

burton & dyson

SOLICITORS



Guide to Employment Contracts

A guide by Burton & Dyson



Introduction

The contract of employment between employer and employee is at the heart of the employment relationship. It is a legal agreement between the two parties that comes into force when an employee agrees to work for an employer in return for pay.

It can be in writing or a verbal agreement, although employers are legally required to put key details of their employees' terms and conditions into a document called a written statement.

Whether explicitly stated or not, court rulings have established that all employment contracts include the following terms:

- to maintain trust and confidence through co-operation
- to act in good faith towards each other
- to take reasonable care to ensure health and safety in the workplace

Alongside the employment contract, company handbooks are a useful tool to help employment relationships operate effectively, by setting out the policies of the employing business on a wide range of issues and explaining the rights and obligations of the employer and employee.

Contracts and handbooks are important documents and as such need to be up to date and compliant with the law. Seeking expert advice from legal advisers experienced in employment law is a wise move, whether you want to review existing documents or create new ones.

Contracts

Most contracts do not need to be in writing to be legally valid, but putting the details in writing will help to reduce the likelihood of later disagreements.

If you do not provide a written contract, under the Employment Rights Act 1996 you must give most people you employ a written statement of the main terms within two calendar months of their starting work. The exceptions are anyone who is not an employee, such as an independent contractor or freelancer, plus certain mariners and employees who ordinarily work outside Great Britain.

This written statement (or a contract) must include:

- your name/your organisation's name
- your employee's name
- the date when the employee's employment (and their continuous employment) began
- pay and the intervals at which it will be paid
- hours of work
- holiday entitlement
- entitlement to sick leave, including any entitlement to sick pay
- pensions and pension schemes
- your and your employee's entitlement to notice of termination
- job title or a brief job description
- where it is not permanent, the period for which the employment is expected to continue or, if it is for a fixed term, the date when it will end
- either the place of work or, where the employee will need to work at more than one location, an indication that this is the case and the employer's address
- details of any relevant collective agreements directly affecting the terms and conditions of your employee's employment (including, where you are not a party to these agreements, the persons by whom they were made)
- details of your disciplinary and grievance procedures, and stating whether or not a pensions contracting-out certificate is in force for the employment in question



Where the employee is normally employed in the UK, but you will need them to work overseas for a period of more than one month, the statement must also cover:

- the period for which the employment abroad will last
- the currency in which the employee will be paid
- any additional pay or benefits
- terms relating to the employee's return to the UK

If you do not offer one of the items that must be included in the written statement, such as a pension scheme, you must say that it is not offered in the written statement. You cannot just leave it out.

Other content

Contracts may contain provisions that allow the employer to make certain changes. For example, a flexibility clause gives you the right to change certain employment conditions, such as shift patterns, or to specify that an employee may be asked to carry out any other duties that may be reasonably asked of them, along with their main duties.

A mobility clause allows you to change an employee's place of work, for example by stating that they may be asked to work at any of your company's sites or anywhere in the UK.

A variation term allows you to change a particular term or condition in a contract without first asking. Variation terms must relate to specific issues, such as hours of work or a requirement to do overtime.

Clauses that are too vaguely worded – such as “the employer reserves the right to change terms from time to time” – cannot be used to bring in unreasonable changes, because the implied “trust and confidence” term means that the employer must not act unreasonably.

You may wish to protect your business against ex-employees who may wish to set up commercial operations that could damage your own firm or prevent them from disclosing confidential information or trade secrets.

Post-termination restrictions on ex-employees – implemented through restrictive covenants in employment contracts, which are intended to come into force after employment has ended – are generally considered anti-competitive and in restraint of trade.

However, these covenants can be drafted so that they are only as wide as necessary to protect your legitimate business interests.

Changes to terms and conditions of employment

You may wish to change the terms and conditions contained in your employment contract with your employees, for example due to a reorganisation of the business or a move to new premises. You might wish to make changes affecting issues such as:

- rates of pay
- working time (for example, longer or shorter hours, different days)
- employee duties and responsibilities
- location of a place of work

Outside reasonable variation terms, mobility clauses or flexibility clauses, you cannot simply impose new terms and conditions. You must make the changes with the agreement of your employees, although employees can accept the change simply by carrying on working under the new arrangements.

However, changes should ideally be made by reaching a negotiated agreement, either with individual employees or through a collective agreement, with a trade union or staff association. Collective agreements to employment contracts will also apply to employees who do not belong to the trade union or staff association.

If employees' roles are likely to change significantly, providing a new job description alongside the new contract will set out for you and your staff what they will be expected to do, how they are expected to do it and who they should report to.



Company handbooks

When a new employee joins you, it is important that they understand the policies and procedures that help you to run your business.

Many employers now provide new employees with an employment handbook when they start work, which bring together information on a wide range of relevant issues. These could include:

- absence
- alcohol and drugs
- codes of conduct
- confidentiality
- data protection
- discipline and grievance procedures
- email and internet use
- employee monitoring and the right to search
- environmental policies
- equal opportunities
- holidays
- maternity, paternity and family policies
- restrictive covenants
- retirement procedures
- staff development and appraisal
- stress

Putting in place a company handbook that sets out all your policies and procedures means that everyone in the company knows how situations should be handled and what is expected of them, which helps the business to run smoothly.

Where documents already exist, it is also important that these are reviewed regularly to ensure that they are legally compliant and tailored to the individual needs of your business.

Employees also need to be regularly reminded of the content of your policies and procedures.

Conclusion

Employment contracts and company handbooks are valuable tools for helping your business to operate effectively and to minimise the risk of disputes, disciplinary issues, grievances and employment tribunals.

By seeking expert legal advice, you can ensure that your contracts and handbooks are drafted correctly while a regular review of your documentation will ensure that it is always up to date and legally compliant.

To find out more about how we can help you, please contact us:

- **Phone:** 01427 610761
- **Fax:** 01427 610761
- **Email:** enquiries@burtondyson.com
- **Web:** www.burtondyson.com