absent due to sickness
- disciplinary and grievance procedure
- pension provision, if any
- details of any relevant collective agreements (i.e. those agreed with a union)
- length of employment if a fixed term and/or notice period

Hours of work

The Working Time Directive 1998 sets out that an employee should not work in excess of 48 hours per week (including overtime). Currently, an employee can 'opt out' of this 48 hour limit by a written agreement to that effect with their employer. Employers should maintain records to show clearly which employees have 'opted out'. An employee can terminate an opt out agreement by giving at least seven days notice to the employer (but the employer can insist on a longer notice, which cannot exceed 3 months, provided that the opt out details this).

National Minimum Wage

The current national minimum wage is as follows:-

Category	Minimum wage
Apprentices under 19 years of age, or 19 or over but in their first year of apprenticeship	£2.60 per hour
Young workers (between 16 – 17 years)	£3.68 per hour
Employees aged between 18 –20 years	£4.98 per hour
Employees aged 21 and over	£6.08 per hour

National Minimum Wage rates are reviewed annually in October.

There are exceptions to the National Minimum Wage for:-

- self employed workers;
- voluntary workers;
- some apprentices;

- students carrying out work experience as part of their education course;
- trainees on government funded courses;
- members of the armed forces (excluding civilian MoD workers)

Employers must keep records so that they can show that they are at least paying the minimum wage. Failure to keep accurate records, pay the minimum wage or be obstructive towards an enforcement officer's investigations is a criminal offence. You can be fined up to a maximum of £5,000. Holiday entitlement

Each employee is entitled to a minimum of 28 days paid holiday leave per holiday year (your holiday year does not have to run January to December). The 28 day entitlement is inclusive of statutory public/bank holidays and is calculated pro rata to the hours/days which they work, and pro rata if they started work for you part way through the holiday year.

Holiday pay is the normal pay rate for the worker.

Statutory Sick Pay (SSP)

If an employee is absent through sickness for **four** days or more then they are usually entitled to be paid SSP (if the absence is for less than four days, they are not entitled). You only have to pay it to your employees, not to non-employees. Some employers do pay above SSP to employees and the conditions that apply are normally detailed in the Written Statement of Terms (see above). SSP is currently £81.60 per week.

Employees earning less than the NIC lower earnings limit are not entitled to SSP

Maternity and Paternity pay, leave entitlement and other family friendly obligations

Statutory Maternity Pay (SMP)

SMP is paid to female employees who:-

- have worked for you for a minimum of 26 weeks prior to the 15th week before the expected week of child birth; and at the end of the 15th week before the Expected Week of Childbirth ("EWC"); and
- earn more than the NIC lower earnings limit; and
- are still pregnant 11 weeks before the start of the EWC, or have already given birth.

SMP is payable for 39 weeks and is 90% of the employee's usual salary for the first 6 weeks from the date that maternity leave starts; and thereafter (for the remaining 33 weeks) the lesser of either 90% normal salary or (currently from April 2011) £128.73 per week. Businesses recover the cost of this from the government.

Maternity Leave

Since April 2007 all female employees, regardless of service, are entitled to 52 weeks Maternity Leave (ML). The first 26 weeks is known as Ordinary Maternity Leave (OML) and the last 26 weeks is known as Additional Maternity Leave (AML). SMP is payable for 39 of these weeks (see above). There is therefore no SMP entitlement during the last 13 weeks of ML – it is unpaid leave.

During maternity leave, in accordance with legislation, an employee's terms and conditions of employment and personal benefits (excluding remuneration which may include the right to bonus payments if applicable) continue to apply. For example holiday entitlement will accrue during leave and the employee can elect to tag that entitlement on to the end of her maternity period.

Right to Return to Work

If a female employee returns to work following 26 weeks OML, then she is entitled to return on to the same job and on the same terms on which she started OML. The employee is entitled to return to work after AML but it does not necessarily have to be the same job offered to her. It is best to take advice however.

Statutory Paternity Pay (SPP)

SPP is two weeks paid leave (paid at the basic rate of maternity pay (currently £128.73 per week from April 2011 or 90% of normal weekly earnings, if lower) to the father. Employees are entitled to SPP if:-

- it is taken within 56 days of the child's birth, or within 56 days of the first day of EWC if the child is born before the EWC;
- they are responsible for the child's upbringing;
- they are the biological father, the mother's husband or the mother's partner

They must have worked for you for a minimum of 26 weeks at the end of the 15th week before the EWC and have continued to work for you until the child is born.

The Additional Paternity Leave Regulations provide for the right to Additional Paternity Leave ("APL") which is exercisable by the parent of a child born on or after 3rd April 2011. APL is available to the father of the child or to a person of either sex who may be the mother's partner or the partner of the adopter.

To be eligible the employee must have been continuously employed for at least 26 weeks at the end of the 15th week before the EWC. The employee is entitled to take a period of APL commencing 20 weeks after the child's birth and ending 52 weeks after the same date. The APL must last between 2 and 26 weeks and be calculated as a multiple of complete weeks.

The right to take APL is dependant upon the mother having returned to work from maternity leave with at least 2 weeks of her maternity allowance or statutory maternity pay period remaining, so a father or partner who takes APL is only entitled to additional statutory paternity pay ("ASSP") for a period equivalent to the mother's unexpired pay period.

In order to qualify for APL the employee must provide the employer with at least 8 weeks written notice of their intention to take APL, and a declaration on behalf of the mother of the child that she has returned to work.

The employer is obliged to confirm the start and end dates of the APL within 28 days of receiving the notice.

ASPP for qualifying employees is currently (as at April 2011) £128.73 per week or 90% of weekly earnings whichever is lower.

Note : there are similar rights to maternity and paternity leave and pay in cases of adoption.

Other family friendly rights include:-

- Right to 13 weeks **unpaid** leave from birth until child is aged 5 or in the case of a disabled child until they are 18.
- Right to emergency time off – **unpaid** for example to organise alternative child care arrangements if the child minder is ill.
- Right to request flexible working (e.g. part time, shorter working days, annualised hours) for parents with children aged 17 (from April 2011 this will increase to under 18) and under or in the case of a disabled child until they are 18.

A summary of the various Work and Family Rights are set out in the table following this section.

Disciplinary and Grievance Matters

Since April 2009, employers and employees must refer to the ACAS Code of Practice when dealing with a disciplinary matter or receiving a complaint from an employee. The Code sets out the principles of what an employer and employee should do to achieve a reasonable standard of process. Effectively, the Code provides that it is no longer mandatory to follow the 3 step procedure and goes back to the previous regime before 2004 of procedural fairness, natural justice and equity, with the addition that tribunals will consider an adjustment of <25% or >25% in compensation for failure to comply with the Code.

In summary the new Code provides that:

- Issues must be raised and dealt with promptly;
- There must be an investigation to establish facts;
- Employers and employees alike must inform each other of the basis of the problem;
- Allow the employee to put their case;
- Right to be accompanied;
- Right to call witnesses;
- Right of appeal;
- Act with consistency and apply appropriate action or sanction;
- Keep written records.

Although the Code has no prescriptive time frame or steps it remains a little vague, and so for employment matters arising post April 2009 it is still advisable to follow the 3 step procedure of 1) statements to be sent to employee (in discipline cases) or employer (in grievance cases), 2) meeting to be held, and 3) right of appeal given, but also ensuring the additional rights granted by the Code are included within the process in order to ensure that matters are dealt with reasonably, expeditiously and fairly.

Unfair Dismissal

Currently, employees gain protection from unfair dismissal once they reach 12 months service (51 weeks really when one takes into account that the minimum notice period of one week will take them across the 12 month threshold). After that date employers can only dismiss for given reasons – misconduct, poor performance, ill health, redundancy, criminal offences or for a permitted other “substantial reason”. Prior to reaching 51 weeks service employers can dismiss without the dismissal falling into one of those reasons so it is certainly worth employers coming to a conclusion about the future of the employee well before the 51 week mark. However care should always be exercised that you are not discriminating against the employee (see below) as employees have protection against discrimination from day 1 (indeed, before!)

Discrimination

It is unlawful to discriminate against employees, potential employees or workers on the following grounds (“Protected Characteristics”);

- Sex, Pregnancy/Maternity,
- Sexual Orientation , Gender re-assignment
- Marital or Civil Partnership status
- Colour, Race, Religion or belief
- Disability

- Age

Harassment is also a form of discrimination when it is related to any of the above mentioned Protected Characteristics.

It is very easy to be caught by discrimination law as it is extremely complex. Employers can be held to have discriminated by refusing a pregnant or disabled applicant a job, for refusing a request to work part time, to make adjustments to a pc monitor for a partially sighted employee, or can be held liable for a discriminatory act of an employee (e.g. a sexist comment or the display of a page 3 calendar). It is very important to have an equal opportunities and anti bullying/harassment policy (there are standard versions available so they don't need to be time consuming or expensive to obtain) and to publicise and enforce it amongst the workforce.

The above is a very brief summary of some of the requirements placed on employers under Employment Law. If you have any issues it is best to seek advice before acting.

Work and Family Rights Table

Right	Required Service	Length	Paid/unpaid	Status	Notification
Ante Natal Time Off	Nil	Reasonable time as required	Full Pay	Employee (i.e. not worker)	Must seek permission. No deadline but must give as much notice as possible.
OM Leave	Nil	26 weeks	See SMP	Employee	Notice of intended start date should be given by the end of the 15 th week before EWC. Employee can change start date with 28 days notice or less if not reasonably practicable to give 28 days.
AM Leave	Nil	26 weeks	See SMP	Employee	No additional notice above that for OML required.
Maternity Pay (SMP)	26 weeks at the end of the 15 th week before EWC	39 weeks	90% earnings for 6 weeks, £128.73 for 33 weeks	Employee	Must notify employer of date intended SMP start at least 28 days beforehand, otherwise as soon as reasonably practicable.
Paternity Leave	26 weeks at the end of the 15 th week before EWC	Employee can choose to take 1 week or 2 continuous weeks within 56 days of birth.	See SPP	Employee	Must notify employer of wish to take leave 15 wks before EWC. Employee can change start date with 28 days notice if reasonably practicable.
Paternity Pay (SPP)	26 weeks at the end of the 15 th week before EWC	2 weeks	90% earnings or £128.73 per week which ever is less	Employee	28 days if practicable, otherwise as soon as reasonably practicable.
Additional Paternity Leave	26 weeks at the end of the 15 th week before EWC	Employee can take 2 to 26 weeks during the period between 20 weeks after the child's date of birth and 12 month's after the date of birth.	See ASPP	Employee	8 weeks notice of intention to take APL must be given.

Additional Statutory Paternity Pay ("ASPP")	26 weeks at the end of the 15 th week before EWC	2 to 26 weeks	90% earnings or £128.73 per week which ever is less	Employee	8 weeks notice of intention to take APL must be given.
Parental Leave	1 year	13 weeks in total over 5 years, before the child's 5 th birthday (18 weeks if the child is disabled).	Unpaid	Male or Female Employee with care of child up to 5 years of age (18 if disabled)	At least 21 days.
Flexible working – child care	26 weeks	As agreed	As agreed	Male or female employee with care of a child up to the age of 17 (18 if disabled).	Employee must submit their request before the child's 17 th birthday (18 th birthday if disabled). Process for request can take up to 14 weeks.
Flexible working – adult care	26 weeks	As agreed	As agreed	Male or female employee with care of an adult who is their spouse, partner, a relative, or lives with them	No deadline but the process can take up to 14 weeks.
Time off for Dependants	Nil	Short term (purely to provide assistance and make arrangements in the event of illness/injury/death of dependant, or unexpected incident at child's school).	Unpaid	Male or female employee with a dependant.	As soon as is reasonably practicable, even if that is at the time of the employee's return to work.

BUSINESS PREMISES – WHAT NEW BUSINESSES NEED TO CONSIDER.

Once the decision has been taken to start a business, it is vital, at an early stage, to consider from where the business will operate and the type of premises that are required to meet the particular needs of the business.

The 'type' of business will dictate the type of premises that are needed. For example, retail, warehouse, industrial or offices. The location of the premises can be equally as important and will be dependant on the needs of the intended client/customer base. A good example of sighting the correct location for a business is the necessity of a retail outlet to be in such a location where the footfall is at its absolute maximum in order to attract passing trade.

There are two methods of occupying property, these being;

- to purchase the freehold and therefore absolute ownership, **or** as is more commonly the case with commercial premises,
- to take a lease for a fixed term for which rent is paid to a landlord. Generally new business ventures would begin their operations from rented property, usually due to the relatively low initial costs of renting against the large capital investment required to purchase premises outright.

If a small business is acquiring an established business, it is likely that as part of the business sale, a lease would be included in the purchase price. Alternatively a 'new start' business may be required to take a lease of empty premises, in either case it is important that the terms of the proposed lease are clearly understood. Leases, after all can be a long term financial commitment.

In considering the terms of a lease the main factors to be considered are as follows.

Length of Term

The term of the lease is the time period that the tenant will be entitled to occupy the property. The term needs to be sufficiently long to enable the business to become established, but not so long as to become a burden to the tenant, should the tenant wish to leave the premises before the end of the term.

Identity of Tenant

The 'identity' of the tenant is an important factor in light of the fact that many landlords will not be willing to grant a lease of any significant length and value to a newly formed company. The landlord is likely to request an individual or company director takes the lease or as a minimum, will guarantee the lease should the tenant company be unable to pay the future rents.

Rent

The rent is the sum the landlord charges the tenant for the use and occupation of the property. The rent will generally be a fixed amount but later may be reviewed to take into account any increases in the market value of the property. In addition to the rent the landlord may charge for the provision of various service charges, for example maintaining and repairing any communal parts of a shared building. It is quite ordinary for the landlord to insure the building, but to charge back to the tenant the amount that the landlord pays by way of insurance premiums.

Additional Tenant's Obligations

The tenant will usually be responsible for the upkeep and general maintenance of the property. It is therefore important for a prospective tenant to obtain the advice of a surveyor prior to signing a lease, to ensure that the tenant is not going to incur a lot of expense in improving the property even before they have had an opportunity to begin trading.

The prospective tenant should always take the advice of a property agent or surveyor when negotiating the terms of a lease, as the surveyor will be able to provide an expert opinion as to the market value and the appropriate level of rent that the tenant should be expected to pay. Agents are also useful when it comes to negotiating any incentives that may be offered to a tenant to take a lease. Such incentives may involve the landlord making a one off payment to the tenant or granting the tenant a rent free period.

When budgeting for business premises, it is not only the purchase price and the rental payments that need to be considered. In the majority of commercial property transactions, the tenant or purchaser will be required to pay Stamp Duty Land Tax which is currently payable at a rate of 0-4% depending on the value of the property or level of rent passing under the lease.

Careful enquiries should also be made of the local authority to determine the likely level of business rates.

In light of the important decisions that have to be made and the potential liabilities concerning business premises and associated matters, it is essential the new business takes the appropriate advice at the outset.

REGULATORY GUIDANCE

Every business, irrespective of size has a legal responsibility to ensure that it complies with the health and safety legislation.

All employers have a duty under the law to ensure, so far as is reasonably practicable, the health, safety and welfare of people at work. The legislation seeks to protect a wide variety of people including employees, self employed people, customers, visitors to the premises, casual staff etc.

The Health and Safety Executive (“HSE”) and/or the local authority are the responsible bodies for enforcing the legislation.

In summary, it is a duty of a business to ensure that the workplace is safe and without risks to health and that there is sufficient knowledge and training in place for workers on health and safety.

All businesses must ensure that:

1. They register with the HSE or the Local Authority if involved in certain industries and if they employ staff.
2. If they have employees, that there is Employer’s Liability insurance in place and the appropriate certificate is displayed
3. That a risk assessment assessing any risks to health and safety is carried out if they have employees.
4. Any measures identified in the risk assessment are implemented.
5. They record significant findings/the risk assessment and the arrangements for health and safety measures are implemented.
6. If there are more than 5 or more employees, a health and safety policy must be written up and this should be drawn to people’s attention.
7. A health and safety representative is appointed
8. Emergency procedures are set up.
9. There are adequate first aid facilities available.
10. They provide protective clothing or equipment, where required.
11. The workplace satisfies health and safety welfare requirements eg ventilation, temperature, lighting, sanitary facilities.
12. Adequate signage on health and safety is displayed.

There are many more duties imposed upon businesses in relation to health and safety. We have identified the main duties only.

The HSE has provided some useful guidance on the health and safety legislation governing businesses. More information can be obtained from www.hse.gov.uk.

In addition there are further obligations imposed on businesses to protect the environment from any harm. Permits and licences are required depending on the industry. Permits and licences are required in industries involved in the following:

- End of life vehicles
- Landfill
- Pollution and Control permits
- Radioactive substances and wastes
- Solvent emissions
- Waste incineration/waste management
- Water

There is individual legislation governing the following environmental areas

- Air
- Business efficiency
- Energy
- Hazardous waste
- Land
- Noise, dust and odour
- Packaging
- Permits
- Waste and recycling
- Water

Taking waste as an example, there is a duty of care on anyone who produces, imports, carries, keeps, treats or disposes of controlled waste from business or industry or acts as a waste broker to ensure that waste is handled safely and in accordance with the legislation.

You must make sure that anyone that you pass your waste on to, such as a waste contractor, is authorised to do so. If you don't, and your waste is illegally disposed of, you could be held responsible.

You and/or your business have an obligation to take all reasonable measures to:

- Prevent anyone keeping, depositing, disposing of or recovering your 'controlled waste' without a waste management licence or an exemption from the need for a licence.
- Prevent materials escaping from your control or the control of anyone else by packaging it securely.
- Ensure that waste is only transferred to an authorised person.
- Ensure that the waste being transferred is accompanied by a written description that will enable anyone receiving it to dispose of it or handle it in accordance with his or her own Duty of Care.

It is imperative that you comply with the environmental regulations. Failure to do so could lead to a criminal prosecution and your business closed down.

Further information regarding your environmental obligations can be obtained from <http://www.netregs.gov.uk>

CASH COLLECTION

Avoiding Bad Debtors

Most businesses fail because of poor cash flow and not because of poor sales. Every time that your business supplies goods or services on credit there is a financial risk to your business. There are a number of practical steps that businesses can take to reduce the risk of incurring bad debts.

Steps to take:-

Terms and Conditions of business

It is very important that you have in place terms and conditions which set out the basis upon which you are selling your goods or services and that your terms are incorporated into the contract. They must be drawn to the attention of the other party at the outset and not simply on your invoices which is too late. Disputes (and non-payment of your invoices) can be avoided by having carefully drafted terms in place.

Your terms of business should include terms which govern the following-price, payment, delivery, the right to charge interest on late payment, standards of quality, time limits for rejecting goods/making a claim and limitation of your liability to the customer.

All your staff should be made aware of the terms of business and must not make any statements to your customers which conflict with your written terms.

Know your customer

Of course, knowing your customer and whether your customer is creditworthy is fundamental. Credit reference agencies provide credit reports on companies and other businesses some of which can be very detailed including a credit rating for the company concerned. There are a number of online providers of credit reports which promise constantly updated financial data. Companies House holds a substantial amount of publicly available information about companies but the information may be out of date. You should also carry out a search of the Register of Judgments Orders and Fines to find out whether there have been any judgments registered against your customer which will give you a good indication as to whether your customer will pay you.

Credit Limit

After carrying out checks, you should then set an appropriate credit limit for each customer. You should ensure that all staff (and in particular sales staff) are made aware of the limit and not given discretion to vary these without prior authorisation. Credit limits should, of course, be enforced.

Guarantees

Guarantees whether from a director of your customer company, third party or from the customer's bank provide additional security should a customer become insolvent.

Deposit

You should consider when supplying high value goods or services asking the customer for a significant deposit before releasing goods or providing services. Normal credit terms for the customer should then be given on the balance.

It is also worth checking your customer's payment record with some of their other suppliers (known as trade references).

Insurance

Finally, you can seek to insure yourself against the possible default and insolvency of your customers which is known as credit insurance.

The above basic steps will go a long way in helping you to manage your cash flow better and reduce the risk of bad debtors.

BUSINESS START UP SERVICES

Relevant business start up services that we offer include:

- Free Health Check – a review of your employment contracts, policies and procedures, with any required remedial work carried out on a fixed fee* basis, followed by an annual update for a nominal £150 encompassing all necessary updates to documents.
- Updates – written updates advising of significant changes in legislation or case law together with regular E-Brief email updates on more general employment law developments.
- Complimentary invitation to our at least biannual Employment Law Seminars.
- Training – (including in-house) at very competitive rates for your managers, employees or HR personnel on matters such as implementing anti-discrimination policies, disciplinary procedures, recruitment or guidance on basic employment law.
- Workshops – practical guidance on a range of legal subjects which is given to a restricted number of delegates of different levels of management.
- Company Secretarial – a fixed rate Company Secretarial Service, with the costs determined by the range of services provided. These can include providing a registered office address, filing annual returns, minute taking, name changes and share scheme administration.

Additional work such as amending the Articles of Association can also be carried out at a very competitive rate. The facility can be used regardless of the size of the company and can assume the administrative burden for anything from a small start up company with one director to a corporate group.

* Endeavour has made a continuing commitment to donate 10% of these fees to the NSPCC
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CONTACTS

Address

Westminster
St Mark's Court
Teesdale Business Park
Teesside
TS17 6QP

General Contact Details

DX 723015 Stockton on Tees 10
T: 01642 610300
F: 01642 610330
W: endeavourpartnership.com

Corporate

Head of Dept: Paul Bury (01642 610308)

Email: p.bury@endeavourpartnership.com

Contact: Lewis Goodwin (01642 610321) / Fiona Gibbon (01642 610343)

Email: l.goodwin@endeavourpartnership.com / f.gibbon@endeavourpartnership.com

Commercial

Head of Dept: Paul Bury (01642 610308)

Email: p.bury@endeavourpartnership.com

Contact: Lewis Goodwin (01642 610321)

Email: l.goodwin@endeavourpartnership.com

Commercial Property

Head of Dept: Simon Wake (01642 610336)

Email: s.wake@endeavourpartnership.com

Contact: Jamie Brown (01642 610318)

Email: j.brown@endeavourpartnership.com

Litigation

Head of Dept: Paul Bennett (01642 610311)

Email: p.bennett@endeavourpartnership.com

Contact: Alex Smith (01642 610340) / Nazia Aftab (01642 610313)

Email: a.smith@endeavourpartnership.com / n.aftab@endeavourpartnership.com

Employment

Head of Dept: Julie Bruce (01642 610326)

Email: j.bruce@endeavourpartnership.com

Contact: Catherine Devereux (01642 610320)

Email: c.devereux@endeavourpartnership.com