

Employment Contracts Guide

Overview

Composite Legal Expenses Insurance provides advice to thousands of businesses and individuals each year through its legal advice helpline. The vast majority of calls to the helpline come from businesses seeking help on employment related matters.

Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool. The guide gives a general overview of the formation of an employment contract.

The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.

If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.

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EMPLOYMENT CONTRACTS

Employment Contracts

An employment contract will usually be a written agreement between an employer and an employee. As with any other contract the terms of the contract set out each parties' rights and obligations.

For any contract to exist there must be;

- An offer,
- Acceptance,
- Consideration (pay), and
- An intention to create legal relations.

It is possible that these elements could exist without a written contract. When that happens and a dispute arises a court usually has to look at the parties' intentions to determine the terms of the contract. For that reason, having a clear written agreement is always preferable.

Section 1 of the Employment Rights Act 1996 (ERA) tells us that all employees must at the very least be provided with a written statement of particulars of employment and that has to be given to them within the first two months of their employment.

To summarise, this written statement must, at least, include the following information;

- the names of the employer and employee,
- the date when the employment began,
- the date the employee's continuous employment began,
- the rate or scale of pay and any method for calculating payments,
- when the employee will be paid (intervals e.g. weekly, monthly etc.),
- any terms relating to hours of work,
- entitlement to holiday, including details of public holiday and holiday pay,
- terms and conditions related to incapacity for work due to sickness/injury and any provision for sick pay,
- notice periods,
- job title and description,
- if the job is not permanent details of when any fixed term will end,
- either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,
- details of any collective agreements that affect the terms and conditions of employment, and
- where an employee is required to work outside the United Kingdom full details of pay and duration etc.

*if drafting an employment contract you should always take specific legal advice and refer to the **ERA** directly.

See **Template 1*

Express and Implied Terms

An employment contract will usually be a mixture of **express** and **implied** terms. Anything written into the contract will be an **express** term.

There will be certain **implied** terms in any contract of employment.

For example, an employer will always be expected to;

- act reasonably,
- pay wages,
- co-operate with the employee and maintain trust and confidence,
- take reasonable care for health and safety,
- deal reasonably and promptly with grievances,
- to exercise pension rights in good faith

and an employee will always be expected to;

- work for the employer with due diligence and care,
- co-operate with the employer and obey lawful orders,
- follow a duty of fidelity, i.e. not compete with the employer,
- take reasonable care for his own health and safety.

Implied terms could also arise due to the passage of time, if something is custom and practise and becomes expected it may become implied into the contract.