

ESSENTIAL GUIDE TO CONTRACTS OF EMPLOYMENT

What is a contract of employment?

A contract of employment is an agreement between an employer and employee which is legally binding. The term is defined by the Employment Rights Act 1996 as a contract of service or apprenticeship. It outlines the basis of the employment relationship for both parties.

Some key facts about employment contracts

- Employment contracts do not need to be in writing to be legally valid, but it is better if they are.
- A contract 'starts' as soon as an offer of employment is accepted. Starting work proves that you accept the terms and conditions offered by the employer.
- Most employees are legally entitled to a Written Statement of the main terms and conditions of employment within two calendar months of starting work.
- An existing contract of employment can be varied only with the agreement of both parties.

What needs to be included in the written statement of particulars?

As a minimum, the following need to be included:

- names of the employer and employee
- date when employment began
- date on which the employee's continuous employment began
- scale or rate of remuneration or the method of calculating the remuneration
- intervals at which remuneration is paid, that is, weekly, monthly or other specified intervals
- terms and conditions relating to hours of work, including any terms and conditions relating to normal working hours
- terms and conditions relating to entitlement to holidays, including public holidays and holiday pay
- job title or a brief description of the type of work the employee is employed to do
- place of work or an indication that an employee is required or permitted to work at various locations

Express Terms and Implied Terms

The facts included in the Statement of Particulars are known as express terms as they generally meet the minimum legal standards and are stated in writing. Other express terms can be verbal or included in the staff handbook and often refer to legal entitlements, such as the right to rest breaks etc.

In addition, some terms are implied into contracts and can occur because the term is:

- incorporated by collective agreements (agreements with trade unions recognised by the employer)

- incorporated by workforce agreements (for example, agreements with the whole workforce covering breaks)
- incorporated by statute
- incorporated into individual contracts by custom over a period of time
- so obvious that the term is assumed to have been impliedly agreed
- needed to give 'business efficacy' to the contract (that is, to make the contract work properly)

Examples of implied terms can include the following:

- a duty of mutual trust and confidence between the employer and employee
- the employer's duty to provide a safe system of work and safe workplace
- the right to receive at least the national minimum wage (implied by statute)
- the right to a minimum period of notice (implied by statute)

It is good practice to provide as much clarity as possible to employees on terms and conditions for employees to help avoid uncertainty or disputes in the future. Information over and above the detail in the statement of particulars can be provided in instalments, through company communications, company policies and the staff handbook.

Examples of these may include:

- documents relating to disciplinary and grievance rules and procedures
- documents relating to sickness and pensions
- documents relating to the detail of bonus or commission schemes
- collective agreements
- length of notice the employee is required to give and receive to terminate the contract
- where the employment is not intended to be permanent, the length it is intended to last, or the end date if it is for a fixed term
- where the employee is required to work outside the UK for a period of one month or more, details of the time they are to work abroad, the currency they will be paid in, any additional remuneration payable and any benefits provided by reason of working outside the UK and any terms relating to the employee's return to the UK.

Contracts: Frequently Asked Questions

Q. Can an employer change the terms of an employee's contract?

A: An employer may be able to change the terms of an employee's contract (written or verbal) if one of the following applies:

- if there is a clause in the contract that allows them to do so
- if the employee agrees to the change, or
- if the employer ends their current contract and then re-engages them under a new contract

The safest option for making changes, to avoid claims of breach of contract will be to consult with the employee and gain their agreement to the change.

Any variations should be confirmed in writing within one month of the changes taking place.

Q. Is a contract of employment enforceable if it is not signed?

A: A contract of employment is an agreement made between an employer and an employee, rather than a piece of paper. Where there is written confirmation of this agreement, the terms within it may still be enforceable even if it is unsigned, if in practice the employer and employee have both been working to it.

It is important therefore that employees do not assume that not signing a written confirmation of the contract means that they have not agreed to it or that it is not enforceable. If an employee does not agree with the terms outlined in a written version of the contract, in order to demonstrate that they have not accepted these terms they must write to the employer at the time the contract is issued, explaining which parts of the contract they don't agree to and why.

Q. What is a zero-hours contract?

A: There has been much public debate on zero-hours contracts. A zero-hours contract is not a legal term, but means a contract of employment in which there is no set minimum number of hours.

- Zero-hours contracts normally mean there is no obligation for employers to offer work, or for workers to accept it.
- Most zero-hours contracts will give staff 'worker' employment status.
- Zero-hours workers have the same employment rights as regular workers, although they may have breaks in their contracts, which affect rights that accrue over time.
- Zero-hours workers are entitled to annual leave, the National Minimum Wage and pay for work-related travel in the same way as regular workers.