Employment Law Guide for Employers

Employment Contracts and Handbooks

PENINSULA

Employment Contracts and Handbooks

This employment law guide explores the basics of employment contracts and handbooks and offers guidance on how to avoid common pitfalls.

The contract of employment sets out the employment rights, duties and responsibilities and will cover more than the initial signed document. The document that an employee first signs when offered the job will usually be a statement containing the main terms of employment.

A handbook is an important tool to allow employees to know what rules they work under but, also, what is required of them in the workplace. Issuing company handbooks upon commencement of employment allows employees to access this information immediately and to refer back to it at a later date.

When supplying contracts and handbooks to employees it is good practice to receive either a signed and dated copy of each, or a signed and dated notice from the employee. This should be used as evidence that employees have received and understood the documents.

> **Not giving an employee a statement of main terms can cost up to four weeks' pay**

Different types of contract

A full-time permanent employment contract is not the only option for an employer who wants to engage staff. There are a variety of contracts that can be used to reflect the needs of the employer.

Some examples are below:

Fixed-term contract - This contract will include an end date for when the contract will terminate. These are often used for employers who require staff to complete a specific project (after which there will be no need for the employee to remain) or to cover periods of leave (such as maternity leave).

Part-time contract – This will stipulate the hours that are to be worked by the employee, which are less than a normal full-time employee. All entitlements and benefits of a full-time worker will be included in this contract but provided on a pro-rata basis to be dictated by the actual amount of hours worked.

Zero hours contract – This is a contract that provides the most flexibility to the employer, who cannot guarantee any level of hours to be worked. It allows the employer to call upon the employee whenever they are needed, but does not promise any minimum hours of work.

Written Statement of Main Terms

One month's service

an employee becomes entitled to a statement of main terms

Two months service

an employee must receive their statement of main terms

Under the Employment Rights Act 1996, employees who are employed for longer than one month must receive a written statement of the main particulars of their employment within two months of their starting date. The information contained on this statement is required by law and has to be covered.

The required information includes:

- The name of the employer and employee
- The employee's start date
- The job title
- Details on the annual leave entitlement
- Details on the rate and frequency of pay
- Details on the normal hours of work
- Notice periods for termination
- Disciplinary and grievance procedures, or indicating where these are located

(This is not an exhaustive list)

An employer may include additional information on other terms and conditions relating to employment, such as, notification of absence procedures, information about benefits etc. As this extra information is not required in the statement, employers may find it useful to include these in a separate employee handbook.

Types of Terms

The contract that governs the employment relationship will cover a wide variety of terms other than those contained in the statement of main terms. The following will be included in the contract of employment:

Express Terms
These are terms within a contract of employment that have been specifically stated or had attention drawn to. An express term can be included in a contract in writing or orally; it does not have to be written down to be an express term.

Implied Terms
These are terms that have never been written down or spoken. However, they are in existence in the employment relationship for various reasons. A term can be implied into a contract because it is so obvious that it doesn't need to be directly mentioned. A term may also be needed to make the contract work properly or, in other words, to give the contract business efficacy.

Examples of implied terms are: mutual trust and confidence between employer and employee; a duty on the employer to pay the employee's wages; a duty on the employee not to work in competition with the employer during employment.

Statutory terms
Some terms are inserted in a contract because the law prevents anything to the contrary. This means that if a term is included in the contract that is below the minimum provided by statute, the statutory minimum will override and make the contractual term void. Examples are minimum notice periods and national minimum wage.

Breach of any of the above terms entitles the employer or employee, as appropriate, to take action up to and including dismissal or a tribunal claim.

Over 1,000 people claimed they weren't given a written contract in 2015/16

(October 2015 – September 2016)

Employee Handbooks

There are useful policies and clauses that can be included in handbooks to provide clarity on the employment relationship. Here are a few that can be included:

Equal opportunities
Whilst employers believe they are carrying out equal opportunities within the workplace, explicitly showing employees they are working under such a policy is good practice and can lower the potential for equality and discrimination complaints. These claims can be costly at tribunal. The clause should be easily accessible to employees and the inclusion within a handbook is an easy way of making it so.

E-mail, social media and internet usage
These clauses have become more relevant in recent years, so handbooks may need to be checked and updated if they are not included. Most policies of this kind will reiterate to employees that any information sent from or through their work email account is property belonging to the company and, as such, should comply with all business policies including those relating to data protection and bullying or harassment. The same principles apply to workplace internet use. The clause should specify whether any monitoring or checks are carried out on the content of staff's emails or internet searches.

Laying down set guidelines on the use of social media will ensure that, if any contentious posts are made by your employees, action can be taken against the employee for this. Recent tribunal cases have been lost by employers because their employees were not aware that their actions on social media fell within the company's view of misconduct and powers to discipline.

Protected disclosure
A clause detailing the procedure for how to make a workplace disclosure is important for employees who wish to do so, along with explaining how their disclosure will be handled and investigated. The clause should also make clear that a person who does make a protected disclosure will be prevented from unfavourable treatment by reason of them doing so. This will encourage genuine disclosures to be brought forward by concerned staff.

Data protection
Most companies will deal with sensitive and confidential information about their staff. Having a clause that covers the process for storing data, explaining who has access to it, and any information regarding how the company complies with subject access requests is likely to remove the potential for any breaches involving data and confidentiality. The clause must also detail how employees should handle external data, and can either include or link to rules on confidentiality and disclosure.

Disciplinary procedures
A clause containing a disciplinary procedure will be beneficial when analysing whether action taken against employees is fair or unfair. Transparency of disciplinary action allows managers, employees and even tribunals to assess the implications of an employee's act. Clauses will usually contain general examples of types of disciplinary issues such as misconduct, serious misconduct and gross misconduct. It is important to include specific disciplinary issues linked to the specific business in this clause.

Grievance procedure
It is important to include a clause containing the procedure that employees need to follow when raising a formal complaint, ensuring that this can be handled efficiently and properly. The difference between a grumble and a grievance can be hard to identify but encouraging employees to bring a grievance via the proper channels will allow effective identification and management of grievances.

Also, in the interests of transparency, the grievance procedure can show employees how their complaint will be managed, by whom, and how long this process will take.

Termination of employment
Employers may think that ending employment is as simple as giving notice, or receiving a resignation, however there are various areas that should be covered to make the transition from employee to ex-employee easier, for both the business and the individual. This clause can include information on areas such as payment in lieu of notice, garden leave, return of works property and company vehicles, and what the powers the company has if the right amount of notice isn't given by the employee.

Right to amend
Handbooks should be kept up-to-date and relevant at all times. The constant development of employment law and employment cases can often mean that certain clauses become irrelevant or outdated.

Including a separate clause reserving the right to amend, or including the right within each individual clause, will give employers the power to update the handbook to ensure it is enforceable when needed. When clauses are updated, the handbook should be reissued to staff, again making sure that evidence of receipt and understanding is received.

Restrictive Covenants

Restrictive covenants should be given separately to, but at the same time as, the written statement of main terms.

Restrictive covenants are documents that place restrictions on the employee once their current employment ends. They are placed on the employee for a limited period or can contain a given radius where the ex-employee cannot conduct the same business. They are put in place to safeguard the employer's interests by protecting the information the employee would have been privy to as part of their job.

The main areas restrictive covenants protect are:

- Non-solicitation: the employee is prevented from approaching current or prospective clients of the employer
- Non-competition: the employee is prevented from conducting the same business, either on their own account or as part of a competing business
- Non-poaching: the employee is prevented from poaching employees from the employer
- Confidentiality: can cover trade secrets, new developments, bespoke methods etc.

Restrictive covenants must be drafted reasonably to be considered valid by the courts when the employer is seeking to enforce them. This means the time period or geographical location cannot be indefinite or unrealistic. Employers should take into account their location, the particular industry and the seniority of the particular employee when drafting covenants.

Restrictive covenants should be separately signed and dated. This will provide solid evidence when an employee goes through the civil courts to enforce the restrictions against the ex-employee.