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A Guide to Employment Contracts

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A Guide to Employment Contracts

Including valuable information on:

- **Enforcing Contracts**
- **Restrictive Covenants**
- **Breach of Contract**

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A Guide to Employment Contracts

Contracts of Employment

From the moment you employ a new member of staff, in your enthusiasm to get them up and running, it's easy to overlook your basic legal obligations. A contract of employment is the cornerstone of any employment relationship and the law requires that all your staff are given a written statement containing the main terms and conditions of their employment within two months of them starting work. An Employment Tribunal may impose financial penalties on your company if you fail to do this, or if your existing contracts of employment fail to meet the specific legal requirements.

The mutual need for good contracts of employment

Having a written contract of employment can benefit employers and employees alike, ensuring your staff understand what is expected of them, while providing them with a sense of job security and trust, knowing that their pay and benefits are clearly set out in writing.

Contracts of employment are best supported by a staff handbook, which sets out all your company's policies and procedures including: Disciplinary and Grievance, Anti-Harassment and Bullying, Equal Opportunities, Maternity and Paternity and many others to ensure your staff are aware of your company's rules and what is regarded as acceptable behaviour. Consequently, if a member of staff breaks a rule, resulting in disciplinary action, having a staff handbook makes it much easier for you to show that your employee was aware of their responsibilities in the first place.

In practice, getting your employment documentation right the first time can be laborious and time consuming. Delphi takes the stress out of this process, drafting contracts of employment for all your employees, thus giving you more time to get on with running your business, secure in the knowledge that your contracts are robust, up to date and comply with current employment legislation.

In addition, our HR Resource Library contains a comprehensive range of forms and documents specifically designed to help your company with day to day employment and recruitment needs; with documents such as a job application form, health questionnaire, holiday request form, absence reporting form; appraisal form, return to work interview form; parental leave record; exit interview form and many more. These become available to you once you become a Delphi customer.

Do I have to give my staff written contracts?

A contract of employment does not have to be in writing to be legally binding. It exists as soon as an employee agrees to work for you. The terms of an employment contract can be agreed verbally, although putting everything in writing provides greater certainty as to what has been agreed.

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Why does a contract of employment have to be in writing?

If someone has been employed by you for one month, you are legally required to give them a written statement of employment particulars. This doesn't have to be a formal employment contract – a letter will do – but it must state the job title, start date, hours of work, rate of pay and notice periods, etc.

You must provide the written statement within two months of your employee starting work. If you do not and they win an employment tribunal case on another issue – unfair dismissal, for example – you may have to pay compensation of up to four weeks' salary for your failure to provide the written statement. The current limit on how much a tribunal can award an employee for a week's pay is £508.

Some contracts for senior managers and company directors can be very complex and lengthy. You may prefer to provide your staff with more detailed contracts, containing specific terms relating to probationary periods, the use of confidential information, restrictive covenants and data protection, etc. This document looks at some of these elements later.

Is an employee bound by a contract if they have not signed it?

A contract of employment does not have to be signed to be legally binding – its terms can be accepted verbally or by the conduct of the parties.

If you have evidence to show that you gave your employee a contract when they started their job, but they did not sign it or send it back and have carried on working for you, an employment tribunal will generally assume your employee has agreed to the terms of the contract.

An exception might be if your employee can show that some of the terms of the contract were never agreed or were still under discussion. If both parties have acted in accordance with the terms of an unsigned contract, it will usually be regarded as legally binding.

Express terms and implied terms

There are two different terms in any employment contract:

- Express terms are those agreed verbally or in writing. For example, if you make someone a verbal offer of a job with a salary of £20,000 per year, which is accepted, that salary becomes a legally binding express term of your employee's contract.
- Implied terms are those which cover something obvious that has not been specifically agreed, such as a lorry driver needing to hold a valid driving licence. Employment contracts contain an implied term of mutual trust and confidence, meaning both parties will act reasonably – for example, an employee will not steal and an employer will provide a safe and secure working environment.

Once they have been agreed, contractual terms must be followed by both you and your employee until the contract ends – usually when the employment terminates.

Can I change the terms of a contract once they have been agreed?

If you want to change your employee's contractual terms, you must consult with them about the proposed changes – these can only be amended with the employee's agreement.

If your employee has transferred to your company from another business that you have taken over, you will generally be prevented from making significant changes to their original contract of employment by TUPE Regulations.

If you need new contracts of employment, a staff handbook or other employment law documentation, or if you would like your existing documentation to be reviewed, we can help.

At Delphi, we specialise in employment law and with many years of experience are very well qualified to assist you with any contractual issues you might have. **Contact us today on 0113 867 2815.**

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Restrictive Covenants

Contracts of employment may include what is known as a restrictive covenant. This is a specific clause which stops your employee from competing against your business after their employment has ended. It may also prevent them from poaching your clients and customers by using knowledge gained during their employment.

When should restrictive covenants be used?

The success of your business may rely upon confidential information and specific client relationships. Employees who have access to these assets might be seen as desirable to your competitors, who may try to poach them.

To stop this, you may seek to protect your interests by including one or more post-termination restrictions in their contract, in order to prevent them from working for competitors, having dealings with your clients/customers or poaching your staff.

Are restrictive covenants enforceable?

If a restrictive covenant is designed to stop an employee working in their trade or profession once their employment ends, a court may regard it as a restraint of trade and not enforceable.

The law accepts however, that if your employee agreed to an employment contract containing a restrictive covenant, then you should have the right to enforce it.

If your employee agreed to the inclusion of post-termination restrictions but they later feel that these are too obstructive, you must satisfy the court that the terms are reasonable in order to protect your business interests, and go no further than necessary.

What is reasonable to protect my business interests?

The courts may decide that it is reasonable for you to prevent a senior employee from working for a direct competitor for a limited period of time, for example up to 12 months. More than two years would be likely to be regarded as unreasonable and not enforceable.

Similarly, a geographical restriction preventing your employee from working in the immediate locality would probably be enforceable, but restricting them from a wider area would not.

The courts treat each case on its own merits, but generally they will be looking to ensure that a fair balance is struck between your right to protect your business interests and your employee's right to earn a living.

If you are looking for more detailed advice about restrictive covenants or help with devising specific terms or updating your contracts of employment, Delphi can help you.

We can ensure that your business interests are protected and your contracts and restrictive covenants are properly drafted and legally enforceable. We specialise in employment law and with extensive experience, we are highly qualified to assist you with any restrictive covenant issues you might have.
Contact us today on 0113 867 2815.

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Breach of Contract

Both employers and employees can breach the terms (express or implied) of the contract of employment. This can happen in several different ways and each can sue the other if they suffer losses as a result.

What happens if the contract terms are broken?

Common examples of how you might breach your employee's contract of employment are a failure to:

- Give proper notice to terminate the contract
- Pay in lieu of notice
- Pay contractual wages or a bonus.

You may be able to sue your employee for breach of contract, if they:

- Resign without working their notice and you have to pay for a temp to cover their work
- Breach their restrictive covenants
- Unlawfully take confidential information.

Where can breach of contract claims be made?

If you are responsible for the breach and your employee suffers a loss, they could make a breach of contract claim in either an employment tribunal or the civil courts (the County Court or High Court).
Your employee must resign their employment if they wish to make a breach of contract claim in an employment tribunal, which has the power to award them compensation of up to £25,000.

If your employee resigns as a result of a breach of contract on your part, they may also have a claim for constructive dismissal.

You may counter-claim to the employment tribunal if you suffer a loss because of your employee's failure to observe the terms of their contract of employment.

The time limit for employment tribunal claims is three months from the date of the breach. The advantage of bringing a claim in an employment tribunal is that it is often quicker and simpler – and generally, the loser will not have to pay the winner's legal costs.

There is no limit to the compensation that can be awarded in the civil courts, so if your employee's breach of contract claim is potentially worth more than £25,000 – or they are still employed – they might make a claim in the County Court or High Court. The time limit for submitting a breach of contract claim in the civil courts is six years.

The team at Delphi has years of experience dealing with breach of contract issues. If an employee has brought a breach of contract or wrongful dismissal claim against you – or if you need specific clauses or full contracts of employment drafting – Delphi can help you.

We specialise in employment law and with extensive experience, we are highly qualified to assist you with any contractual issues you may have. **Contact us today on 0113 867 2815.**