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# EMPLOYMENT LAW UPDATE: MODERN APPRENTICESHIPS

*In this article, Louise Walker of Just Employment Law provides an overview of modern apprenticeships and important information those in the motor trade should be aware of.*

## What is a modern apprenticeship?

A modern apprenticeship in Scotland is a work-based training programme that leads to a recognised qualification for the apprentice. They involve the employment and training of the apprentice, usually for a fixed period of time, until the apprentice achieves a particular qualification.

A modern apprenticeship involves three parties: the apprentice, the employer and the training organisation. In some cases, the employer might also be the training organisation, but more commonly a college will be the training provider. In that case, the basic obligation on the employer is to allow access to training.

## What employment rights do apprentices have?

Although their terms and conditions will normally be governed by a modern apprenticeship contract, an apprentice is also an employee therefore they will have a number of employment rights including the right



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that dismissal to be fair, the employer would have to show that either no time-served positions were available, or the apprentice had not reached the necessary standards to hold a time-served position. If either of these scenarios is likely, the employer should be giving the apprentice several months' advance warning that a time-served position is unlikely to be available upon completion of the apprenticeship.

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### What are apprentices entitled to be paid?

Apprentices are entitled to the applicable rate of the national minimum wage (NMW).

The current apprentice rate, which applies for qualifying apprentices under 19 years of age at any stage of their apprenticeship and those aged 19 or over but in the first year of their apprenticeship, is £3.30 per hour

Where the apprenticeship rate does not apply, apprentices will be entitled to the general NMW rate for their age.

The current general NMW rate for 16 and 17 year olds is £3.87 per hour, for 18-20 year olds this rises to £5.30 per hour, and those aged 21 and over must be paid £6.70 per hour.

### What is the apprenticeship levy?

The government has published draft legislation introducing the apprenticeship levy. This was announced in the summer budget of 2015 and will have effect on and after 6 April 2017. The levy will be set at 0.5% of the amount by which an employer's annual pay bill exceeds £3,000,000. The government estimates that less than 2% of UK employers will pay the levy.

### Further information

**This article relates to modern apprenticeships in Scotland, and there are different rules relating to apprentices in England, Wales and Northern Ireland.**

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not to be wrongfully or unfairly dismissed. The employment rights of apprentices can be more substantial than the rights of other employees and dismissing an apprentice may result in enhanced compensation.

A wrongful dismissal claim can arise as the employer will have contracted to provide training to the apprentice for a fixed period of time until they achieve a particular qualification. If the employer seeks to terminate the contract prior to the end of the fixed period, the apprentice may not achieve the qualification. In those circumstances, as well as seeking damages for lost earnings for the remainder of the apprenticeship, the apprentice may also seek damages beyond the end of the contract to reflect their loss of opportunity in the future. Such a claim can be brought by apprentices from day one of their employment.

An unfair dismissal claim can be brought by apprentices who have two years' continuous service with the employer. It is generally quite difficult to justify the dismissal of an apprentice on the normal grounds of misconduct, lack of capability or redundancy. Generally, the dismissal of an apprentice will only be fair where the apprentice is essentially untrainable. It is also important to understand that at the end of the apprenticeship, if the apprentice is not offered a time-served position with the employer, this too counts as a dismissal. For