



Employment contracts

It doesn't matter whether you have a written document or not, as soon as someone accepts your job offer a contract exists. But that doesn't mean you don't have a legal obligation to provide every employee with a written statement covering specified terms of conditions, within two months of employment starting. So, what exactly does need to go into your employment contracts?

What do I need to include?

You must include in one document:

- your name and the name of the employee
- the date on which the employment began
- the date on which the period of 'continuous employment' began
- pay, how it is calculated and when it will be paid
- details of working hours
- entitlement to holidays and holiday pay
- the employee's job title or a brief description of their work
- details of where the employee will work
- details of disciplinary, dismissal and grievance rules and procedures (the Acas Code of Practice gives guidance on what is fair and reasonable)

You can also include (or must at least make available):

- terms and conditions relating to sickness, injury and sick pay
- terms and conditions relating to pensions
- details of the notice period the employee is obliged to give and entitled to receive for termination of the employment contract
- the intended length of employment
- details of any other provisions which directly affect the employment, for example confidentiality, restrictive covenants etc.
- details of any applicable collective agreement and any terms relating to work outside the UK

As a part of this you may also want to include details, perhaps as an annex to the contract, of the employee's complete job description, any relevant correspondence, company policies and details of your obligations as an employer (for example to provide a safe, secure and healthy working environment).

What penalty is there if I don't do this?

If you fail to provide a written statement within two months of employment starting your employee can refer the matter to the Employment Tribunal as a part of another claim (for example unfair dismissal or underpayment of wages). The penalty for non-compliance is usually two or four weeks' pay (capped at £475 per week), unless there are found to be 'exceptional circumstances'.

Are there any things I need to watch out for?

Whilst you want to make sure that any employment contract or written statement includes everything it needs to you also want to ensure you retain flexibility and avoid any risk associated with overly restrictive terms. Consider the level of detail included in the job description and make sure you include the option to amend it and change the employee's place of work etc as the business requires it. Also consider how you refer to bonuses, insurance and other discretionary benefits to make it clear that they are, indeed, discretionary.

Above all, seek professional legal advice to help identify areas of risk and lack of clarity.

Does this apply to people I'm taking on on a short term contract?

Yes, as long as this is for longer than one month. If this is the case then they are entitled to exactly the same employment rights as a long term employee. You simply need to ensure that you are very clear about stating the length of the term of employment.

Can I change the terms of a contract?

As long as you have written into the original document that you reserve the right to do this, then yes, as long as it is reasonable. If you have not, however, then you cannot do this without the employee's agreement.

What happens if the employee will not agree to my changing their contract?

You can terminate a contract on full notice and offer to re-engage the employee on new terms of employment after their notice period is up. There would not be a breach of contract in this case but you do risk a claim of unfair dismissal if this is not handled properly so this should not be done until you have taken legal advice.

Are there any things I should consider for senior employees and directors?

In these circumstances you may wish to put a longer notice period into their contracts as well as the option to place them on gardening leave. It may also be relevant to put in place non-solicitation of clients and/or staff clauses, as well as confidentiality clauses. You may also wish to consider whether you include agreements on commission and bonuses and the way in which these are drafted. Provisions relating to directors' roles as well as their termination should be carefully written. Above all, seek legal advice to ensure you do not open yourself up to future risk.

For help on setting up your business please follow the link wards.uk.com/service/business-employment or contact Bridget Juckes or Joanne Turner on 0117 9292811