

technical factsheet 147

The contract of employment

Every employment relationship is governed by a contract of employment which is an agreement governing the mutual obligations of the employer and employee. In most cases it is not necessary for an employment contract, other than apprenticeship contracts, to be in writing in order to be legally valid. As soon as an employee starts work, the contract begins, and even if it is not in writing, the terms that have been offered and accepted will be implied by the way in which the parties conduct their relationship.

Why should I use a written contract or statement?

Writing down the basis of your agreement is likely to avoid disagreements later on, it is also a good discipline as it makes the employer think about, and decide, what the terms of the arrangement are going to be, so it is certainly highly recommended.

What are the minimum requirements?

Although a legally valid contract of employment can be made without writing, s1 Employment Rights Act 1996 requires employers to provide employees with a written statement of the main terms of the employment within two calendar months of starting work. The mandatory terms that must be covered in this statement are:

- The names of the parties
- The date that employment started
- If the employee is already employed, and the contract relates to a new position, on what date continuous employment with the employer started
- A job title, and/or brief description of the role
- Hours of work
- Scale or rate of remuneration
- Intervals of payment
- Hours
- Overtime
- Holidays
- Sick pay
- Grievance procedure*
- Disciplinary procedure*
- Pension*
- Place of work
- Notice period

*these need not be laid out in full in the statement, but can be in a separate document to which the statement refers

Where the employer gives or has given the employee a contract of employment covering all these matters, it does not also have to provide a statement. There is no need to provide such a statement for an employee who works for less than one month. However, where the employer needs one, the ACCA have produced a pro-forma 'Contract of Employment' and a 'Statement of terms and conditions', available at:

Contract of Employment: <http://www.accaglobal.com/documents/contract.doc>

Statement of terms: <http://www.accaglobal.com/documents/statement.doc>

Alternatively, Business Link provides a tool for employers to use enabling them to create a standard statement by filling in these details onto a pro-forma. This is available from:

www.businesslink.gov.uk/Employing_People_files/Written_Statement.pdf

What happens if I do not provide a statement or a contract?

There is no freestanding right for an employee to obtain damages if the employer fails to provide either a compliant contract or statement, but if the employee takes an employment tribunal case against his employer relating to another aspect of employment and is successful, and a statement has not been provided, an additional award of two to four week's pay may be made against the employer.

What is the difference between a contract and a statement?

There is a legal difference between a contract and a statement. Where an employee signs an employment contract to say that s/he agrees with the terms, it is binding on both parties from the date of the contract and it does not matter in practice whether the employee has read or understood the terms or not. A standard statement is given to the employee as the employer's version of the terms and the employee does not agree to it formally, although sometimes s/he will sign it to signify that they have received it or read it. Acceptance of the terms will be implied by the fact that the employee has acted in accordance with the terms of the statement. It is therefore of evidential value, but not conclusive as to the content of the contract.

Which should I use?

It is better to have a statement than nothing, but it is undoubtedly true that a contract is better for the employer because there are many additional terms which are worth including in the contract. For further information about this, please see Factsheet 147.

What if the parties do not agree about the terms of their contract or statement?

If, for example, there has been a misunderstanding about the parties' agreement, what happens will depend upon how long the employee has been working and what the impact of the disagreement is. Any employee who is unhappy with his written terms and conditions has limited ability to challenge them if s/he is inside his first year of employment. He has no right to claim unfair dismissal, and unless s/he can claim that there is some kind of unlawful discrimination, the option is to live with it or leave.

Once the employee is past that first year, there is the option of claiming unfair dismissal if it is felt that s/he is being asked to do something which is not required by what they understood to be their contract. In theory this could permit the employee to leave and claim constructive dismissal; this is not a decision to be taken lightly and it would be rare to advise any employee to do this. The law has always demanded a degree of flexibility from employees, particularly in small businesses, and a tribunal would have to be convinced that what was being expected went well beyond what the employee should have been asked to do. In addition, what has been agreed between the parties will often be a matter of oral evidence and it is notoriously difficult to rely on such things as they are a matter of one word against another.

There is a right under the Employment Rights Act s121 for either party to apply to the tribunal to ask for a determination on the accuracy of a standard statement of terms and conditions and to ask for the particulars to be confirmed, amended or substituted with fresh ones. This tends to happen when there are other claims in respect of other employment matters and the argument is that the particulars are inaccurate. This power covers a situation where the particulars are incorrect rather than incomplete, and the tribunal will not use the power to interpret the meaning of a term which the parties disagree on.

As ever, the best option is for both parties to negotiate and try to reach some kind of sensible compromise.