

10. Contract of Employment

1 OVERVIEW

A contract of employment exists between two parties, the employer and the employee. An employment contract is a signed agreement between an employee and an employer and it establishes both the rights and responsibilities of the two parties.

A contract sets out an employee's:

- Employment conditions
- Rights
- Responsibilities
- Duties

These are the 'terms' of the contract. Employees and employers must adhere to the terms of the contract until it ends, for example, by an employee giving notice. If either party breaches this agreement, the other party may make a claim for breach of contract.

An employer must provide employees with a 'written statement of employment particulars' within 2 months of the start of employment.

It will often be clear when an offer of employment has been made to an individual. However, in order to be valid, the offer must meet certain requirements. It must:

- show a clear intention on the part of the employer to be bound by a contract
- be sufficiently clear and unequivocal so that a potential employee can accept it; and
- be communicated to the individual to whom the offer is made.

2 KEY POINTS

Employees may accept an offer of employment either expressly (for example, by signing the contract of employment or expressly stating to the employer that they are accepting the offer) or impliedly (for example, by turning up to work).

Both parties to the contract must have an intention to create legal relations and a valid 'consideration' must change hands. In an employment contract, this is ordinarily the payment of salary in return for the performance of work.

Terms should be drafted with as much clarity as is possible, in order to avoid potential issues during the course of the employment relationship.

3 WHAT TO INCLUDE IN A CONTRACT OF EMPLOYMENT

The following must be included in a written statement of particulars:

- Employer name and address
- Employee name and address
- Start date of employment of the employee
- If a previous job counted toward continuous service and the date that started
- Job title of employee

- Normal place of work. Where an employee will be working
- Payment. What the salary will be and how it will be paid?
- Hours of work
- Holiday entitlement and holiday pay (and if this include public holidays)
- Pension arrangements
- Notice periods
- How long a temporary job is expected to last
- The end date of a fixed term contract
- Who to go to with a grievance
- How to complain about how a grievance is handled
- How to complain about a disciplinary or dismissal decision
- Information about collective agreements which might affect the terms and conditions of the employment.

4 IMPLIED TERMS

Implied terms are automatically included in the contract even if it is not written down.

If there is nothing clearly agreed between you and your employer about a particular issue, it may be covered by an implied term - for example:

- employees not stealing from their employer
- your employer providing a safe and secure working environment
- a legal requirement like the right to a minimum of 5.6 weeks' paid holidays
- something necessary to do the job like a driver having a valid licence

5 VARYING CONTRACTS

In keeping with the principles of contract law, an employment contract may only be varied with the consent of both employer and employee. An employer can rely on either an employee's express or implied agreement to the proposed variation or on an existing contractual term which authorises the change which the employer wants to make.

The most preferable course of action is for an employee to obtain the express consent of the employee to the variation, preferably in writing. This can be done with a simple letter or amendment agreement to the employee's contract of employment.

Where an employer is unable to obtain the employee's consent to a contractual variation, it may try to impose the change unilaterally. This approach is not generally advisable as it will place the employer in breach of contract.

6 NEXT STEPS

- Gather together the information and detail needed for the contract of employment, including; the employee's working hours, personal address, start date of employment, location of work, job title, holiday entitlement, etc.
- It is advisable to engage a HR professional to create a template contract of employment for employees of your business.

- Send two copies of the contract that you have signed to your employee and ask for one copy to be signed and returned to you as soon as is reasonable. Be prepared to answer questions that they might have about some of the detail in the contract.

7 FACTSHEETS & TEMPLATES TO HELP

- How to make an offer of employment
- How to prepare for your new employee
- Holding HR records
- Written Statement of Employment

8 FOR MORE ADVICE AND INFORMATION

ACAS - (Advisory, Conciliation and Arbitration Service) free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. www.acas.org.uk

Achieve in Bath & North East Somerset - free recruitment support, advice and help. Matching job seekers, employers and course providers to help employers recruit, train and retain employees. www.achieveinbathnes.co.uk

Future Bright - free help & support for businesses and employees to realise their full potential. Provide access to training and development, workshops and networking. HR support to promote career progression and best practice to attract and retain staff. www.futurebright.org.uk

Bibliography - this fact sheet was produced by Rathbone HR Solutions in association with Cool Ventures Ltd in December 2018 with content sourced from; HR Inform (www.hr-inform.co.uk), ACAS (www.acas.org.uk), CIPD (www.cipd.co.uk), the pensions regulator (www.thepensionsregulator.gov.uk/en/employers), HMRC (www.gov.uk/government/organisations/hm-revenue-customs), the Information Commissioner's Officer website (www.ico.org.uk)



Created for Future Bright by Cool Ventures - Business Support in Bath, Bristol, Wiltshire, Gloucestershire, South Gloucestershire and throughout South West England www.coolventures.co.uk