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Contracts of employment

Learn about the 'contract of service', the written statement of particulars, and varying the contractual terms

Introduction

A contract of employment is a legally binding agreement between an employer and employee. In the UK, the term 'employee' is defined by the Employment Rights Act 1996 as an individual who has entered into or works under a contract of service or apprenticeship.

This factsheet focuses on the contract **of** service, rather than a contract **for** services which might apply to a subcontractor or freelance worker, and so it doesn't deal with self-employment or workers in any detail. It provides introductory guidance on the types on contract, and examines the items included in the written statement of particulars and their legal context. It also provides advice on drafting or amending contracts and varying the contractual terms.

See the **full [A-Z list](#) of all CIPD factsheets**.

What is a contract of employment?

A contract of employment is a legally binding agreement between an employer and employee. In the UK, the term 'employee' is defined by the Employment Rights Act 1996 as an individual who has entered into or works under a contract of service or apprenticeship, and they are a mixture of 'express' and 'implied' terms.

Basically global employers and employees can choose which country's law their contract is subject to. Some countries have rules of contract like the UK while others don't. There are mandatory rules in some countries which apply automatically and will prevail but it differs from place to place.

Express terms

Express terms are stated in writing or given verbally. Written express terms are not restricted to written employment contracts but can include a number of the organisation's other documents, such as a staff handbook, unless the provisions are deemed not to have contractual effect.

Before drafting express terms, employers need to be familiar with the relevant law, such as employee status, the rules governing written particulars, equal pay and the minimum wage, fixed-term and part-time work, flexible working, parental leave and working hours. The express terms must comply with any minimum legal standards such as the right to paid holidays and the right to daily and weekly rest breaks.

All employees and workers have a statutory right to a written statement of particulars of employment setting out certain key employment terms on their first day of work.

Implied terms

Terms can also be implied into contracts, for example if the term is:

- Incorporated by collective agreements (agreements with trade unions recognised by the employer).
- Incorporated by workforce agreements (for example, agreements with the whole workforce covering issues such as entitlement to breaks).
- Incorporated by statute.
- Incorporated into individual contracts by custom over a period of time.
- So obvious that the term is assumed to have been implied.
- Needed to give 'business efficacy' to the contract (that is, to make the contract work properly).

Examples of terms that are implied into a contract of employment include:

- A duty of mutual trust and confidence between the employer and employee.
- The employer's duty to provide a safe system of work and safe workplace.
- The right to receive at least the national minimum wage or living wage (implied by statute).
- The right to a minimum period of notice (implied by statute).
- Equality relating to men and women's pay (implied by statute).

As many terms as possible should be clearly set out in writing and given to the new employee before or when they start the job. This will help to avoid uncertainty or a dispute between the employer and the employee about the terms.

The UK legal position

A contract of employment is in many respects no different from any other contract. As such, it's governed by contract law, which means that there needs to be:

- An offer of employment by the employer, which should be clear and unambiguous and may be conditional.
- Acceptance of that offer by the employee.
- Consideration between the parties, for example the work done by the employee in return for the wages paid by the employer.
- An intention to create a legally binding arrangement.

However, because the employer is often the more powerful party in the arrangement, the law does require some extra aspects. Our [Terms and conditions of employment Q&As](#) for CIPD members have more detail on contractual matters.

Types of contract

UK law currently recognises three main types of employment status:

- employee
- worker
- self-employed.

An individual's employment rights depend upon whether they are an employee or worker. (The self-employed have very few employment rights).

A contract of employment only applies if there is an employee relationship, so this factsheet focuses on employees' rights although some aspects apply to workers too.

Various tests are used to decide whether a person is an employee including:

- **Mutuality of obligation** - does the employer have to provide work, and does the worker have to take the work that is offered?
- **Control** - does the employer control how the worker does the work, and do the employer's disciplinary procedures apply to the worker?
- **Integration** - how far is the employee integrated into the employer's organisation?
- **Multiple** - looks at a number of factors including 'substitution' (that is, can the

worker send another person to do work for the employer on their behalf?)

Employers must make the relationship clear at the outset, not least because employees have more rights in law than workers. Find out more on the difference between employees, workers and the self-employed in our factsheet on employment status. CIPD members can find more detail in our [Employee status law Q&As](#).

There has been much public debate on the [gig economy](#) and [zero-hours contracts](#). 'Zero-hours contract' is not a legal term, but means a contract involving an employee or a worker in which there is no set minimum number of hours.

The written statement of particulars

The essential elements of the written statement of particulars of employment are set out in UK law. From 6 April 2020, both workers and employees are entitled to receive written particulars from day one of their contract.

Some information must be included in one document while other information can be delivered separately.

Items to be included in the **main document**:

- Names of the employer and employee or worker.
- Date when employment or engagement began.
- Date on which continuous employment began (employees only).
- Length of notice the employee or worker is required to give and receive to terminate the contract.
- Scale or rate of remuneration, or the method of calculating the remuneration.
- Intervals at which remuneration is paid, that is, weekly, monthly or other specified intervals.
- Terms and conditions relating to hours and days of work, including any terms and conditions relating to normal working hours, days of the week and whether hours or days are variable (and, if so, how they vary).
- Terms and conditions relating to entitlement to paid holidays, including public holidays and holiday pay, in such a manner as to allow them to be precisely calculated.
- Job title or a brief description of the type of work the employee or worker is to do.
- Place of work and address of employer or an indication that an employee or worker is required or permitted to work at various locations.
- Any other benefits (including benefits clearly specified as non-contractual) which are not covered elsewhere in the written statement.

- Details of non-permanent employment or engagement e.g. period of fixed-term contract.
- If the employee or worker is required to work outside the UK for over a month: arrangements for working outside the UK including period, currency of pay, additional benefits and return terms.
- Details of any probationary period.
- Details of training which the employer requires the worker to complete even if the employer does not pay for it.

Items that can be provided in a **supplementary statement**:

- Terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick leave and pay.
- Terms and conditions relating to occupational pensions and pension schemes (can be provided within two months).
- Any collective agreements, which directly affect the terms and conditions of employment, including who made the agreements (can be provided within two months).
- Where the individual is required to work outside the UK for a period of one month or more, details of the time they are to work abroad, the currency they will be paid in, any additional remuneration payable and any benefits provided by reason of working outside the UK and any terms relating to their return to the UK.
- Any other training entitlement (can be provided within 2 months).
- Disciplinary and grievance procedures (can be provided within 2 months).
- Any other paid leave.

Where there are no particulars to be entered under any of these headings, that fact should be stated, and all the above information should be given to the employee or worker.

While the Employment Rights Act 1996 states the items that must be included in the written statement of particulars, employers can refer to their **employee handbook** or **other policies** for precise details of issues such as:

- Documents relating to disciplinary and grievance rules and procedures.
- Documents relating to sickness and pensions.
- Documents relating to the detail of bonus or commission schemes.
- Collective agreements.
- Other terms (for example, private health care, overtime, holiday arrangements, retirement).

The written statement may additionally contain other clauses that an employer wishes to

rely on such as restrictive covenants or rules about company equipment. Where an offer letter or written contract sets out the main employment terms and conditions, this can count as the written statement.

Varying an employment contract

Varying existing contractual terms normally requires agreement.

Although some minor matters can be changed without the employee's agreement, most aspects cannot. Examples of things that can be changed include non-contractual policies where these have been carefully drafted to ensure there is no binding contractual effect.

Organisations should be cautious about trying to vary contractual terms. If changes are a fundamental breach of contract employees can resign and bring a tribunal claim. There has been much debate about employers adopting a 'fire and rehire' approach; the CIPD has issued [guidance](#) on what this practice is, and why it should be avoided unless no other option is available.

Some employment contracts include an express term which states that a particular term is variable by the employer. Such clauses may encourage employees to assume that the changes are permissible, but even an express clause will not guarantee that the employer can significantly vary contractual terms to the employee's detriment without agreement.

Employers who wish to alter existing contractual terms have three main options:

1. **Agree the changes with the employee after thorough consultation.** A small incentive may be offered to encourage acceptance. This is the safest course of action.
2. **Make changes unilaterally.** Even where there is a pressing business need to impose the changes, this may be risky. In some circumstances the employer may assume acceptance if the employee continues to work without objection. However, the employee may choose to continue to work, but do so under protest and bring an action for breach of contract. Alternatively, the employee may resign and bring a claim for constructive unfair dismissal and/or wrongful dismissal. See more on [dismissal procedures](#).
3. **Terminate the employee's contract by notice and offer them re-engagement on new terms and conditions.** An employer may consider this option where changes cannot be agreed and where it appears too risky to impose the changes unilaterally. The employer must then offer re-engagement on the new terms immediately.

Employers should be aware that in legal terms this may be considered a redundancy dismissal, so they should follow any rules around collective redundancy and consultation time limits. This course of action is not without risk: the employee may claim breach of contract or unfair dismissal, although any compensation will be limited as the employer is offering re-engagement. See more on [redundancy](#).

Any variations should be confirmed in writing within one month of the changes taking place.

Additional points to consider

- Changes following a transfer of undertakings can only be made for a economic, technical or organisational reason if connected to the transfer, not merely to harmonise terms across the workforce.
- While there is no legal requirement for employees to sign their written statement, it makes it easier for an employer to rely on any clauses if they've done so.
- Where employers wish clauses to be non-contractual, they should state this clearly when inserting them to ensure they cannot be relied on as implied by custom and practice.
- Certain clauses such as mobility clauses or restrictive covenants need to be drawn up with particular care to ensure they can be relied on in the future.
- Employees' requests to change their terms and conditions must at least be considered, especially for employees who have worked for the same employer for at least 26 weeks as the flexible working legislation requires this.
- There may be an increased focus on employers' attempts to vary existing contractual terms as they try to carry on trading following the coronavirus related impact on business.

Useful contacts and further reading

Contacts

[Acas - Employment contracts](#)

[Acas - Templates for written terms of employment](#)

[GOV.UK - Employment contracts](#)

[GOV.UK - Contract types and employer responsibilities](#)

Books and reports

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