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What employment rights are there for nannies?

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They perhaps have one of the most important jobs, yet sometimes nannies are not afforded the employment rights and protections to which they are entitled, as the recent Employment Tribunal judgment against Manchester City star Riyad Mahrez highlights. Mr Mahrez was ordered to pay his nanny compensation for outstanding expenses and unauthorised deductions from her wages. In order to avoid claims, employers must have appropriate documentation in place and comply with relevant employment legislation.

Nannies are likely to be employees as they will almost certainly be required to provide personal service (rather than being able to subcontract their work) and the employer is likely to exercise a high degree of control over how, when and where they do the work. These factors are all consistent with nannies being employees rather than self-employed. As employees, nannies benefit from the full range of employment protections. An employer must also operate PAYE, deduct tax and pay national insurance contributions, and must comply with pension auto-enrolment obligations.

As employees, nannies should be given a written statement of their particulars of employment. The statement must include specified information such as the terms in respect of pay, working hours, holiday entitlement and sick pay. The statement should be provided no later than two months' after the employment commenced.

It is unlawful for an employer to make a deduction from a nanny's wages unless the deduction is required or authorised by law or a provision in the nanny's contract, or the nanny has given their prior written consent to the deduction.

Nannies also benefit from certain terms which are implied into their employment contract as a matter of law. These include an implied duty to indemnify the nanny in respect of costs, claims and expenses incurred by the nanny in carrying out their duties. There is also an implied duty for the employer not to act in a way which destroys trust and confidence between the employer and the nanny. A failure to comply with this implied term can result in the nanny resigning and claiming constructive dismissal.

Nannies have the right to be paid at least the National Minimum Wage. Employers must calculate their nanny's hourly rate of pay over an appropriate "pay reference period" and maintain records to demonstrate their nanny has been paid at least the National Minimum

Wage. Problems can arise if a nanny is paid the National Minimum Wage or only slightly more and then is required to work additional unpaid overtime resulting in their actual rate of pay falling below the National Minimum Wage.

Unlike most workers, nannies are exempt from the maximum 48-hour limit on average working time set out in the Working Time Regulations (WTR). This is because specific rules apply to what are known as "*domestic servants*" in a private household. The term "domestic servant" is not defined in the WTR, but government guidance describes a domestic servant as "*someone who works in or about the home doing jobs which would otherwise be done by the householder, such as cleaning, child minding or caring duties.*" Nannies would appear to fall within this category. Accordingly, there is no requirement for employers to request their nanny to sign an "opt out" agreement if it is likely they may work on average more than 48 hours per week.

Whilst the maximum 48-hour limit on average working time does not apply to nannies, they do benefit from the rights under the WTR to a minimum of 5.6 weeks' paid annual leave - equivalent to 28 days paid holiday for a nanny who works full-time five days per week - and to daily and weekly rest breaks, and rest periods during the working day.

Like other employees, nannies can generally only bring a claim for unfair dismissal if they have two years' of continuous employment at the date of dismissal. However, the qualifying two year period is not required where the dismissal is discriminatory - for example it is connected to the nanny's pregnancy, childbirth, or her having taken statutory maternity leave - or it is because she has sought to assert her statutory rights - such as to paid holiday - or where she is dismissed for having made a protected disclosure under whistleblowing legislation.

Finally, as employees, nannies are entitled to be given at least statutory minimum notice on termination of their employment. Employees with continuous employment of at least one month but less than two years are entitled to at least one week's notice from the employer. Employees with two years' continuous employment or more are entitled to one week's notice for each complete year, up to a maximum of 12 weeks' notice.

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