

Pay rises

1 . Types of pay rise

A pay rise is an increase in the amount of money an employee gets for doing their job.

There is no legal requirement for an employer to give a pay rise to an employee unless:

- they earn the minimum wage and it increases
- they earn the minimum wage and move into the next age bracket
- their contract states they are entitled to one

Even though there is no legal requirement to offer a pay rise there can be benefits for an employer. For example, it could help:

- employees feel happier and more engaged at work
- encourage employees to stay at their organisation
- recognise good performance

Discretionary pay rises

Discretionary pay rises are not guaranteed each year. They are sometimes called non-contractual pay rises.

The employer has some flexibility over whether or not to award a discretionary pay rise.

If a contract says a pay rise is discretionary, the employer should still act fairly when deciding whether to pay it. If some employees will not receive the pay rise, there should be clear reasons for this.

For example, a company decides they will award a 5% pay rise. To be eligible, employees must have been working for the company at the start of the financial year. Charlie joins the company partway through the year and so does not receive the pay rise.

If the employer does not act in a fair and reasonable way, their employee might be able to make a legal claim.

Contractual pay rises

An employment contract might give employees a contractual right to a pay rise.

The employer must pay a contractual pay rise if certain agreed criteria are met. For example, if an employee meets certain performance objectives.

The employee's entitlement to a pay rise should be recorded in their [written statement of employment particulars](#). This should clearly explain the criteria for the employee to get the pay rise.

For example, Li's contract says employees are entitled to a 3% pay rise if they meet yearly performance targets. Li meets their targets, and so they are entitled to the pay rise.

Custom and practice

An employer might have regularly paid their employees a pay rise without a written agreement.

If there is no written agreement, the employees might be entitled to a pay rise through 'custom and practice'. If it's not clear whether custom and practice applies it's a good idea to [get legal advice](#).

[Find out more about custom and practice](#)

Collective bargaining

If an employer recognises a trade union, they must carry out 'collective bargaining'. This is where an employer negotiates with the trade union on changes to certain terms and conditions.

Collective bargaining usually includes negotiations about pay.

Where collective bargaining leads to a pay increase, it is called a collective agreement. Collective agreements can cover employees who are not a member of the trade union.

[Find out more in the Acas Code of Practice on disclosure of information to trade unions for collective bargaining purposes](#)

2. Employee rights and pay rises

Certain circumstances might affect if an employee should get a pay rise. For example, if there has been:

- a TUPE transfer
- a National Minimum Wage increase
- an equal pay issue

Pay rises and TUPE

TUPE regulations protect employees' rights when:

- an organisation, or part of it, transfers from one employer to another
- a service transfers to a new provider, for example when another company takes over the contract for office cleaning

On the date of a TUPE transfer, the employee will automatically transfer to the new employer. Their employment contract, including their terms and conditions of employment, transfer with them. This means an employee's contract continues and they do not get a new one.

If the employee has a contractual entitlement to a pay rise, this would carry over to the new employer. An employer can only change this contract if certain conditions apply.

[Find out more about changing a contract after TUPE](#)

Pay rises and the minimum wage

If an employee is paid the minimum wage, they're entitled to a pay rise if:

- the government increases the rates (usually in April each year)
- they turn 18 or 21

- they're an apprentice who turns 19, and they've already finished the first year of their current apprenticeship
- they're an apprentice who is already 19 and they finish the first year of their current apprenticeship

The higher rate starts to apply from the next pay reference period after the increase. This means someone's pay might not go up straight away.

[Find out more about National Minimum wage increases](#)

Equal pay

When an employer gives a pay rise they must make sure they follow equal pay law.

By law (Equality Act 2010) men and women must get equal pay for doing 'equal work'. This is work that equal pay law classes as the same, similar, equivalent or of equal value.

The right to equal pay applies to:

- employees
- workers
- apprentices
- agency workers
- full-time, part-time or temporary contracts
- self-employed people who are hired to personally do the work

[Find out more about equal pay law](#)

3. Asking for and awarding pay rises

There are things an employer should consider when awarding pay rises.

When pay rises are awarded

When a pay rise is agreed, employers should communicate the change to employees or their representatives.

Employees do not have to sign a new contract for changes to take effect.

However, the employer must put any changes to an employee's main terms of employment in writing. For example, in a letter or email.

By law, an employer must put a change in writing within one month of the change.

If the same pay rise is awarded to a number of employees, the employer does not need to write to everyone separately. The employer can put the changes in writing for the whole group at the same time. For example, in a group email.

The employer could choose to update an employee's [written statement of employment particulars](#) but they do not have to.

When employment ends

An employer might award a backdated pay rise.

If an employee leaves, a backdated pay rise might cover the period they were employed. In these circumstances whether they are eligible for the pay rise depends on their contract.

Employees who have left employment should check their contract to see if they're eligible for a backdated pay rise.

If it is not in contract the employee could talk to the employer to ask if they are eligible. If they do this, the employee should confirm what they have discussed in writing. For example, in a letter or email.?

If the employer and employee cannot agree, the employee can [raise a grievance](#). This is where the employee makes a formal complaint to their employer. An employee can still do this even if their employment has ended.

If an employee is not able to resolve the decision on the pay rise, they might be able to [take legal action](#).

Asking for a pay rise

An employee might want to discuss a pay rise with their employer if they do not have a right to one through either:

- their contract
- an existing collective bargaining agreement

They could give the reasons why they think they should get a pay rise.

Whether an employee can be dismissed for asking for a pay rise

When deciding whether to dismiss someone an employer must:

- have a [fair reason for dismissal](#), for example, misconduct or capability
- use a fair and reasonable procedure

Asking for a pay rise is unlikely to be a fair reason to dismiss someone.

If an employee has 2 years' service and is dismissed, they could have the right to make a claim for [unfair dismissal](#).

It would be automatically unfair dismissal if an employee asked for their legal right to be paid the minimum wage. An employee does not need 2 years' service to claim automatically unfair dismissal.

4. Resolving problems with pay rises

If an employee has not received an agreed pay rise, they should raise it informally first, by [talking with their employer](#). This can help resolve things quickly if there has been a mistake.

If the employee talks to their employer, the employee should confirm what they've discussed in writing. For example, in a letter or email.

If the issue cannot be resolved informally, the employee can [raise a grievance](#). This is where the employee makes a formal complaint to their employer.

Options for taking legal action

If an employee is not able to resolve the problem, they might be able to make either:

- a county court claim
- a claim to an employment tribunal

If the problem relates to non-payment of the National Minimum Wage, there are other options. [Find out what to do if an employer pays less than the National Minimum Wage.](#)

Making a claim to an employment tribunal

If an employee has not been paid an agreed pay rise, they can make a claim to an employment tribunal for unlawful deduction from wages.

There are strict time limits for making a claim to an employment tribunal. Employees have 3 months minus 1 day from the date of the underpayment to make a claim.

Find out more about:

- making a claim to an [employment tribunal](#)
- [employment tribunal time limits](#)

Making a county court or sheriff court claim

Alternatively, an employee could make a breach of contract claim in the county court (in England and Wales). They have up to 6 years from the date of the underpayment to make a claim.

In Scotland, an employee could make a breach of contract claim in the sheriff court. The time limit for breach of contract in a sheriff court is 5 years from the date the employee has knowledge of the loss.

If an employee wants to make a county court or sheriff court claim, they should [get legal advice](#) to understand what will be involved.

5. When employees are off work

An employee's entitlement to pay rises when they are off work depends on the type of leave they are taking.

Maternity leave

A pay rise might affect an employee's statutory maternity pay. This depends on when the pay rise is awarded.

Recalculating statutory maternity pay

Statutory maternity pay is based on an employee's average weekly earnings.

Average weekly earnings are calculated over an 8-week period leading up to an employee's 'qualifying week'. To work out the qualifying week, use a calendar to count back 15 weeks from the week the baby is expected to be born.

An employer might award a pay rise between the start of an employee's 8-week calculation period and the end of their maternity leave. The employer must take this into account when calculating the employee's statutory maternity pay.

The employer must recalculate the maternity pay as if the pay rise had taken effect at the start of the 8-week calculation period.

This applies even if the pay rise is not backdated into the 8-week calculation period. The employer must make an additional 'top-up' payment to the employee.

If an employer excludes someone on maternity leave

If an employer excludes employees on statutory maternity pay from a pay rise, it could be:

- maternity discrimination
- unlawful deduction from wages

[Find out more about statutory maternity pay](#)

Enhanced maternity pay

It might be written in the contract that employees get more than statutory maternity pay. This can be called 'enhanced' or 'contractual' maternity pay.

If a pay rise is awarded, an employee on enhanced maternity pay should get it at the same time as other employees.

The employer does not need to backdate the pay rise to the start of the maternity pay period.

Statutory adoption leave

A pay rise might affect an employee's adoption pay. This depends on when the pay rise is awarded. Statutory adoption pay is based on an employee's average weekly earnings.

The employee's average weekly earnings are calculated over the 8-week period before the week they're matched with a child.

A pay rise might be awarded while an employee is on adoption leave. The employer does not need to recalculate their statutory adoption pay unless the pay rise is backdated.

However, the employee will be entitled to the pay rise on their return to work.

If the pay rise is backdated

An employer might award a backdated pay rise that includes the 8-week calculation period.

In this situation the employer must include the pay rise when calculating the employee's statutory adoption pay. This applies even if the pay rise is paid at a later date.

[Find out more about statutory adoption pay](#)

Enhanced adoption pay

It might be written in the contract that employees get more than statutory adoption pay. This can be called 'enhanced' or 'contractual' adoption pay.

If a pay rise is awarded, an employee on enhanced adoption pay should get it at the same time as other employees.

Statutory shared parental leave

A pay rise might affect an employee's shared parental leave pay. This depends on when the pay rise is awarded.

Statutory shared parental pay is based on an employee's average weekly earnings.

The employee's average weekly earnings are calculated over an 8-week period leading up to either:

- the week of expected birth

- the adoption match date

A pay rise might be awarded while an employee is on shared parental leave. The employer does not need to recalculate their statutory shared parental pay unless the pay rise is backdated. However, the employee will be entitled to the pay rise on their return to work.

If the pay rise is backdated

An employer might award a backdated pay rise that includes the 8-week period used for calculating the employee's normal weekly earnings.

In this situation the employer must include the pay rise when calculating the employee's statutory shared parental pay. This applies even if the pay rise is paid at a later date.

[Find out more about shared parental pay](#)

Enhanced shared parental pay

It might be written in the contract that employees get more than statutory shared parental pay. This can be called 'enhanced' or 'contractual' shared parental pay.

If a pay rise is awarded, an employee on enhanced shared parental pay should get it at the same time as other employees.

Sick leave

If a pay rise is awarded to all staff, an employee on long-term sick leave should receive this.

Employers should be careful with pay rises based on individual performance.

It could be [disability discrimination](#) if:

- an employee's health condition is disability-related
- their employer excludes time on long-term sick leave when calculating a pay rise

This is a complex area of law. If employers need more information on performance-related pay rises and sick leave, they should [get legal advice](#).