

Technical factsheet

The contract of employment

This factsheet is part of a suite of employment factsheets and a pro forma contract and statement of terms and conditions that are updated regularly. These are:

- The contract of employment
- The standard statement of terms and conditions
- Working time
- Age discrimination
- Dealing with sickness
- Managing performance
- Disciplinary and dismissal procedures
- Unlawful discrimination
- Redundancy
- Settlement offers
- Family-friendly rights
- Employment status: workers

Every relationship between an employer and an employee is governed by a contract of employment, which is an agreement setting out their mutual obligations. The contract starts as soon as the employee starts work, and if there are no written terms, the parties' obligations are implied by looking at how the parties conduct their relationship on a day-to-day basis. For most purposes, there is no need for an employment contract to be in writing in order to be legally valid. The one exception to this is an apprenticeship contract¹, which must be set out in writing. to set out the key terms of the contract, but failing to do this does not affect the validity of the contract between the employer and employee, though it may result in a sanction (see below).

Why should I use a written contract or statement?

As well as being a legal requirement, employers should bear in mind that writing down the basis of your agreement is likely to avoid disagreements later on. It is also a good

¹ This is as laid out in S32 Apprenticeship, Skills, Children and Learning Act 2009

discipline as it makes the employer think about, and decide, what the terms of the arrangement are going to be. It is therefore highly recommended.

What are the minimum requirements?

s1 Employment Rights Act 1996 requires employers to provide employees with a written statement of the main terms of the employment within two calendar months of starting work. This statement does not have to be provided to any employee who works for less than one month.

The mandatory terms that must be covered in this statement are:

- the names of the parties
- the date that employment started
- if the employee is already employed, and the contract relates to a new position, on what date continuous employment with the employer started
- a job title and/or brief description of the role
- hours of work
- scale or rate of remuneration
- intervals of payment
- hours
- overtime
- holidays
- sick pay
- grievance procedure*
- disciplinary procedure*
- pension*
- place of work
- notice period.

* These need not be laid out in full in the statement but can be in a separate document to which the statement refers.

Where the employer gives the employee a contract of employment covering all these matters, it does not also have to provide a statement. To assist employers, ACCA has

produced a pro forma contract of employment and a statement of terms and conditions, available at bit.ly/acca-factsheets.

In addition to the contract of employment there is an accompanying Appendix A: computer use policy, available at bit.ly/acca-factsheets. This can be added as an appendix to the contract of employment at your discretion, or included in your handbook.

What happens if I do not provide a statement or a contract?

There is no freestanding right for an employee to make a claim if the employer fails to provide either a compliant contract or a statement. However, if the employee takes an employment tribunal case relating to another aspect of their employment and is successful, and the employer has not provided at least a statement, an additional award of between two and four weeks' pay may be made against the employer.

What is the difference between a contract and a statement?

There is a legal difference between a contract and a statement. Where an employee signs an employment contract to say that they agree with the terms, it is binding on both parties from the date of the contract and it does not matter whether the employee has read or understood the terms or not. On the other hand, a standard statement is issued to the employee and it represents the employer's version of the terms. The employee may not sign the statement at all and, even if they do, they are not signing it to say that they agree the terms – merely that they have received or read it.

However, there will be a point at which the employee is taken to have accepted a term of a statement; if they have acted in accordance with a particular requirement in their day-to-day working life, it is presumed that they have agreed to it. For example, if they habitually work the hours and perform the role as described in the statement, it is clear that these terms are agreed. In respect of any other terms, the statement is of evidential value in proving that this term is part of the contract of employment.

Which should I use?

It is better to have a statement than nothing at all, but it is generally preferable for the employer to provide a contract, as the terms are then clearly binding on the employee. In addition, the employer can also include a wide range of other clauses in a more comprehensive contract, such as provisions about confidentiality. For further information about this, please see the pro forma contract of employment or statement of terms.

What if the parties do not agree about the terms of their contract or statement?

If there has been some confusion or misunderstanding about what the parties have agreed, what happens will depend on how long the employee has been working and what the impact of the disagreement is. Any employee who is unhappy with their written terms and conditions has limited options if they have been continuously employed for less than two years. They have no right to claim unfair dismissal if the employer insists on its version of the agreement and, unless they have some argument that they have been the victim of unlawful discrimination, the choice is to live with it or leave.

Once the employee is past that statutory period, they may be able to claim unfair dismissal if the employer is requiring them to do something that they consider is beyond their contractual obligations. In theory, this could permit the employee to leave and claim constructive dismissal; this is not a decision to be taken lightly and it would be rare to advise any employee to do this. The law has always demanded a degree of flexibility from employees, particularly in small businesses, and a tribunal would have to be convinced that what was being expected went well beyond what the employee should have been asked to do, perhaps because it looks to be completely outside their remit, and/or they have insufficient training or the demand is altogether unreasonable. In addition, what has been agreed between the parties will often be a matter of oral evidence and it is notoriously difficult to rely on such things; they are usually a matter of one word against another.

There is a right under the Employment Rights Act s121 for either party to apply to the tribunal to ask them to determine the accuracy of a standard statement of terms and conditions, and to ask for the particulars to be confirmed, amended or substituted with fresh ones. This tends to happen when there are other claims in respect of other employment matters and the argument is that the particulars are inaccurate. This power

covers a situation where the particulars are incorrect rather than incomplete, and the tribunal will not use the power to interpret the meaning of a term that the parties disagree on.

As ever, the best option is for both parties to negotiate and try to reach some kind of sensible compromise.

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