

DOCUMENT NAME:	Employment Contracts Factsheet
LINKED DOCUMENTS:	This factsheet is part of a suite of factsheets.
HEALTH WARNING/USAGE RESTRICTIONS:	This factsheet sets out the basics/law on employment contracts.

Disclaimer

This document has been prepared on the basis of what is required by law at April 2025 what is good practice, and our understanding of common issues. This document is not intended to be a comprehensive guide, may not be suitable for your circumstances and should not be considered a substitute for the advice of a lawyer. You agree you use this document at your own risk in these respects.

Employment Contracts

Factsheet

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1 Legal terms explained

“**Employment contract**” is a legally binding agreement setting out the terms under which the employee agrees to work for the employer;

“**Parties**” means the employee and employer entering into a contract of employment;

“**Employment Rights Act (ERA) 1996**” is an Act of Parliament providing a number of rights to employees. It sets out the information which must be given to all employees;

“**Employment terms**” are terms that are considered to exist in the employment contract whether or not they have been included in a formal written employment contract. These can be expressly agreed or implied from a number of different sources including common law;

“**Variation**” is a change to the contract of employment that is usually agreed between the employer and employee;

“**Unilateral variation**” means variations that are imposed by one party, usually the employer, without the agreement of the other party. They may not be effective without formal agreement. Agreement can sometimes be implied if a variation goes unchallenged for a period of time;

“**Job description**” means the job title and the detailed description of the duties, responsibilities and the skills required to fulfil those duties; and

“**Grievance and disciplinary procedures**” means formal methods for dealing with the grievances of employees and disciplining employees.

2 The employment relationship

In order for there to be an employment contract, there has to be a genuine employment relationship between the parties.

The ERA 1996 states that an employee is an individual who works under a contract of employment. Importantly, the employment contract must be a contract of service as opposed to a contract for services (which is not employment). A contract for services generally means that the individual is self-employed.

An individual will be an employee if the following conditions are met:

- The employee agrees to use their own skills to do the job, usually in exchange for pay. This means that the employee cannot ask someone else to do his or her job if they are absent for whatever reason
- The employee agrees that whilst performing their job, they are under the employer's control. This means that the employer can tell the employee what they want the employee to do and how to do this
- The other provisions of the contract are consistent with it being a contract of service.

3 Terms of the employment contract

The relationship between the employer and the employee is primarily a contractual one governed by the terms and conditions agreed between them and contained in a contract of employment. These are called the express terms.

In addition, employees have a large number of statutory rights and restrictions as well as terms that are implied into their contracts, which are known as implied terms. They may also be subject to other terms and agreements that have been collectively agreed with a union or representative body.

Legal requirements

As from 6 April 2020, employees are entitled to a written statement outlining their main employment terms. This requirement applies to all employees and workers and from day one. This means that even casual staff or

those on zero-hours contracts must receive a statement on or before their first day of work. This statement is sometimes referred to as a “Section 1 Statement”.

Once an employee has unconditionally accepted a job offer, the contract is binding and the employer cannot unilaterally withdraw the offer.

The parties are bound by the terms of the employment contract until it ends, usually by giving notice, or until the terms are varied, usually in an agreement between the parties.

4 Express terms

The employer must provide an employee with the following details of their employment in writing:

- The employee’s and employer’s name
- The job title or a brief job description
- The date when employment began and how long it will continue unless it is to continue indefinitely
- The pay rate and how often it will be paid
- The hours of work
- The holiday entitlement
- Where the employee will be working and if this is in more than one place, the other locations
- Sick pay arrangements
- Notice periods that both parties have to give to terminate the contract
- Some information about disciplinary and grievance procedures
- Any collective agreements that affect the employee’s terms and conditions of employment
- Details of the pension scheme available to the employee.

Since 6 April 2020, the following additional information is now also required:

- Working pattern and if hours or days may be variable
- Entitlement to paid leave other than paid holiday such as maternity and paternity leave
- Any probationary period and its length
- Any mandatory training provided by the employer and training for which they will not bear the cost.

This information may be included in one or more documents such as the letter offering the job or in the contract of employment.

Some employers provide new starters with a copy of the staff handbook or other documents that contain the policies that apply to them. For example, the disciplinary and grievance procedures are often contained in a separate policy document or company handbook rather than being set out in full in the contract of employment.

If the employer does not offer one of the terms set out above, the contract or Section 1 Statement or other document must confirm that it is not offered. For example, if the employment is not subject to any collective agreements, the employer should confirm this in writing. The employer should not just leave this information out.

Employers are required to keep the section 1 statement or other documents up to date. Generally they should notify the employee/worker of any changes to it within a month of the change being made. If employers wish to make significant changes to an employee’s terms and conditions, they will also have to undertake further steps to ensure that employees are treated fairly and lawfully.

The contract of employment will often include a number of other terms. Senior employees can expect to have contracts that contain additional information setting out their entitlement to benefits such as personal health insurance or a company car.

In addition, their contracts will often include restrictions that apply during their employment as well as for a limited period of time afterwards. Restrictions that apply after the employment ends are known as restrictive covenants.

5 Implied terms

It is unusual for a contract of employment to contain all of the terms of that contract. Implied terms are deemed to form a necessary part of the contract of employment and impose obligations on the employer and the employee.

5.1 Employee's obligations

The most common implied terms relevant to employees are:

- The duty to render faithful service, sometimes referred to as a duty of fidelity. This means that the employee is under a duty not to act in a way that is contrary to the interests of the employer
- The duty to obey lawful and reasonable orders
- The duty to exercise reasonable care and skill
- The duty not to destroy the relationship of trust and confidence between the employee and employer.

5.2 Employer's obligations

The main implied terms affecting the employer are:

- The duty to provide reasonable support
- The duty to provide a safe system of work and a safe workplace
- The duty not to destroy the relationship of trust and confidence between the employee and employer.

5.3 Implied duty of mutual trust and confidence

The relationship of employer and employee is regarded as one based on mutual trust and confidence between the parties. It is a wide ranging obligation and can overlap with other implied terms.

Employees bringing claims for constructive dismissal most frequently rely on breaches of the implied term of trust and confidence.

6 Incorporated terms

The employer and the employee may agree to incorporate contract terms from other sources. The most common are those contained in:

- Collective agreements
- Works rules
- Disciplinary procedures or codes.

Once incorporated they are as much a part of the contract as any other term.

Most policies and procedures contained in the employer's Staff Handbook will be non-contractual. This makes it easier to update the policies (as changes to contractual policies usually need to be agreed – more on changing terms and conditions below). Further, any deviation from a policy which is contractual by either the employer or the employee could amount to a breach of contract (which could lead to claims in certain circumstances), whereas a deviation from a non-contractual policy would not. As such, employers should think carefully before incorporating any policies or rules into employee contracts – this will be appropriate for some terms or policies but not others. Further advice should be sought from us where in doubt.

An employee may expressly agree to incorporate certain terms. For example, the contract of employment may expressly refer to other documents, such as national or local collective agreements that set pay scales and working hours.

Alternatively, incorporation may be implied, for example where there is a clear custom that terms of collective agreements are incorporated into contracts of employment where it is obvious that the parties would have agreed to it.

7 Statutory terms

The law imposes a number of terms that are deemed to be included in a contract of employment. The most important are:

7.1 Equality clause

This is intended to ensure that men and women receive the same pay for the same work or work of equivalent value.

7.2 Statutory minimum notice period

Employees are entitled to certain minimum periods of notice on termination by the employer. Employees with over one month's service are entitled to receive one week's notice for each year worked, subject to a maximum of 12 weeks' notice.

7.3 Working time

The working time regulations impose a contractual obligation on employers to ensure that workers do not work for more than 48 hours on average per week and it also sets out minimum rest periods and holiday requirements.

In most cases, the employer cannot exclude these terms by a contrary express term in the contract of employment. However, an employee can contract out of the 48-hour working week.

8 Changing an employee's terms and conditions

Please see our separate factsheet on changing terms and conditions.

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