

What is an Employment Contract?

Section 230(2) of the Employment Rights Act 1996 defines an employment contract as:

“a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing”

In short, the employment contract is the agreement between an employer and employee which establishes the basis of the employment relationship. Such contracts are legally binding, can be implied, agreed orally or in writing and contain the terms and conditions of employment and the rights and responsibilities of the parties to the contract.

As with all contracts, for an employment contract to be legally binding it must contain the basic elements of a contract:



An intention for the parties to create a legally binding relationship

For example, a volunteering or internship arrangement would not normally demonstrate an intention to create a legally binding relationship.

Offer and acceptance

An offer of employment may be conditional (for example, upon receipt of satisfactory references) or time-limited (for example, open for acceptance for a specified time period), but must be made by someone with authority to bind the employer. Acceptance can be communicated in several ways by the employee and it is good practice for an employer to be clear about the required method of acceptance.

Consideration

As with all contracts, consideration is required for a binding agreement. In the employment context, the employer's consideration is usually the payment of wages and the employee's consideration is usually the performance of the work.

It is good practice to ensure that the terms of the contract are sufficiently certain. In the employment contract, section 1 ERA sets out the particulars of employment which must be given to workers.

When and how is the Employment Contract established?

Although employment contracts can incorporate both implied and express terms, which can be agreed orally or in writing before and during the employment relationship, there are certain terms which employers must confirm in writing to the employee at the start of employment, including:

- The names of the employer and employee
- The date the employment begins, any probationary period and whether it is intended to be permanent or for a fixed term and the notice required for the employee to terminate
- The job title or job description
- The place of work, including details of any requirement to work outside of the UK
- The rate of pay and the pay intervals – i.e. weekly, monthly etc.
- The hours of work and whether these are variable
- The entitlement to holiday and holiday pay
- Details of sick leave and sick pay and any other paid leave
- Details of pension provision and any other benefits
- Any collective agreements and training requirements

Why have a written Employment Contract?

Notwithstanding the statutory obligation to provide certain terms and conditions of employment in writing, there is no obligation to provide a written employment contract. The parties may have entered into an express agreement orally or they may have implicitly entered into an agreement through a course of conduct. Furthermore, although a well drafted written employment contract can provide certainty to both parties and protection to the employer and employee, a poorly drafted written employment contract can create doubt and lead to dispute.


The key therefore is to ensure that any written employment contract is clearly drafted and reflects the true intentions of the parties at the time of entering into it.

The type of employee and the role they perform will usually inform what, in addition to the statutory written terms, to include in a written contract of employment and an employer may wish to include tailored clauses dealing with the following issues:

- Duties specific to the role
- Responsibilities of the employee – including statutory duties if a director
- Any rules or requirements which are binding on the employee or employer
- The status of any supplementary documents, such as staff handbook or share option scheme
- Bonus or commission entitlement
- Confidential information
- Intellectual property
- Restrictions during employment
- Post-termination restrictions

It is important to remember that a one size fits all approach rarely works well in the context of an employment contract. The written employment contract should contain terms appropriate to the employee and the employer to avoid confusion and the risk of terms being void. Furthermore, over time, the employment relationship – and its terms – can evolve and change and having a record of both the change and the agreement to and implementation of it can assist in the event of any dispute.

For further information or to arrange a free, no obligation consultation, then please contact our team on:

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