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MONEY BOX LIVE

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LEWIS: Hello. The new government has promised to remove barriers to flexible working and promote equal pay. Flexible working is a fairly new concept, but equal pay isn't. It's 42 years since female sewing machinists at the Ford factory in Dagenham went on strike to be paid the same as men doing the same job. But it's still contentious. Birmingham City Council is currently appealing against an equal pay judgement over bonuses, which were paid to men in their jobs but not to women doing different but said to be equivalent jobs. So today Money Box Live is taking your questions about rights at work. And not just equal pay and flexible working, but maternity and paternity rights, discrimination - now of course banned not just on grounds of sex and race but of disability, age, sexual orientation and religious belief. Or lack of it. And as unemployment grows and job cuts are threatened throughout the public sector at least, what are your rights if you're made redundant? Away from these grand issues, what happens when someone skives off to watch the World Cup? And how should people be treated if they were trapped abroad by the flight ban after the Icelandic volcano? Or perhaps on the other side, you're a small employer struggling to cope with an ever growing list of rights and the paperwork that goes with them. Or are you an employee who thinks your boss has definitely not treated you fairly? Well whatever your question about rights or fair treatment at work, you can call Money Box Live now: 03700 100 444. With me today to answer your questions, I have Sarah Veale, who's Head of Equality and Employment Rights at the TUC; Karen Mortenson, Employment Specialist at solicitors Finers Stephens Innocent; and Jane Mann who's Head of Employment at the city lawyers Fox

Williams. And our first call is from Janice in Bedford. Janice, your question?

JANICE: Oh yeah, our firm's proposing doing away with tea breaks and holiday, bank holidays, and are starting consultation next week. And at the moment they pay us 20 minutes plus 5 for changing, which is 1 hour, and that makes 4 hours a week and 16 hours a month, which makes us £125 we're losing - of which over the course of the year it would be about £1,322. Now to me, that's a lot. And our £7 an hour that we're getting at the moment, with the last firm before this firm took us over, was also in the tea break and also our attendance allowance.

LEWIS: Okay, so your terms of work are being changed without agreement and you're losing money or at least working longer as a result. That sort of summarises it.

JANICE: Yeah.

LEWIS: Well let's start with Sarah Veale of the TUC.

VEALE: You said your employer was consulting. I assume they're consulting ... is it with the trade union or with you directly?

JANICE: No, it'll be with me and a few other people direct.

VEALE: With you and your colleagues. Well obviously you'll need to put up a feisty argument in defence of at least keeping your conditions as good as they are. I imagine that your employer - as quite a few employers are doing at the moment - is saying that because of the difficult financial circumstances ...

JANICE: Yeah.

VEALE: ... exactly, in order for the company to survive they'll have to reduce you know your pay, etcetera. Now this is a very difficult one because obviously you're faced with standing up you know for your position and not having worse conditions to

work in ...

JANICE: That's right, yeah.

VEALE: ... or being told well actually in that case three of you are going to have to lose your jobs. Is that the sort of way they're putting it?

JANICE: Well they've already made some people redundant in April.

VEALE: Yes.

JANICE: And they've made two other people redundant as we came out from a talk. And then they put us into consultation. But I mean they said to us our wages are not affected, but they are because they're taking away the tea breaks and that is our money.

VEALE: Yeah, absolutely. I mean I think really this is one of those situations where you have to go in and argue with them that this is going to make a substantial difference to your income whatever they say. You sound as though you've got a really good grip on the figures and how all this breaks down. I think you need to go and impress them with your knowledge of exactly how this is going to affect you and say that it's going to damage productivity and good will. And those sort of things are something a company can't afford to do without, so they need to rethink it all.

LEWIS: Let me just ask ... excuse me a minute, Janice. If I can ask Jane Mann what the legal position is here.

MANN: I think you might just look at the working time regulations and see whether you're entitled to a 20 minute break. And how long is your shift?

JANICE: 12 hours.

MANN: Yes, you're entitled to 20 minutes if you work more than 6 hours, so that's perhaps an angle to pursue with your employers.

JANICE: Yeah, but also employers don't have to pay your tea breaks, do they?

MANN: No, they don't have to. They just have to give you the breaks. It depends what your existing contract says as well.

JANICE: Well the existing contract was that with the £7, that was our tea break plus attendance allowance. Well now if they take this tea break away from us, that means we'll be back down to £6.41 to £6.45 an hour, so really they're giving us a wage cut and doing away with the tea break.

VEALE: Have you thought of joining a union? (*Janice laughs*) You're laughing. I mean seriously, you know if you're in a union they can help you negotiate quite effectively on this. And it's never too late to talk to a union about whether if you were to join up, they could come in and help you make the case using the law and using other means to make your argument as strong as possible and to stop them picking off one or two of you for being stropky.

LEWIS: Janice, thanks very much for your call. I'm sure a lot of people are facing similar choices of being told they've got to work longer or harder or for less money or they might be made redundant. It is a very difficult decision and I think you know forming some sort of association or getting a representative of some sort or joining a union is always helpful. But good luck with that and I'm sorry we can't tell you that you have an absolute right to the same terms because your employer can do what they want within the law. Jane is next in Nottinghamshire. Jane, your question?

JANE: Hello. I'm currently at threat of redundancy. I've had the initial meeting and I'm waiting for a date for the final meeting, so sort of everything is in consultation at the moment. But what I'm wondering about is in the research that I've done, I've found that the employer has the opportunity to offer me an alternative role, and if I turn that down because it's unsuitable then I may not qualify for any redundancy

payments. And so I'm just a bit curious to find out what 'suitable' means.

LEWIS: Yes, it is a difficult one, isn't it?

JANE: If they offer me part-time or a pay cut or something, what's the borderline on suitable or unsuitable?

LEWIS: I'm sure lots of people are facing this. I think 173,000 people made redundant in the last 3 months. Karen Mortenson?

MORTENSON: Jane, hi.

JANE: Hello.

MORTENSON: The difficulty is there's no sort of clear cut what is suitable. The question is whether ...

JANE: I thought you might say that.

MORTENSON: Yeah, exactly. The question is whether what they've offered you is suitable alternative employment. So if, for example, obviously I don't know what your role is, but if for example a secretary is offered a role as a receptionist, that could arguably be a suitable alternative employment. One thing to bear in mind is that you do have the opportunity of agreeing to a trial period - particularly if you need to retrain - and you can agree a four week trial period in the new role. And then if at the end of that trial period it isn't confirmed because you don't think it's right or because the employer decides that you know it's not a suitable role, they agree with you, then your right to a statutory redundancy payment is unaffected.

JANE: Oh okay.

MORTENSON: I'm not sure if they're offering you enhanced contractual

redundancy, but if they are that will obviously depend on the particular terms.

LEWIS: And enhanced contractual redundancy is what?

MORTENSON: Sorry, enhanced redundancy is just where an employer offers sort of severance terms. So, for example, statutory redundancy pay is calculated by a strict formula. It's effectively one week's pay, which is capped at £380 per week for each year of service, and it's sort of reduced for years of service under 22 and it's increased for years over 41. But employers might for example do one week's actual pay or they might do two weeks pay for each year of service. So if your employer was offering you enhanced redundancy terms, not statutory, you need to make sure you've spoken to them and found out what the position is.

JANE: Yeah, yeah I understand that.

LEWIS: Sarah Veale?

VEALE: Statutory - you have to have been there for two years, don't you?

MORTENSON: Yes.

LEWIS: Yes, right. Sarah Veale, what else have you got?

VEALE: Sorry, I was just going to say you have to have been employed for at least two years by the same employer to get statutory redundancy. But I don't think I've got anything particular to add actually. I think that advice is absolutely spot on.

LEWIS: It is a difficult one though, isn't it ...

VEALE: Yes, very difficult.

LEWIS: ... knowing what is a suitable alternative job? And just to be absolutely

clear. If they offer a job and Jane does turn it down because *she* doesn't think it's suitable, can there then be an argument about whether it is or isn't and whether she should be made redundant or not?

VEALE: Well there could be an argument, and I suspect I'd probably advise her to pursue that if the worst comes to the worst in a tribunal.

LEWIS: In a tribunal, yes. Okay, Jane.

MORTENSON: Sorry, one thing Jane just to bear in mind, which can be useful for other callers out there, is the government's advisory service, which is ACAS, they can offer guidance. I don't know where you were doing your research, Jane, but ACAS have got quite a helpful website and they have a free helpline which is confidential.

JANE: Great.

LEWIS: Okay, well ACAS and I'm sure there's a link to that on our website. If not, I'm sure you can find it through using a search engine. And while we're on the subject of people who are being dismissed in one way or another, we've just had an email, very brief, from Nigel who says, 'I feel I've been a victim of constructive dismissal' - which I suppose means the terms have been changed so much, doesn't it, that he has had to leave? 'Is there a time limit in which I have to take action?' Jane Mann?

MANN: There's no specific time limit, Nigel, but you have to act promptly because if you don't act promptly then you'll be taken to have accepted the change, whatever it is that's caused you ...

LEWIS: So the sooner the better really?

MANN: The sooner the better, yeah.

LEWIS: Okay, well thanks for that email, Nigel, and good luck with that. Let's go to our next call now, which is John from Cambridgeshire. John, your question?

JOHN: Hi panel. My situation's rather unpleasant. Basically I've been working for the same employer in full-time employment for the past 6 years. My last 2 years of employment for this company has been in a position that I've been working permanent nights. Now essentially over this previous 2 years, my marriage has broken down to the state where we're in the process of divorce. Now with me working nights ... I have a child as well. Now with me working the night shift, that has allowed me to actually have a childcare position in place. So when my position ended on nights and I reversed back to my 9 to 5 job, I notified my company straightaway and they're leaning on me quite heavily to suggest that basically they can't accommodate my childcare arrangements. So what my question is to the panel is basically have I got any legal rights for my company to say no, you know you have to ... this has been your situation for you know the best part of a year? You know ...

LEWIS: And this would be on the grounds that you've got children, so you can't really change your working pattern? Jane Mann?

MANN: Do you know how the women are treated in your company? Do they have rights to have flexible arrangements around childcare?

JOHN: I have no idea. That's the unfortunate thing. I'm a bit of an unknown entity with that company. I'm subcontracted out for technical support, so that's the position. I'm normally here, there and everywhere, and I don't really get to know. I mean the point I can add is that I have offered to be as flexible as is required, but it's a case of I'm not prepared to compromise my childcare for my daughter. You know I do believe she has the right to see as much of me as her mother - which is fine, both parents have got a working arrangement which works okay.

LEWIS: Okay, let me just ask Sarah Veale about the rights here. What do you think John can do?

VEALE: I think you should definitely put in a formal request to work flexibly, which you have a legal right to do. And put them ...

JOHN: I do have that legal right?

VEALE: Yes, you do have the right to request. But what you have to do is make sure you construct the case in a way that doesn't allow the employer to say this would make it impossible for me to run my business. Now I can't see from what you're saying how they *could* argue that. I think they're just trying to bully you into doing something that's for their convenience. But you've certainly got a very, very strong moral case. I mean I think it's admirable that you are fighting like this to be able to go on caring for your child, and I think any decent employer would do their best to try and assist you. But try that flexible working request. There's information available on the government's Directgov website. Or the TUC website called Work Smart can give you plenty of advice on how you do that. It's definitely worth a try, I think.

LEWIS: It's important to stress, isn't it, that you have the right to *ask* for flexible working, but they don't have to give it you.

JOHN: But that's the key point. Because in the meeting that we did have, I had to sit down with HR and the Managing Director and they did lean pretty heavily on me to say well if it's not within the business needs or business requirements, you know we won't condone this and it will be seen as unauthorised absence.

LEWIS: Karen?

MORTENSON: I mean on that point, John, I'd say that there is an issue in terms of the employer doesn't have to agree, but they have to have good reasons not to agree and there's a limited number of reasons they can. So if for example, I mean you've been manning technical support for two years at nights. Do they really not need anyone to do technical support at night now? Why do they now only need it in the daytime? Do they have a proper business reason? So they've got to consider it. There's also a possible argument, which normally works with working mothers rather

than working fathers, which is just that because mothers bear the brunt of childcare quite often - I mean obviously not in all cases - that refusing to allow a request for flexible working could be indirect sex discrimination. Which is why I think Jane, my colleague here, raised the possibility about how women in your company were treated because if women would be allowed to work flexibly to allow them to have childcare responsibilities, it would be direct sex discrimination against you as a man to refuse to allow you to have the same rights.

LEWIS: Okay, well there are a couple of avenues there that you might pursue, John. It's like many of the calls. I suspect there's quite a long way to go after we've given you the sort of guiding hand from the panel. But anyway, thank you very much for that call and I am sure there are other people in your position. Let me just take a very quick email now. This is from an employer who says, 'We have full-time staff and a number of part-time staff and casual staff. What is our requirement of holiday pay for the part-time casuals? Is it simply pro-rata for the hours worked? Is there a simple answer to that? Sarah?

VEALE: Yes, yes.

LEWIS: Oh the answer is yes. There we are, that's your answer. The answer is yes. Okay, well that's a simple one. We'll move on. Thank you very much for your email. And let's hope that Roger in Berkshire has as simple a question. Roger, what's your question?

ROGER: Oh yes, good afternoon. I'm just over 65. I am a customer facing employee for a fairly well-known DIY company and I've been with them for just over 7 years. Now the involvement of staff is such there's a reasonable turnover and tends to be more of the younger age staff that stay for a while and then move on, so there's new young staff coming in. I'm finding I'm in a position where I'm finding out that the younger members of staff, after a period of time which is somewhere in the region of a lot less than half of the time I've been there, have been promoted. Now the type of jobs that they are doing is one I've already done. If you accumulate the different types of jobs I've done, it's many more than what they have.

LEWIS: So you're suggesting there's age discrimination against you as somebody who's 65 compared with the younger people? Is that your problem, your complaint?

ROGER: Yes it is. That's the gist of it.

LEWIS: Okay. Well I mean that should be unlawful. Jane Mann?

MANN: Yes, I think you might have a claim for age discrimination, but of course it depends why they're promoting the others. If there are good reasons for promoting them, they're doing a really good job and they're better people for that particular role, then you wouldn't have a claim. But if it's just purely on age, then you might do.

LEWIS: It's hard to prove that though, isn't it Karen?

MORTENSON: Yes, there are difficulties in proving why an employer has made a decision to promote someone over someone else. But it does sound as though you may have a good argument - at least something that will make your employers sit down and think about things - so it's always worth going to speak to them and explain your concerns. One point I should flag though is at age 65 currently, which is under great amounts of consultation and is perhaps very unpopular with a large number of ... a sort of broad spectrum of people, is the fact that currently your employer can compulsorily retire you on 6 months notice.

LEWIS: But that's only if they have a policy of retiring people at 65, isn't it, or can they just do it out of the blue?

VEALE: Well no, they'd have to have ... they have a normal retirement age.

LEWIS: They'll have a normal retirement age of 65.

VEALE: But if they don't, there's a default at 65 at the moment.

LEWIS: Yes, right.

VEALE: So at that point, they can get rid of you simply because you've reached that age - which we, I would argue, is age discrimination actually, but it is at the moment allowed.

LEWIS: Well it clearly is. It just happens to be lawful, yes. Are you suggesting though that if Roger makes trouble about this, as you might say, they may well say well, okay, sorry, you're 65, it's time to go?

VEALE: It is a risk. I mean, Roger, you need to think about that Roger, I'm afraid.

ROGER: The company does have within its kind of trading policy - if that's the right term - that they don't ask people to leave once they've reached the ...

LEWIS: So they don't have a retirement age, so maybe that isn't such a danger. But I mean I think the important thing always, Sarah, is to sit down, isn't it, and discuss things with the employer? It sounds easy, but it is the first step to take.

VEALE: And persuade them that you add enormous value. Your experience in itself is something they should be rewarding, not penalising you for. So I'd go for the conversation.

MANN: And they may not be thinking of you as a candidate for promotion. So if you express enthusiasm for it, maybe that would be helpful.

LEWIS: Yes, that may make them see you in that light. Roger, thanks very much for your call. We'll move on because we have a lot of others, but thank you and I hope you do manage to get that conversation going with your employer. It's always an important thing to do. Ann is calling us from Carmarthen. Ann, your question?

ANN: Hello there, hi. I worked as a sessional for a particular care project and I,

worked there for two and a half years as an employee of the care project. I was then put to work through agencies. Since then, there's been an incident at work and complaints have been made about me. The police and social services are quite satisfied I have no case to answer, but the company did an internal investigation and I've now been informed by the agency that they can't use me anymore. However they will not tell me what the result of the investigation has been.

LEWIS: So this is the sort of rights of an agency worker to fair dismissal rather than just being told they're not going to work there anymore?

ANN: Yes and rights of appeal and also who has the duty of care for my safety at work because the reason the incident happened was because I wasn't handed over to properly as in I wasn't given information about a new policy that would have helped me calm the situation down.

LEWIS: Okay.

ANN: And also when I called the on call support, they weren't available.

LEWIS: Sarah Veale?

VEALE: It gets very complicated when you're talking about employment of agency workers, and I think here the difficulty is that the right of appeal and the processes are actually something which probably a company would only apply to its own directly contracted employees, which is I suspect where the difficulty comes if they're the ones who hold the information. The other issue about safety though. There is an obligation on the agency to make sure that an agency worker is being contracted to go and work in a safe and healthy workplace and not being asked, for example, to use equipment they're not trained to use. But I think on the issue of obtaining information, that always is a problem. I'm not quite sure whether either of the other two have ...

MANN: Just wondering whether you might make an application under the Data Protection Act ...

ANN: I've done that. They haven't really responded.

MANN: ... for information about personal data held about you, if you're not getting any information? It's a difficult problem, this, and I think this is the sort of thing where you need some legal advice from ... you know it's actually worthwhile going to see somebody because you need to work out what actually happened.

LEWIS: People are very afraid of going for legal advice though, aren't they, because of the cost? Where can someone like Ann go to get good legal advice from someone ...

MANN: Well I don't know what Ann's circumstances are, but maybe a Legal Aid solicitor or possibly a high street solicitor. But I think it might be worthwhile spending a little bit of money on something like this because it could have a knock on effect into the future. That's the aspect of things that would particularly concern me.

LEWIS: Karen?

MORTENSON: Yeah. And if you were trying to, if you couldn't afford to go and take legal advice, which would be understandable, Sarah's already mentioned the possibility of joining a union. They have support lines. We also have ACAS and the government body, Direct.gov, has some helpful guidance on it as well. So they're all free sources you can have a look at. There's also law centres.

LEWIS: Direct.gov.uk. I can't ...

ANN: I have actually investigated all those routes and come to a dead end on all of them.

LEWIS: You've tried those things and you've come to a dead end. Have you been to Citizens Advice?

ANN: I have had a phone conversation with them. They're not really ... until I find out what the result of the investigation is, it's very difficult for me to move the matter on.

LEWIS: Yes. Well perhaps you could wait for that and then take that to a lawyer, a local lawyer, and see what they say. I think at that stage, that's probably all the help we can give you, Ann. Thank you very much for your call. Pat has emailed us to say, 'May I add a positive note to your programme? For 8 years my colleague and I were paid £10,000 a year less than a male doing the same job. We got help from the Scottish Equality and Human Rights Commission and last week we heard we had won our case. So our advice is take action. Use the support on offer and persevere.' And on a similar note, Rachel has emailed in to say she's read somewhere - and this obviously is at the heart of equal pay - that under equal opportunities legislation you can ask your employer to make the rates of pay available. Is that true because it's hard to fight for equal pay if you don't know what the other people are being paid? Karen?

MORTENSON: Well currently there's no real provision in relation to having pay grades publicised. It's quite common in the public sector in terms of nurses for example being on pay scales, so that information's quite readily available. But under the Equality Act 2010, which comes into force in October, there are going to be provisions banning pay secrecy. And while the intention is that's going to relate to limited circumstances - so for example if you suspect you're being paid less than a male worker or a male worker suspects he's being paid less than a female worker, you can discuss it with them. There is some grey area regarding what the situation is if the reason you're trying to find out what someone's paid is to basically tell a competitor to get a pay rise negotiated, but it will be easier come October.

MANN: Another point is if you're bringing proceedings, you can get information in the course of proceedings. A tribunal may order it to be produced.

MORTENSON: And by proceedings, you mean going to a tribunal to complain about something?

MANN: Going to tribunal.

VEALE: You serve a questionnaire, don't you, on the employer?

MANN: You can serve a questionnaire.

LEWIS: And then they have to provide it.

MANN: There are ways and means of getting the information at the moment.

LEWIS: Okay, well thanks for those two emails. And we're going to go to another call now. Margaret is in Devon. Margaret, your question?

MARGARET: Oh hello, yes. I'm due to go back to work shortly following maternity leave, and prior to going on maternity leave I discussed the option of job sharing with my manager who indicated quite favourably that she would agree to that and we found a candidate within the organisation. But the senior manager's now said it's not appropriate for the level of my role and I just really wanted to know what I should be able to expect from my employer. They have a job share policy.

LEWIS: Right, this is sort of another flexible working question really, isn't it? Karen?

MORTENSON: Yes, to a large extent. On return to maternity leave, you've got the right to return to your previous job; but if you only want to work part-time on the job share basis, you've only got the right to request that and they do have to follow a fair procedure and they do have to properly consider it. I think the fact that your direct line manager said they couldn't see any problems with it means they're going to be facing a really hard battle to turn around and say why the business can't accommodate

it anymore. I mentioned earlier on in this session about the risk of possible indirect sex discrimination claims as well because obviously the reason that you - presumably at least - the reason you want to have the job share is to enable you to care for your child?

MARGARET: Yeah.

MORTENSON: So there's possible sex discrimination points there as well. One thing you could suggest and a sort of proactive approach is just the possibility of a trial period - particularly if it's an internal appointment - because presumably if it doesn't work, the person could go back to their existing role. Presumably they wouldn't need to recruit for the first couple of months. So perhaps that's a good way of pushing it forward.

MARGARET: Okay, thank you.

LEWIS: Yes, we've had a number of emails about this too, and in fact Diane is of the view that lack of flexible working options keeps women away from senior roles because the more senior the role, the harder it is to do flexible working or job sharing. Sarah ...

VEALE: Yes, I mean I personally think that's a myth actually. I think senior jobs are just as easy to split if you're an imaginative manager as manual jobs and other jobs.

LEWIS: So it's perception rather than reality?

VEALE: Exactly. And once someone's done it once, they often find it's enormously beneficial to the company as well as to the individual.

LEWIS: Okay, thanks very much for your call, Margaret, and we'll go onto Ian now who's calling us from his mobile. Ian, your question?

IAN: Hello, yes. In my company they pay us a productivity related bonus scheme and they have a habit of reducing the rates as and when they like to - punitively fining us for what might be termed procedure letters, amongst other things, out of the bonus. But also if we work overtime, any overtime that we claim is reduced, is taken away from the bonus, and I were just wondering if basically this is allowed?

LEWIS: Right, so Jane Mann, does a bonus policy have to be clearly set out and enforceable?

MANN: It has to be clearly set out in the contract, so it's clear how the bonus is done. I'm just wondering, is it a discretionary bonus or is it fixed?

LEWIS: Well we're told that they're allowed to do all this because the bonus is not within the terms of our contract. It's totally separate.

MANN: There are some rules relating to discretionary bonuses. The decision should be rational, shouldn't be arbitrary in your case. There may also be a claim under the Wages Act. It's a little bit of a complicated issue to go into, but it would be interesting to know what your expectations are, bearing in mind they're using the deductions as a punitive measure.

LEWIS: And Sarah Veale, very briefly, what can someone in Ian's position do?

VEALE: It's quite difficult. I mean the thing about overtime is there may come a situation where they need you to work overtime. It works two ways. They might suddenly have to have you. So remind them of the fact that you've always been willing to do it and they might need to call in that favour at some point.

LEWIS: So discussions again seem to be the answer. Ian, thanks for your call. That's all we have time for. My thanks to Sarah Veale of the TUC; Karen Mortenson from Finers Stephens Innocent; and Jane Mann from Fox Williams. Thanks to you for all your calls and emails. No time for barely a fraction of them. You can find out more

about rights at work on our website, bbc.co.uk/moneybox, where you can listen to the programme again, subscribe to a podcast, and in a couple of days read a transcript. If you don't have a computer at home, most public libraries give free access. I'm back at noon on Saturday with Money Box and here to take your calls on Money Box Live next Wednesday when the subject will be Tuesday's budget. And we'll be on air as usual at 3 and then we'll be continuing on the web 3.30 to 4, so a bumper Money Box Live next Wednesday afternoon.