

Implied duties

1 . What implied duties are

There are certain duties that are central to any employment contract. These are sometimes called 'imposed duties'.

The main duties are:

- duty of care
- duty of trust and confidence
- duty of fidelity

These duties:

- are crucial to a good working relationship
- help employers and workers work together effectively
- also apply when someone is not working but is still employed – for example, when they're on holiday or off sick
- cannot be overridden by any express term in the contract

If either the employer or worker breaches one of these duties, it can damage or even end the working relationship.

2. Duty of care

Employers have:

- a common law 'duty of care' towards workers
- specific rules they must follow under health and safety law

This means employers must do all they reasonably can to protect workers' health, safety and wellbeing at work.

This could include:

- providing a safe working environment
- doing risk assessments and taking action based on what they find
- doing everything they reasonably can to protect workers from discrimination and bullying
- taking steps to help prevent work-related stress

Examples of how an employer might breach their duty of care include:

- pressuring workers to work excessive hours
- failing to provide the right training or equipment for carrying out work safely
- allowing staff to work who are unwell or do not have the right training – they could put themselves or others in danger

If an employer breaches their duty of care

There is no standalone legal claim called 'breach of duty of care'.

However, there are likely to be other legal claims for situations where the employer breaches this duty. For example:

- claims where the employer has failed to protect a worker from discrimination, for example, not taking reasonable steps to prevent sexual harassment at work
- breach of contract
- [constructive dismissal](#) – where someone resigns because the breach is so serious they do not feel they can continue working for their employer

Breach of contract and constructive dismissal

Only those with the [legal status of employee](#) can make claims for breach of contract and constructive dismissal.

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero-hours contract

An employee cannot make a breach of contract claim while they're still employed. But they can make a claim to county court in England and Wales or sheriff court in Scotland.

If a worker notices a health and safety risk

If a worker identifies a health and safety risk at work, they should:

- speak to their employer
- follow any procedure their organisation has for reporting these
- speak to a health and safety representative at work if they have any questions

Employees can also report health and safety issues to the Health and Safety Executive (HSE) or their local authority if:

- they've raised the issue with their employer
- their employer has not responded or taken any action

You can:

- find out about [reporting a health and safety issue on the Health and Safety Executive website](#)
- [contact the Acas helpline](#), if you're unsure who to report health and safety issues to

Detriment relating to health and safety

An employer must not cause a worker 'detriment' because they:

- reasonably believe being at work or doing certain tasks would put them in serious and imminent danger
- take reasonable steps over a health and safety issue, for example complaining about unsafe working conditions
- inform their employer about a health and safety issue in an appropriate way

Detriment means someone experiences one or both of the following:

- being treated worse than before
- having your situation made worse

Examples of detriment could be:

- an employer reduces someone's hours
- experiencing [bullying](#)
- experiencing [harassment](#)
- an employer turns down someone's training requests without good reason
- someone is overlooked for promotions or development opportunities

Workers are also protected if they whistleblow about health and safety. Find out more about [whistleblowing at work](#).

Contact the Acas helpline

If you have any questions about the duty of care, you can [contact the Acas helpline](#).

3. Trust, confidence and fidelity

The duties of 'trust and confidence' and 'fidelity' are between an employer and anyone with the [legal status of employee](#).

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero-hours contract

Duty of trust and confidence

Employers and employees have a duty of trust and confidence towards each other.

They must:

- behave in a way that means they can trust each other
- treat each other with respect
- not behave in an entirely unreasonable way – for example, an employer deliberately failing to pay wages without agreement

If an employer breaches the duty of trust and confidence

If an employer breaches the duty of trust and confidence, their employee might be able to claim:

- breach of contract
- [constructive dismissal](#) – if it's a very serious breach

Examples of how an employer might breach this duty include:

- refusing or failing to look into an employee's grievance
- demoting an employee without a good reason

If an employee breaches the duty of trust and confidence

If an employee breaches this duty, their employer might take disciplinary action, which could lead to dismissal.

Examples of how an employee might breach this duty include:

- making false expenses claims
- stealing from their employer

Duty of fidelity

Employees have a 'duty of fidelity' towards their employer. It is sometimes called the duty of good faith.

This duty means employees must behave honestly and faithfully towards their employer.

Under the duty of fidelity, employees must not:

- make a secret profit
- work in competition with their employer
- share confidential information that they learn while working for their employer

This duty is especially relevant when an employer includes a 'restrictive covenant' in their employee's contract. This is a term stating that an employee cannot take certain actions that are in competition with the employer's business.

'Non-compete clauses' are a type of restrictive covenant.

[Find out about types of terms in a contract](#)

Doing work for another employer

The duty of fidelity would not stop employees taking on extra work for a different employer.

However, they should consider whether:

- the work is in competition with their employer – for example, if a hairdresser sets up their own business and visits clients of the salon they work for
- the work is detrimental to their employer – for example, if someone works excessive hours for another employer and they're so tired it's unsafe for them to be at work

In both these circumstances, the employee might be breaching the duty of fidelity.

Contact the Acas helpline

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