



**Employers
Direct**

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Your essential guide to
Contracts

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Contracts



An employment contract

A contract is a set of promises made between two or more parties which have the intention of being legally binding. This means that there is a clear objective that, should either party not keep to their promise, the other party may take enforcement action.

It is a common misconception that the contract of employment is the document that is passed to the employee to sign when they start their new job. Whilst this document (a statement of main terms) makes up part of the contract, it does not constitute the whole thing. The '[contract of employment](#)' is a concept, and can include any term or condition that indicates an intention that is agreed between employer and employee.

It follows then, that a contract of employment can be made up of written and oral terms.

There are, however, certain pieces of information about the employment relationship that must be included in the written statement of main terms and provided to the employee. This is a requirement of the Employment Rights Act 1996. An employee becomes entitled to receive the statement after 1 month of employment, and the employee may take enforcement action at tribunal if it is not provided within 2 months. The required information includes:

- ▶ The name of the employer and employee;
- ▶ The employee's start date, taking into consideration previous periods of employment which are counted;
- ▶ The job title;
- ▶ Details on annual leave entitlements;
- ▶ Details on the rate of pay and how often the employee will be paid;
- ▶ Details on normal hours of work;
- ▶ Notice periods applicable to the termination of employment;
- ▶ Disciplinary and grievance procedures.

(This is not an exhaustive list)

An employer may include information on other terms and conditions relating to employment, for example, notification of absence procedures, information about benefits etc, and it is useful to include these in a separate employee handbook.

Engaging someone on an [employment contract](#) means that the individual will have the full complement of employment rights available, subject to length of service requirements (see Employment Status).

Types of Terms

Express Terms

These are terms within a contract of employment which have been specifically stated or had attention drawn to. As before, an express term can be included in a contract in writing or orally i.e. it does not have to be written down to be an express term.

Implied Terms

These are terms that have never been written down or spoken, however, for various reasons, are in existence in the employment relationship. A term can be implied into a contract because it is so obvious that it doesn't need to be directly mentioned, or because it is needed for the contract to work properly, or in other words, to give the contract business efficacy.

Examples of implied terms are: mutual trust and confidence between employer and employee; a duty on the employer to pay the employee's wages; a duty on the employee not to work in competition to the employer during employment.

Statutory terms

Some terms are inserted in a contract because the law prevents anything to the contrary. This means that if a term is included in the contract which is below the statutory minimum that must be provided, the statutory minimum will override and make the contractual term void. Examples are minimum notice periods and national minimum wage.

Breach of any of the above terms entitles employer or employee, as appropriate, to take action, up to and including dismissal or a tribunal claim.

Different types of contract

A full-time permanent employment contract is not the only option for an employer who wants to engage staff. There are a variety of contracts that can be used to reflect the needs of the employer. Some examples are below.

Fixed-term contract - This contract will include an end date at which the contract will terminate. These are often used for employers who require staff to complete a specific project after which there will be no need for the employee to remain; or for maternity leave cover.

Part-time contract – This will stipulate the hours that are to be worked by the employee that are fewer than a normal full-time employee. All entitlements and benefits of a full-time worker will be included in this contract but provided on a pro-rata basis to be dictated by the actual amount of hours worked.

Zero hours contract – This is a contract which provides the utmost flexibility to the employer who cannot guarantee any level of hours to be worked. It allows the employer to call upon the employee whenever they are needed, but does not promise any minimum hours of work.

Employment status

There are other ways that an employer can engage people to perform work which do not carry with them the full set of rights that a full contract of employment does.

Worker – an individual can be engaged to perform work under the 'worker' status, as opposed to 'employee' status. This person is not engaged under a contract of employment and this will be reflected in the fact that the working relationship is run in a fundamentally different way i.e. the employee is not expected to work under the 'control' of the employer; nor alternatively, there is no obligation on him to accept the work offered to him.

Workers do have some employment rights, including the right to receive national minimum wage and holidays, but are not able to claim unfair dismissal, for example.

Self-employed – this type of individual is usually someone in business on their own account, who provides work for a set fee rather than a wage. The relationship between this individual and the individual for whom the work is done is one of contractor and client/customer, rather than worker and employer. The person will be able to send a substitute to do the work instead of them personally.

Self-employed individuals have very few employment rights, which are generally limited to protection from discrimination, although some self-employed people do not even have this protection.

Employee shareholder – this is a relatively new employment status where the individual is deemed an employee, but gives up some significant employment rights, such as unfair dismissal, in exchange for a required share in the employer's company at a minimum level of £2000.



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