



Contracts of employment

What is a contract of employment?

- A contract is a promise, or a set of promises, between employer and employee, where the employee promises to work and the employer promises to pay for the work. If either party breaks a promise there is a breach of contract.
- There is no need for a "contract of employment" to be in writing. It can simply be verbal.
- However, section 1 to 7 of the Employment Rights Act 1996 require written particulars of the main terms and conditions of employment to be given to employees (see below).
- There are four main types of terms in a contract: (i) express, (ii) implied, (iii) incorporated, (iv) statutory; express terms may be oral or written; express terms take precedence over implied terms.

Express terms

- Express terms may be oral or written. If the express terms are partly written and partly oral, then the oral term(s) and written terms must be taken together to establish the overall contract.
- Within contract law express terms take precedence over implied terms, however, in certain circumstances implied terms may be used to restrict the way in which express terms are applied in practice.

Implied terms

- Implied terms form a binding part of the contract and are those which the parties are taken to have agreed by virtue of the circumstances in which the contract has been made or performed.
- A term can only be implied if the court can presume that it would have been the intention of the parties to include it in the agreement from the outset.
- A term may be implied if it is automatically part of the contract and it is central to the employment relationship, eg trust and confidence; the employee's duty to be loyal and act in good faith; the employer's duty to provide a suitable working environment.
- Terms may also be implied where: (i) the term is necessary in order to give the contract business efficacy; or (ii) it is the normal custom and practice to include such a term in contracts of that kind; or (iii) the way the contract has been performed shows an intention to include the term; or (iv) the term is so obvious that the parties must have intended it.

Incorporated terms

- These are terms which are incorporated into contracts from other sources such as collective agreements, workforce agreements, working rules, disciplinary codes, staff handbooks, etc.
- Incorporation may be: (i) express: for example, the contract states that some of its terms are regulated by a collective agreement; or (ii) implied: the terms of a collective agreement are incorporated into individual contracts because this is what the parties would have agreed to when the contract was formed and they have been consistently applied.
- The law requires the statement of written particulars of employment to include a section which states whether or not a collective agreement forms part of the terms and conditions of employment.

Statutory terms

- These are terms imposed or implied by statute concerning the rights of employers and employees.
- These include the Equal Pay Act 1970, which imports an equality clause into every contract, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the various Employment Equality Regulations relating to sexual orientation, religion/belief and age which provide the right not to be discriminated against.

Written particulars of employment

Sections 1 to 7 of the Employment Rights Act 1996 obliges employers to provide all employees with a written statement containing their main particulars of employment as set out below, within 2 months of joining.

- Names of the employer and the employee.
- Date employment began.
- Date continuous employment began.
- The scale or rate of pay or the method of calculating it.
- Pay interval and method of payment.
- Terms and conditions relating to hours of work.
- Job title or, where this would not provide adequate information about the duties involved, a description of the employee's work.
- The place of work.
- Where the employment is temporary, either the period for which it is expected to continue or the date when it is to end.
- Terms and conditions relating to holidays, including public holidays and holiday pay sufficient to enable the employee's entitlement, including entitlement to accrued holiday pay on leaving, to be precisely calculated.
- Any collective (union or workforce) agreements which directly affect terms and conditions.

- Where the employee is required to work outside the UK for a period of more than one month, that fact and the terms that apply.
- Terms relating to sickness or injury including any provision for sick pay.
- Terms relating to pensions and pension schemes.
- Whether a contracting-out certificate is in force, contracting out of SERPS.
- Any disciplinary rules applicable.
- The person (specified by description) to whom the employee can appeal to in the first instance if dissatisfied with any disciplinary decision, together with the method of making an appeal.
- Any further steps that can be taken after the first stage of an appeal.
- The person (specified by description or otherwise) with whom the employee can raise a grievance in the first instance and the method of raising a grievance.
- Any further steps that can be taken after the first stage of a grievance.
- The length of notice the employee is obliged to give and is entitled to receive.

Forming a contract

Four main elements

- An offer: First there must be an offer - an indication by the employer of a willingness to be bound by a contract - and the terms must be clear, certain and capable of being enforced.
- Consideration: For the contract to be binding it must be supported by consideration, ie something of value being exchanged between the parties, eg pay in exchange for work.
- An acceptance: The offer has to be accepted in its entirety and on an unconditional basis. Acceptance must be communicated by the means indicated in the offer, eg in writing or verbally.
- An intention to be legally binding: When an employer promises to pay a wage and an employee promises to work for that wage, the parties will of course expect to be held to their respective part of the bargain; they intend the agreement and its terms to be legally binding in order for the whole contract to work.

Conditions in an offer impacting on the formation of a contract

- Offers of employment can be made subject to certain conditions being met, eg: references satisfactory to the employer or evidence of formal qualifications necessary and essential for the job.
- A contract is not complete unless or until the condition is satisfied. If it is not met the offer can be withdrawn if the employee has not commenced work, or the contract terminated where work has started.

