

Making it clear

Contract of employment guide



Contracts of employment

If you think a contract of employment is just another bit of box ticking and no one ever looks at them, think again. Whilst you don't need to have one in writing it certainly helps to clarify things, especially if there is a dispute down the line.

What is a contract of employment?

A contract of employment exists between employer and employee and forms the basis of the employment relationship. Generally speaking, it will cover things such as hours to be worked, scope of the job, holiday entitlement, sick pay, benefits and an employee's duties and responsibilities.

A contract, whether written down or not, comes into force as soon as the employee accepts their job offer.



Why employers need to provide their employees with a contract of employment and the legalities around it

While you don't need to have a contract of employment in writing it is always preferable so the terms are clear for both sides. With the best will in the world, not all business relationships work out positively. If this happens in your business, having comprehensive employment contracts can protect both parties and avoid costly litigation down the line.

Most terms will be set out in writing between an employer and employee – these are explicit contract terms and they will include things like rights, responsibilities and duties, remuneration, legal requirements and benefits.

However, there are also implied terms which may not necessarily be written explicitly but are considered part of the contract. For example, they could be very obvious

things such as an employee not stealing from an employer or having a safe place to work in, things needed to make the contract of employment work e.g. like a driver having a driving licence and terms which have been established as custom and practice over time e.g. paying a Christmas bonus.

In addition, there will be statutory terms included in a contract, either implied or explicitly imposed by an Act of Parliament or statutory instrument, such as the right to be paid the minimum national wage.

If someone works for you for more than a month, as a minimum you'll have to provide them with a written statement of employment within two months of their start date. This isn't an employment contract but it will include the main conditions of employment.

The benefits of providing employees with a contract

An employment contract allows you to be specific about terms. This can be especially important if you want to protect trade secrets, include non-compete agreements or if they will be working with sensitive or copyrighted material. It also allows both you, and your employee, to refer back in the event of a future dispute and can be used as evidence if necessary.

It also helps promote good working relationships between you and your employee, painting you as an organised and efficient employer and providing a solid working structure.

In most cases your HR representative should be able to draw up a standard contract of employment for your business, but if you do require more legal clauses these may warrant specific employment law support.

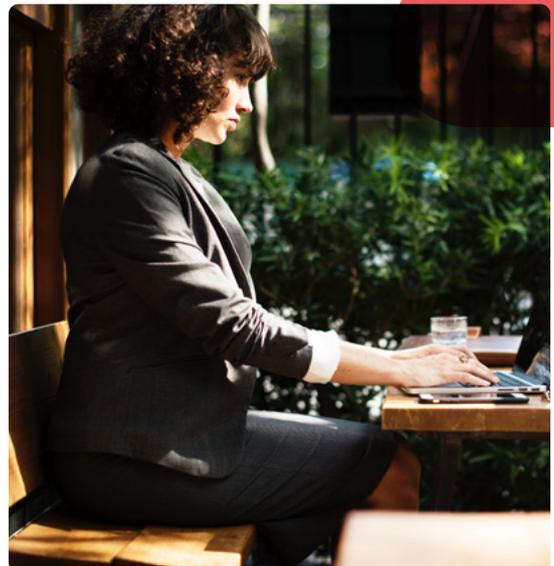


Types of employment contracts

There are many types of contracts and you should take the time to review your requirements with an HR or legal professional. There are a few of them to choose from and they are each written slightly differently to ensure they cover the relevant job type, so think it through before you decide what you need. This document is a very important one to protect your business and your employees.

These contracts are for those employees who are employed by the business.

1. Permanent
2. Fixed-term
3. Part-time
4. Temporary
5. Director service agreement
6. Senior level
7. Apprentice or work-experience
8. Shift work
9. Homeworker
10. Term-time
11. Job-share
12. Zero-hours
13. Young worker
14. Compressed hours



Consultancy contracts

These contracts are for services provided for third party suppliers who are not employed by your business.

1. Independent consultancy
2. Contract for services

Once you know the type and level of contract you need you will be able to start building it. You will need to know everything about working for your company, joining processes, employee benefits, location, job role, confidentiality levels, GDPR compliance requirements, restrictive covenants and exit processes.

All this information will be used in the contract to outline specific clauses.

Advice for creating employment contracts

- ✓ Make sure they are issued on your company branded headed paper – present it well, after all its showcasing your business.
- ✓ Make sure you have spellchecked the document before sending (Especially the employees name and address to ensure correct)
- ✓ Double check any contract terms that you change. Remember once signed this is a legal document so if anything is incorrect its often only picked up when the individual either resigns or is terminated. By then its too late to change anything that isn't quite right.
- ✓ Have the same contract for all employees (Management level may differ, but all employees of the same ilk should have the same contracts to ensure fairness and ease of management and upkeep)
- ✓ Build in the right level of compliance you need for your business, GDPR, Internal processes and confidentiality.



What to do if the contract of employment needs to be varied/terminated

A contract can be varied by both the employer and the employee. An employer might do so because of changes in economic conditions or business reorganisation. An employee might wish to negotiate better terms e.g. pay, job role or benefits.

Changes can only be made with the agreement of both parties and should ideally be in writing. You should consult with your employee and explain any changes you wish to make.

Drawing up a contract

Contract of employment template

This contract of employment template is a basic contract overview to give you an outline of what you should have in place for your employees.

Please make sure if you are drawing a contract up and are not an HR or legal professional with employment law experience we would urge you to seek professional support to make sure this document fully protects you and provides all the compliance elements that you will need to support your business.

Statement of terms and conditions of employment

In accordance with the Employment Rights Act 1996, this Statement, together with [delete as appropriate] your offer letter/employee handbook/staff handbook, forms part of your Contract of Employment (except where the contrary is expressly stated) and sets out particulars of the main terms on which [insert name of employer] [insert address of employer] employs:

[Insert employee's full name]

[Optional - insert employee's current home address].

Job title

You are employed as [insert job role] and your duties will be as advised by [insert manager's name/role]. Your duties may be modified from time to time to suit the needs of the business.

Commencement of employment

Your employment began on [insert date]. No previous employment counts as part of your period of continuous employment.

[Optional clause] Probationary period

[You can add a clause outlining the period of probation and expectations during this period. Also, what happens should the employee not successfully pass their probationary period.]

Place of work

You will normally be required to work at/from [insert details].

Hours of work

Your normal hours of work are [insert hours of work]. You may be required to work overtime/additional hours when authorised and as necessitated by the needs of the business.

Fixed number of hours on different days and times

Your normal working hours per week are [insert number].

Break entitlement

[Enter details on break entitlement]

Remuneration

Your salary is currently £[amount] per [delete as appropriate – hour/week/month/year] to be paid [delete as appropriate] weekly/fortnightly/monthly on the [insert day] of each [delete as appropriate] week/month by cash/cheque/credit transfer, in arrears/part in arrears and part in advance.

Holidays

Your holiday year begins on [insert date] and ends on [insert date] each year, during which you will receive a paid holiday entitlement of [insert details] inclusive/exclusive of any public holidays which you may choose to request. In your first holiday year your entitlement will be proportionate to the amount of time left in the holiday year, accruing at the rate of one twelfth of the full annual holiday entitlement, on the 1st of each month, in advance.

[Optional]

Once you have reached [insert length of time] continuous service with the Company, your annual leave entitlement will increase by [insert number] extra days' annual leave for every [delete as appropriate] complete years' service/holiday year, up to a maximum of [insert number] extra days' leave after [insert number] [delete as appropriate] complete years' service/holiday years.

For periods of annual leave, you will receive your normal rate of pay.

In the event of termination of employment your entitlement to accrued annual leave will be calculated and any annual leave accrued but not taken will be paid for. However, in the event of you having taken any holidays in the current holiday year, which have not been accrued pro-rata, then the appropriate payments will be deducted from your final pay.

It is our policy to encourage you to take all your holiday entitlement in the current holiday year. We do not permit holidays to be carried forward.

The Company operates a holiday booking procedure and all requests for holiday should be made using this procedure. Holiday requests must be authorised by management therefore it is not advisable to make any firm arrangements eg flights/hotels before authorisation is obtained.

Public holidays

As part of your holiday entitlement, you are entitled to [insert number] public holidays each year. The public holidays each year are: [Insert recognised public holidays]

However, because of the nature of our business you may be required to work on any of the public holidays listed above, and it is a condition of employment that you work on these days when required to do so. If you work on a public holiday, payments will be made at the rate of [insert details], and/or you will receive a day off in lieu which is to be taken on a day agreed in advance by the Company at a time deemed suitable as per the needs of the business.

Sickness absence

You must notify us by telephone on the first day of incapacity at the earliest possible opportunity and by no later than [insert details] on the first day of your absence. Other than in exceptional circumstances notification should be made personally, to [insert details].

You can read more on the Company's sickness absence policy which is [delete as appropriate] set out in the employee handbook/available from [insert name/job title].

Sick pay

You are entitled to statutory sick pay (SSP) if you are absent because of sickness or injury provided you meet the statutory qualifying conditions.

Pension

Where required, we will operate a contributory pension scheme into which you will be auto-enrolled (subject to the conditions of the scheme). The scheme enables you to save for your retirement using your own money, together with tax relief and contributions from the Company. Further details can be obtained from [insert name or job title].

A contracting-out certificate [delete as appropriate] is/is not in force in respect of this employment.

Confidentiality

All information that:

- is or has been acquired by you during, or during your employment, or has otherwise been acquired by you in confidence;
- relates particularly to our business, or that of other persons or bodies with whom we have dealings of any sort; and
- has not been made public by, or with our authority

shall be confidential, and, save during our business or as required by law, you shall not at any time, whether before or after the termination of your employment, disclose such information to any person without our prior written consent.

You shall make yourself aware of the Company's policies in relation to compliance with the General Data Protection Regulation and the Data Protection Act in force from time to time and undertake to act in accordance with these at all times, including exercising reasonable care to keep safe all documentary or other material containing confidential information. You shall inform the Company immediately upon discovery of a data breach. You shall, at the time of termination of your employment with us, or at any other time upon demand, return to us any such material in your possession.

Collective agreements

[Select from the paragraphs below and delete as appropriate]

No collective agreements directly affect your terms and conditions of employment.

[OR]

Certain conditions of your employment are governed by the collective agreement the Company has with [insert details]. These terms are [insert details].

Changes to terms of employment

From time to time, the Company may determine the need for changes to be made to contracts of employment. The Company reserves the right to make reasonable amendments to your contract. You will receive confirmation in writing of any changes or amendments to the terms of your employment within one month of them taking effect.

Grievance procedures

The Company grievance procedure provides a mechanism whereby employees may seek a resolution to a complaint they have about their employment with us. Before using the formal procedure, you should speak to your line manager on an informal basis to seek a satisfactory outcome. The formal procedure may be used if you do not feel the informal method appropriate to your concerns, or if the informal method has not produced an outcome with which you are satisfied. In this case, you should raise the grievance in writing to [insert name/job title].

Should you be dissatisfied with the outcome of the formal grievance procedure, you may appeal it in writing to [insert name/job title].

Further information can be found in the [delete as appropriate] employee handbook/attached grievance policy and procedure/available from [insert name/job title].

Disciplinary procedure

It is necessary to have a minimum number of rules in the interests of the whole organisation and employees must make themselves aware of the standards which apply to their conduct and performance. These rules, and accompanying disciplinary procedure, are [delete as appropriate] set out in the employee handbook/attached disciplinary policy and procedure/available from [insert name/job title].

We retain discretion in respect of disciplinary and dismissal procedures to take account of your length of service and to vary the procedures accordingly or in circumstances otherwise set out in the document.

Disciplinary and dismissal appeals

Should you be dissatisfied with any decision to take action against or dismiss you, you may appeal in writing, to [insert name]. Further information can be found [delete as appropriate] in the employee handbook/attached disciplinary policy and procedure/available from [insert name/job title].

Deductions

You agree that the following deductions from your pay will be made for the following costs incurred by the Company in relation to your employment. The Company expressly reserves the right to make these deductions:

- Any fines, penalties or losses sustained that is the result of your carelessness, negligence, deliberate vandalism, dishonesty or a breach of Company rules;
- Any monies paid or payable by the Company to any third party due to the principle for conduct undertaken by you for which we may be deemed vicariously liable;
- Any unauthorised personal use of mobile telephones provided to you for company use;
- Any holiday pay relating to leave you have taken more than that which you have accrued at the point of termination;
- The amount of any overpayment of wages;
- Outstanding loan or wage advance repayments;
- Any other sums owed to the Company by you;
- Any deductions elsewhere under this contract in relation to which the reserved right to deduct applies;
- In relation to deductions authorised by any separate agreement into which the Company has entered with you.

You understand and agree that the Company may make these deductions from all monies due to you.

Data protection

The Company collects and processes certain types of data about you and does so in line with the General Data Protection Regulation and the Data Protection Act in force from time to time. Please read the Company's Privacy Notice which is [delete as appropriate] attached to this document/on the Company's intranet for more information about the types of data processed and the reasons for the processing.

You shall make yourself aware of the Company's policies on data protection about data processing undertaken by you during your duties and act in accordance with those policies at all times. Failure to do so may result in disciplinary action being taken against you, up to and including dismissal.

Termination of employment

Upon successful completion of your probationary period, you must give [insert amount] notice [optional – in writing] when terminating your employment with the Company.

You are entitled to receive the following notice periods when terminating your employment:

From successful completion of your probationary period but less than two years' service – one week.

Two years' service or more – one week for each completed year of service to a maximum of 12 weeks after 12 years

[OR]

From successful completion of your probationary period but less than five years' service – one month.

Five years' service or more – one week for each completed year of service to a maximum of 12 weeks after 12 years.

You should also note the following in relation to notice periods:

- You will not receive any notice of termination when the circumstances of your dismissal involve a gross misconduct offence;
- You may be required to take all or part of your remaining holiday entitlement during your notice period;
- The company reserves the contractual right to give pay in lieu of all or any part of the above notice period by either party;
- [optional] If either you or the company serves notice on the other to terminate your employment the company may require you to take "garden leave" for all or part of remaining period of your employment. If you are asked to take garden leave you:
 - Must not attend your place of work unless otherwise requested;
 - May not be required to carry out your normal duties during the remaining period of your employment, however, you will still be available for answering queries;
 - Will continue to receive your normal salary;
 - Must not undertake any other employment for the period of garden leave without prior authorisation from the company.

In the event of dismissal for gross misconduct, we reserve the right to amend our normal notice provisions.

Return of company property

On the termination of your employment you must return all our property which is in your possession or for which you have responsibility by the last day of your employment. This includes, but is not limited to, the following: Company documents, books or other written material; keys; ID/access card; Company credit card; Company car.

Governing law and jurisdiction

This contract of employment is governed by the laws of [delete as appropriate] England and Wales/Scotland and any claim/dispute arising from its construction or enforceability will be governed by and in accordance with those laws. This extends to non-contractual disputes or claims.

Acknowledgement

I acknowledge receipt of this document. I have read and understood its contents and accept that it forms part of my Contract of Employment together with [delete as appropriate] together with my offer letter and the employee handbook/staff handbook. I will keep myself informed of any changes to its content.

Signed by the employee

Printed name

Date

for and on behalf of [insert name of Company]

Signed by

Printed name and position

Date