

Factsheet 16: Contracts of Employment

1: Definition of a Contract

A contract of employment is a legally binding agreement between an employer and employee formed when an employee agrees to work for an employer in return for pay. It is made up several parts:

Implied terms: terms that are too obvious to mention, that are necessary to make the contract workable, or that are custom and practice of the industry concerned.

Express terms: terms that are clearly outlined and agreed.

Incorporated terms: terms that are incorporated into a contract through reference to another document, such as a staff handbook.

Legal terms: terms that are imposed or required by the law.

Not all aspects of the contract have to be in writing, but it is good practice and can ensure that disputes are avoided later. An employer is legally required to give an employee a written statement of the main particulars of the contract within 2 months of them beginning work, though ideally it should be given to a new employee on their first day.

However, just because you don't create a full written contract doesn't mean that it doesn't exist. A contract exists as soon as employment in return for pay is agreed. It would include basic minimums as set down by law and whatever custom and practice was in existence in the organisation or was practised with the employee during the time of their employment.

A contract of employment can be made up of several parts. However, the written statement must be in one document and must include at least:

- name of employee and employer
- date employment begins
- location of job
- job description/title
- pay
- working hours
- holiday entitlements
- details of any workplace collective agreements

When your organisation employs a new member of staff you need to consider if they are going to be a permanent or fixed term employee.

Permanent contracts - means the contract has no fixed end date. You can include a sentence in the contract that clarifies that the job is permanent subject to continued funding.

Fixed-term - if you have funding for a specific project, you may wish to offer a fixed-term contract, which runs for as long as the funding does. The contract would include the date when the job would end. You can no longer include a term in a contract for a fixed term that requires the employee to waive their right to claim unfair dismissal. In general an employee on a fixed term contract has the same legal rights as a permanent employee.

2: What is Contained in a Contract?

Below are some of the standard areas included you might want to include in a contract. For each element we have included what the law states you must do and then some information on what is good practice.

Hours

The maximum number of hours a week an individual may work is 48, averaged over a 17 week period. There are exceptions to this rule, and if you think this will affect you contact the Department of Trade and Industry for further information. It is up to your organisation how many hours you expect your employees to work. You would usually have a standard working week for all employees.

Remember 9am - 5pm isn't necessarily going to be your working week if you run evening activities. Working specific core hours, with other hours arranged around that can be very useful for staff who have caring responsibilities. If staff work more than their required hours, you may wish to include provision for Time Off In Lieu.

Pay

As of October 2003 the adult minimum wage rate for workers aged 22 and over is £4.50 per hour and for workers aged 18-21 inclusive it is £3.80 per hour. You must operate a PAYE (Pay As You Earn) system if the employee's earnings are above the thresholds for tax and National Insurance. Compare the "going rate" for the job you're offering by looking at job adverts to see what other organisations pay. Remember to take into account pay increments and inflationary increases. The National Joint Council (NJC) payscales, are used by local authorities and many voluntary organisations use. They are amended every year to include the cost of inflation.

Holidays

Every employee is entitled to 4 weeks paid holiday a year, so if your employees work a 6 day week they get 24 days holiday. This can include public holidays (Bank Holidays) and it applies to all staff regardless of how long they have been employed. You must be realistic about what holiday entitlement you can afford to offer. If you require your staff to work Bank Holidays then you would usually give the equivalent time off on another day.

Sick Leave

An employee is entitled to Statutory Sick Pay (SSP) when s/he has been off sick for 4 or more days in a row. The rules about SSP are very complex, so you might wish to contact the Department of Work and Pensions for more information. Some organisations specify what the employee will receive when off sick, over and above the statutory minimum. This can be full pay for a specified period, then half pay for a further period. Again be realistic about what you can afford and take into account that you might have to pay to cover the post during a long period of sick leave.

Other leaves

Maternity Leave - A woman who is pregnant is entitled to 26 weeks "ordinary leave" regardless of length of service. If she has been employed for a year by the 11th week before the expected week of childbirth she can take an additional 26 weeks leave immediately after the "ordinary leave". She will receive Statutory Maternity Pay (SMP) during her maternity leave. The rate is 90% of her salary for the first 6 weeks, and then a set rate for the next 12 weeks. Small employers can be reimbursed for much of this. Contact your local Inland Revenue office for further information. Again you can offer more than the statutory minimum. As with sick leave, you must consider what the organisation can afford and balance this with offering good terms and conditions.

Paternity Leave - Eligible employees can take up to 2 weeks paid leave to care for their baby and support the mother. To be eligible employees must have, or expect to have, responsibility for the child's upbringing, be the biological father or the mother's husband or partner and have worked continuously for their employer for 26 weeks ending with the 15th week before the baby is due.

Parental leave is a different kind of (unpaid) leave that parents can take in order to look after a sick child or to make arrangements for the child's welfare. Employees who have a baby or adopt a child on or after 15 December 1999 and who have worked for the organisation for a year are entitled to this leave (13 weeks for each child).

Adoption Leave - To qualify for adoption leave, an employee must be newly matched with a child for adoption by an adoption agency and have worked continuously for their employer for 26 weeks ending with the week in which they are notified of being matched with a child for adoption. Adopters are entitled to up to 26 weeks' ordinary leave followed immediately by up to 26 weeks' additional leave. Statutory Adoption Pay is paid by employers and the rate is the same as the standard rate of Statutory Maternity Pay.

Pensions

Currently there is no obligation to offer staff a pension. However, you must offer all staff access to information regarding pensions. You do not have to contribute to the pension, but people looking for a new job will weigh up the benefits of an adequate salary with good pension provision, against a more generous salary with no pension provision. Offer a pension to which the organisation makes a contribution, if you can afford it.

3: Further Help

ACAS 08457 47 47 47 www.acas.org.uk

Inland Revenue Employers Helpline 08457 143 143

Department of Trade and Industry www.dti.gov.uk/er/

National Minimum Wage Helpline 0845 6000 678

Department of Work and Pensions Employers Helpline 0845 714 31 43

The Pension Service www.thepensionsservice.gov.uk/