

Employment Contracts – The Essentials

As soon as an applicant accepts an offer of a job on an unconditional basis, a contract of employment comes into existence. The terms of this contract can be oral, written, implied – or a mixture of all three. As an employer, you have a legal obligation to provide all employees who have been in your employment for one month with a written statement of employment particulars. They must receive this within two months of the start of their employment with you. You do not have to issue a written contract. However, the team at Adams usually advise our clients to do so, as this can minimise ambiguity with regard to the employment relationship and reduce the risks of disputes. A contract can be anything from one short page to a lengthy document following detailed negotiations, although most contracts fall somewhere in between.

Written Statement of Terms of Employment

A written statement can comprise one single document, in which case all the information listed below must be included. However, you can provide a written statement of employment in separate parts, provided the employee receives every element within two months of starting work. The statement may be in the form of a letter of engagement and/or a written contract before the employee begins work.

The “principal statement”, which is the information that must be given in a single document, should include the following:

- The legal name of the employer company (it is also worth including the trading name too, if it's different)
- The legal name of the employee
- The date the employment commenced
- The date any continuous employment commenced (including any relevant employment with a previous employer)
- The rate of pay and payment intervals
- The job title or a brief description of the work
- The hours and place of work

Other information that must be provided either within the principal statement or elsewhere is listed below. This can be included in another document, such as the company handbook, as long as it is easily accessible by the employee:

- Sickness, injury and sick pay.
- The length of notice required or, if it is a fixed term contract of employment, the expiry date.
- The procedure for dealing with disciplinary matters and grievances generally.
- Details of any collective agreements, for example with trade unions, which may affect the terms and conditions of employment.
- Where applicable, details of any work outside the UK.
- Details of any pension scheme arrangements.
- Dismissal, disciplinary and grievance procedures.

Need to know!

- The written statement is not a contract in itself – but in the case of a dispute, it can be used as evidence of an employer's terms and conditions.
- You must tell the employee in writing about any changes to the written statement no later than one month after the change has been made. A change will still require the employee's consent.
- Freelance agents or independent contractors do not require a written statement of employment.
- It is advisable to provide all the required information in one instalment even if it is not a single document, to avoid confusion.



Full Contracts of Employment

The terms of a contract of employment can be oral, written, implied or a combination of all three. These terms can be located in a number of places, including the original job advert, letters sent to an employee before they start work, other agreements, and the staff rules and handbook. Although there are some standard terms and conditions, the content of a contract will depend on the nature of the business and the specific job.

Implied Terms

An employment contract can include implied terms, along with those actually agreed with the employee. Implied terms can include:

- The duty of the employer to provide a secure, safe and healthy environment
- The employee's duty of honesty and loyal service
- An implied duty of mutual trust and confidence
- A term too obvious to state – for example, that your employee will not steal from you
- Any terms that are necessary to make the contract workable.

Contractual Terms

Typically, a full contract would deal with all the terms listed in the written statement of employment, but may also cover issues such as:

- Restrictions on competition after termination of employment
- Intellectual property rights, i.e. ownership of inventions, developments and copyright
- Express provisions on confidentiality
- Prohibitions on working for other employers during the employment
- Provisions allowing the employer to put employees on what is known as "garden leave" and make payments in lieu of notice
- An express right to make deductions from salary

Need to know!

- If you wish to change the terms of an employee's contract of employment, you must get his or her prior consent. This is because whether the contract is oral, written or implied, the employee may otherwise be able to sue for breach of contract, or resign and claim constructive dismissal.

Top tips!

- Don't make disciplinary policies a contractual item — otherwise a sacked employee could claim that a failure to comply with every detail of the policy is in fact a breach of contract.
- Include a term stating that this contract replaces all previous discussions/correspondence, in relation to terms of employment, provided the employee accepts this.
- Consult a solicitor or legal advisor for more detailed contracts of employment. This will help to ensure that they are compliant with all current legislation, are fully enforceable and that they meet the employer's precise needs.

For further information

For further information about employment contracts or any other aspect of employment law, contact Greg O'Shannessy in our Whitechapel office on 020 7790 2000 (goshannessy@adamslaw.co.uk) or Maung Aye in our Canary Wharf office on 020 7712 1779 (maye@adamslaw.co.uk).

Please note that this Briefing Note gives general advice about employment law, particularly written statements of particulars of employment and employment contracts. The information is not an authoritative interpretation of the law, and you are advised to seek legal advice where necessary.