



Contracts of Employment



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Contracts of Employment

The Employment Rights Act 1996

Section 1 of the Employment Rights Act 1996 ("the Act") states that employers have to provide a written statement of particulars to every employee within two months of their start date. The principal statement has to include: the identity of the employer and employee; the date employment began; the date continuous employment began (this can be different from the date employment began in some cases); the rate of pay and when the employee will be paid; the hours of work and normal working hours; holidays, public holidays and holiday pay; the job title or a brief description of the work to be done by the employee; and the employee's place of work.

Various particulars also have to be given to the employee but do not have to be included in the principal statement. They are: whether a contracting-out certificate is in force in relation to the pension scheme; if the contract is for a fixed term, when it will expire; if the employment is not permanent, how long it will last; details of any collective agreements directly affecting the terms and conditions of employment; the grievance procedure and the job title of the person the employee has to apply to if he has a grievance; and if the employee wishes to appeal from a disciplinary decision, who he should appeal to. If the employee is required to work outside the UK for more than a month, various extra details have to be given.

The employer can refer the employee to other sources for details of: sickness, injury and sick pay; pensions and pension schemes; the length of notice to be given by either party; and any disciplinary rules that apply.

A contract of employment or director's service agreement will need to include all of these particulars and will usually include other details as well. Most employers will also give employees access to a staff handbook, containing its policies and procedures.

Optional Particulars

Some of the extra provisions you may wish to put in the statement of contract include:

- A probationary period, which will give you a chance to review the new employee's performance after a few months, before you confirm his employment.
- If the employee is likely to work long hours, an opt-out from the 48 hour working week.
- A right to lay staff off and put them on to short time working if necessary (this could save you having to pay full pay if you need to reduce hours temporarily).
- How expenses will be dealt with, including what the employee can claim for, what proof is needed and how a claim is made.
- More detailed rules regarding holidays, such as how holidays are requested, any times of the year when holiday cannot be taken and whether it can be carried forward to the next holiday year.
- Additional rules regarding sickness, such as the reporting procedure and whether the employee can be obliged to have a medical examination.
- The employee's consent to allow you to deduct money from his wages if he owes you money, e.g. loan repayments or overpayments. (Without this, you cannot make a deduction).
- Extra provisions regarding the termination of employment, including whether you wish to be able to make a payment in lieu of notice and whether you can put the employee on "garden leave".
- Clauses that give the employer protection, such as restrictive covenants (limiting what the employee can do when he leaves employment), a confidentiality clause protecting trade secrets and confidential information, and intellectual property clause that will protect anything the employee designs or develops during his employment, and a clause requiring the employee to return property and documents when his employment ends.
- If the employee is a home-worker (either full-time or part-time), additional

provisions should be included dealing with areas such as equipment, insurance, health and safety, confidentiality and attendance at meetings.

- If the employee is a director or shareholder, extra provisions will be required (including the obligation to resign as a director and transfer any shares to termination of employment). These may be included in other documentation rather than the contract of employment.
- The contract should include the employee's consent to process and transfer personal data under the Data Protection Act.
- If the employee gets any benefits (such as a company car, life assurance or private health insurance) or a bonus, details should be included.
- If you want to be able to move the employee between workplaces or overseas, this should be covered.
- If there is an overseas element to the contract (e.g. the employer or employee is based overseas), the contract should state which law and jurisdiction will apply.
- The contract should also include some flexibility around job duties, hours of work and place of work to enable the employer to make reasonable changes.

Frequently Asked Questions

What if an employer does not issue contracts of employment?

As well as uncertainty regarding the terms under which an employee is working, the employer will not have the flexibility and protection set out above. In addition, if an employee is not given a statement of particulars of employment by his employer he does not have a stand-alone claim but, if he brings another claim in the Employment Tribunal (e.g. for unfair dismissal), he can also complain that he has not been given a statement. The Tribunal can award between two and four weeks' pay (which is at the rate of £400 per week), in addition to any other compensation.

What happens if some of the details in

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the contract change?

If there are any changes to any of the particulars required by the Act, an updated statement has to be given within one month of the change.

How often should our contracts be

updated?

Every time you issue a contract you should tailor it to the individual circumstances. In addition, we recommend that your contracts are reviewed and updated every two years to take account of changes in employment law.

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