

Employer's "MOT" Checklist

As an Employer, it is very important that you have in place practices and procedures which comply with employment legislation.

These practices and procedures often serve to develop a cohesive and harmonious working environment. Many of them are also obligatory, and your failure to comply with the legislation could leave you open to various claims from your employees.

Employment law is fast-moving and ever-changing. In order to ensure that your practices and procedures are as current and as up-to-date as possible, we at Menneer Shuttleworth have prepared the following MOT checklist for your use.

We suggest that you review your business' practices and procedures on a regular basis using the checklist. Contact us for assistance or advice if you find any gaps in your existing policies or procedures or more simply a general updated is required.

The Contract of Employment		
1	<p>Do all your employees have a Contract of Employment?</p> <p>A Contract can consist of both oral and written agreements between you and your employee and the terms can be either:-</p> <ol style="list-style-type: none">1. Express (i.e. in writing)2. Implied (obvious terms, custom and practice etc)3. Laid down in law or statute4. By incorporation or reference to other documents <p>You should be aware of the terms of the contract of employment with your employee, and put as much as possible in writing to avoid confusion.</p>	<p>YES / NO</p> <p>If No, we can prepare a Contract of Employment for you, or check your existing contracts to ensure that they are fit for purpose.</p>
2	<p>Have you provided the employee with a Written Statement of Employment Particulars?</p> <p>You have a statutory obligation to provide written details of you employee's main terms and conditions of employment within two months of starting work.</p>	<p>YES / NO</p> <p>If No, issue your employee with Written Statement of Employment Particulars as soon as possible.</p>
3	<p>Have you made any alterations to the employee's Contract of Employment?</p>	<p>YES / NO</p>

	<p>Changes to the terms can only be made with the agreement of both parties or their representatives either verbally or in writing.</p> <p>If you impose change, employees could claim damages in the civil courts or resign and claim constructive dismissal before an Employment Tribunal.</p>	<p>If Yes, you must confirm the changes to your employee in writing, and not make any unilateral decisions.</p>
	Remuneration	
4	<p>Are you paying the employee in accordance with current national minimum wage requirements?</p> <p>Failure to pay employees the National Minimum Wage is illegal and could lead to prosecution under the National Minimum Wage Act 1998.</p> <p>Employers of any size will be pursued by HMRC if suspected of breaching the National Minimum Wage law. You must ensure that your accounts, costings and payroll are adjusted to take into account the current National Minimum Wage.</p>	<p>YES / NO</p> <p>To find the current requirements visit:</p> <p>http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG10027201</p>
5	<p>Are you paying the employee in accordance with their Contract of Employment?</p> <p>You must follow the terms of the Contract to avoid claims for damages in the civil courts or if the employee resigns as a result of any breach, a claim for constructive dismissal before an Employment Tribunal.</p>	<p>YES / NO</p> <p>If no, you may need to update the terms of their Contract of Employment.</p>
6	<p>Do you pay men and women equally for doing the same work or work of equal value?</p> <p>Men and women doing equal work and work rated as of equal value are entitled to equal pay in accordance with the Equality Act 2010.</p>	<p>YES / NO</p> <p>If No, you must take the necessary steps to synchronise such pay. A claim for Sex Discrimination may result from a failure to do so.</p>
7	<p>Do you give the employee itemised pay statements?</p> <p>Your employee is entitled to know how their pay is calculated. You are obliged to provide your employee with itemised pay statements showing:</p> <ul style="list-style-type: none"> • the gross amount of wages or salary; • the amount and purpose of any variable or fixed 	<p>YES / NO</p>

	deductions; <ul style="list-style-type: none"> • net wages or salary payable; and, • where the net amount is paid in different ways, the amount and method of each payment. 	
Grievance and Disciplinary Matters		
8	<p>Have you included information regarding your Grievance and Disciplinary Procedures in your employee's Contract or Statement of Employment?</p> <p>You must ensure that all employees know how to raise a grievance and how your procedure operates together with a copy of the Disciplinary procedure that will be followed if the necessity arises.</p>	<p>YES / NO</p> <p>There are specific requirements you must follow. Please seek further advice from us.</p>
9	<p>Are your Disciplinary and Grievance Policies up to date?</p> <p>If you do not follow your own policies you may be seen to be in breach of contract, resulting in a wrongful and/or unfair dismissal claim.</p>	<p>YES/NO</p> <p>If No, please seek advice from us regarding best practice and minimum requirements</p>
Termination of Employment		
10	<p>Do you or the employee wish to terminate the Contract of Employment?</p> <p>This can be done:-</p> <ul style="list-style-type: none"> • if both you and the employee agree; or • by the employer or employee giving the required notice of termination. <p>Parties must give at least the statutory minimum notice period or the notice period agreed in the contract if this is longer.</p>	<p>YES / NO</p> <p>If Yes, please seek further advice from us regarding the procedure to follow</p>
11	<p>Are you aware of the correct procedure for a "fair" dismissal of an employee?</p> <p>If you do not follow a fair procedure when dismissing an employee, the employee may be able to claim against you at the Employment Tribunal.</p> <p>An employee can only be dismissed fairly if the reason for dismissal falls within one of five permitted categories, namely Conduct, Capability, Redundancy, Illegality or some other substantial reason.</p>	<p>YES / NO</p> <p>If No, we suggest that you contact us if and when you wish to dismiss an employee.</p>

	The dismissal must also be procedurally fair.	
12	<p>Are you aware that Retirement is no longer a fair reason for dismissal?</p> <p>There have recently been big changes in this area.</p> <p>Employers can impose a Contractual Retirement Age, but this must be implemented using a fair procedure.</p> <p>The Contractual Retirement Age must be objectively justified with reference to, amongst other considerations, the nature of the employment and the requirements of the role.</p>	<p>YES / NO</p> <p>If No, we are able to advise on how to deal with a retirement situation in the workplace.</p>
	Discrimination	
13	<p>Are you aware of your obligations with regard to discrimination in the workplace?</p> <p>All employees are entitled to equality and protection from Discrimination.</p> <p>The rights covered include:</p> <ul style="list-style-type: none"> • Age Discrimination; • Disability Discrimination; • Pregnancy and Maternity; • Race Discrimination; • Sex Discrimination <p>The employer must make reasonable adjustments to ensure that no employee suffers discrimination.</p> <p>An employee can bring a claim for unlimited damages at the Employment Tribunal if they are the victim of discrimination in the workplace.</p>	<p>YES / NO</p> <p>If No, we suggest that you seek further advice from us in order to bring such discrimination to an end.</p>
	Maternity and Paternity Leave	
14	<p>Are any of your employees parents, or are any soon to become parents?</p> <p>All pregnant employees are entitled to take 52 weeks statutory maternity leave.</p> <p>You may be obliged to pay your employee statutory maternity during their period of maternity or paternity leave.</p>	<p>YES / NO</p> <p>If yes, please seek further advice from us based on the specific circumstances.</p>

	<p>Fathers are entitled to up to two weeks paternity leave.</p> <p>Fathers are now able to take additional paternity leave of up to 26 weeks.</p>	
15	<p>Are you aware of Flexible Working Arrangements?</p> <p>An employee who cares for an adult, or a child under the age of 17 has the right to request a flexible working arrangement which you must give serious consideration to.</p>	<p>YES / NO</p> <p>If No, we can advise on your obligations in this area.</p>
	<p>Consulting your employees</p>	
16	<p>Do you consult your employees on matters concerning their health and safety and provide information to make consultation fully effective?</p> <p>If you recognise independent trade unions, you must consult via any safety representatives they have appointed; otherwise you can consult employees direct or via elected representatives.</p>	<p>YES / NO</p> <p>If no, there are specific requirements you must follow. Please seek further advice from us based on the circumstances.</p>
17	<p>Are you thinking of selling your business?</p> <p>You must inform or consult with employees' representatives when a business (or part of a business) is transferred to a new owner.</p> <p>There is usually an automatic transfer of employees' rights and liabilities from the old employer to the new employer. Transfer related changes to terms and conditions to employment may be considered void and dismissals automatically unfair.</p> <p>The new employer becomes liable for pre- and post-transfer dismissals.</p>	<p>YES / NO</p> <p>If Yes, there are specific requirements you must follow. Please seek further advice from us based on the circumstances and the TUPE regulations in this complex area of employment law.</p>
18	<p>Do you think you need to make redundancies?</p> <p>If so, to be fair, the redundancy must occur in one of the three following situations:</p> <ul style="list-style-type: none"> • The business closes down; • Work is no longer available or work reduces at the <u>place</u> of employment • Reduction in requirement for employee to do work of a particular kind 	<p>YES / NO</p> <p>If Yes, there are specific requirements you must follow. Please seek further advice from us on the specific circumstances and the redundancy procedure.</p>

19	<p>Are you aware of the correct redundancy procedure?</p> <p>You must consult individuals if you propose to make them redundant and, if you propose 20 or more redundancies, consult with employees' representatives (trade union representatives where a union is recognised) and give information about your proposals.</p> <p>Failure to follow the statutory procedure may lead to the employee claiming unfair dismissal.</p>	<p>YES / NO</p> <p>If No, we can provide you with information to assist you in making dismissals by redundancy "fair"</p>
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If you would like to discuss any of the matters raised in the MOT Checklist, or if you have any other issue with your employees, then please contact us:

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