

Contracts of employment – what businesses should know

Do we really need written contracts of employment?

Many businesses worry that they do not have contracts of employment for staff or that what they have in place may not be legally compliant or up to date. However, the legalities are often forgotten in the “after –glow” of getting the right person on board and the business priorities of getting the person up to speed with their new role. However, the lack of a proper written contract of employment remains a real risk to the business.

It is a legal requirement that basic terms of employment are provided to new employees. Written “particulars” of employment should be provided within one month of employment commencing. This includes key terms such as place of work, pay details, hours, sickness and holiday entitlement, notice periods etc. An Employment Tribunal can award additional compensation on between 2-4 weeks pay in the event of a claim.

A contract of employment in writing will:

- Help to minimise the risks of later disputes arising about contractual entitlements.
- Put the employer in the driving seat in terms of such disputes.
- Help in protecting the business in the event of a dispute.
- Maximise the employer’s options when faced with staff who suddenly resign, often to take up employment with a competitor or where staff have had access to business critical information.
- Present a professional impression of the business to staff.

What is the best way to produce a contract of employment?

Producing a suitable contract of employment need not be a daunting task. You may wish to consider the following:

- The starting point is to consider what the business has in place already. Are there existing contracts that may be out of date? Are all your staff covered? Do we have contracts at all? It may be that existing contracts can be reviewed or updated. Remember that any contractual changes will need to be agreed with staff in order to be legally effective. We can assist in this implementation process.
- How does the contract dovetail with your recruitment process? For example, it may well be that contractual terms are contained in offer letters or exchanges of correspondence/emails before employment actually commences. It is important to ensure that the written contract represents, so far as possible, the “entire agreement”.
- Will one “standard template” be required from which individual employee details can then be added?
- Do you require more comprehensive contracts for senior members of staff for example managers? We would recommend that more comprehensive “service agreements” are entered into for senior managers and directors.
- How does the contract fit in with our Employee handbook? Most businesses will produce an “Employee handbook” containing policies and procedures and rules that staff are expected to comply with. It would be a good idea to review your handbook (or implement one) at the same time as a review of employment contracts.

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What terms should be included in the contract of employment?

In essence, those which are required by law (see sections 1 - 4 Employment Rights Act 1996) and those further terms required to protect the business and to make the employment relationship work. Common terms are set out below:

- Parties – it is important to get the parties to the contract correct – will the employee carry out work on behalf of a number of companies in the group and can each of those companies take the protection of any restrictive covenants (see below)
- Commencement date – both of this contract and also any continuous service with the employer which “counts” towards employment
- Length – is it a fixed term contract or one that will run indefinitely. Most employment contracts run indefinitely but are subject to termination by the employer either “on notice” or summarily in the event of gross misconduct.
- Termination – Employers may wish to terminate employment in a number of scenarios, for example misconduct, redundancy, lack of capability to do the job or perhaps just where “things are not working out” – it is important to appreciate that some employees will be able to make a claim of “unfair dismissal” on termination of their employment (in the main, those employees with over 12 months continuous service) and therefore any termination process must be handled carefully. It is not possible to “contract out” of the right to claim unfair dismissal when the employment contract is first entered into.
- Pay – and the fact that any future salary reviews/increases are not guaranteed. Ensure arrangements for overtime are clearly documented.
- Mobility – What are the existing and future requirements of the business? Is it possible that the

employer may require the employee to work from a different location and how far can the employer use the contract to “enforce” any moves (and avoid triggering any liability to make redundancy payments?)

- Sickness – Employers will want to ensure that employees comply with requirements to notify them promptly of any sickness absence and keep them updated. Does the employer intend to keep the employee or full salary during sickness and if so for what period, or is the entitlement simply SSP (Statutory Sick Pay)?
- Business protection – an important area to consider for more senior staff, those who will develop relationships with your customers and clients, and those who have access to databases and business critical information. In the absence of a written contract containing suitable clauses, the law will not generally come to the rescue of employers. Careful drafting of confidentiality clauses, restrictive covenants, garden leave clauses and delivery up clauses is recommended.

There are many other possible terms which could be considered.



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