

Factsheet - Contracts of employment

Contracts of employment should help you to effectively manage your business, by ensuring you can clearly define the employment relationship with your employees, be compliant with legislation and provide protection against challenge, but also meet business needs.

Find the answers to some common questions about contracts of employment below.

1. What is a contract?

A contract is formed once an offer of employment is made, and the offer is accepted. The terms of a contract do not have to be written down to be binding, but it's obviously better, and avoids misunderstanding, if the terms are clearly stated in writing.

2. Does a verbal offer count?

A verbal offer can be considered a contract, and can override a subsequent written offer, so it's important to ensure any verbal offer is consistent with the written terms.

3. Can an offer be withdrawn?

Once an unconditional offer of employment is made and has been accepted, it cannot be withdrawn unilaterally by the employer without giving notice to terminate the contract. It's good practice to make a conditional offer of employment, subject to specific criteria, such as receiving satisfactory references, or the satisfactory completion of a probationary period.

4. What has to be written down?

There's a statutory requirement to provide a written statement of terms and conditions of employment within eight weeks of the employment starting. This statement must contain all of the basic terms and conditions such as rates of pay, hours of work and holiday entitlement. A list of the minimum requirements for a written statement can be found here

<http://www.acas.org.uk/index.aspx?articleid=4211>

5. Fixed term or permanent?

A contract may include an end date if it is intended to last for an agreed period of time (normally called a fixed term contract), or it can be open ended, without an end date, which is a permanent contract. In either case, it has to include a termination



clause, so either party can end the contract, by giving the correct notice period. A contract without a termination clause is unlikely to be valid.

6. How long should a contract last?

Permanent contracts are designed to last a long time, so it's a good idea to consider what, and what not, to include in the contract. It's best not to include details which may need updating or varying too often, as once agreed, changing a contract requires the agreement of both parties.

7. How flexible can it be?

It's a good idea to include some level of flexibility into a contract, so that the employer has the right to make some changes without the need to negotiate new terms. Any changes must be reasonable, and normally driven by a business need. The most common terms to include flexibility are the hours of work, the work duties, and the work location.

8. What else should be included?

In most cases, a contract only needs referring to when there is a dispute or when things go wrong. Consider this when drafting the terms of the contract, and include clauses to protect the interests of the business should there be a dispute between the two parties, for example, the requirement to keep information confidential or to protect intellectual property assets.

9. How do I change a contract?

If you need to make a change to a contract, first check whether the relevant term has any built in flexibility. If not, you will need to consult with the employee to outline the proposed change and the reasons for it, and seek their agreement. If there is a good business reason for the proposal, and little or no detriment to the employee, it's more likely that the employee will agree to the proposed change. If the proposal is not likely to reach agreement, you may wish to give notice to terminate the contract and re-engage the employee on new terms, but this can be a risky strategy, and is open to legal challenge.

10. What about 'custom and practice'?

Contracts may vary over time naturally, without changes being agreed in writing, by 'custom and practice'. Reviewing contracts fairly regularly, once every two to three years, will help to identify any changes that have come about through 'custom and practice' and which may require contract amendment or reissue.