

## **EMPLOYMENT CONTRACTS**

### **How and when to issue the contract**

For permanent employees, the contract or "Principal Statement" should be given to the employee within two months of their start date. Some employers give the contract to employees at the job offer stage and ask them to sign the contract as their acceptance of the position and related terms and conditions of employment. This is the most effective way of offering the contract, particularly because the employee knows what he is signing up to before he starts work. It is not uncommon for employees, once they have started work, to disagree with the terms and conditions of the job (e.g. restrictive covenants) as they did not realise these would be required of them.

If there is a probationary period in the contract, the contract should obviously be issued to the employee before they start work (unless the terms of the probationary period are set out in the offer letter).

If the employment is for a temporary period it is advisable to issue the contract before the employee starts work, as it may be forgotten after they start.

Whether the contract is issued before or after the employee starts work, you should ask for it to be signed, dated and returned to you. A copy should then be provided to the employee.

### **What if the employee does not sign and return the contract?**

If the contract is issued with the job offer and he is asked to sign the contract as acceptance of the job, he will not be deemed to have accepted the position and the offer can be withdrawn.

If the contract is issued to the employee after they start work, the employee's immediate superior should meet with the employee and establish the reasons for the contract not being signed. If they have no specific objection to the terms and conditions and are simply reluctant to sign their name to anything, they should be warned that continued refusal to sign the contract could result in the termination of their employment. They should be given time to go away and reconsider. If they continue to refuse to sign the contract, telephone the HR Helpline for further advice.

If the employee has a particular objection to a term of the contract, is this something the employee knew was a term of the contract before they accepted the job offer, e.g. holidays, salary etc.? If so, they should be reminded that they have accepted this term as a result of signing the offer letter and, again, should be informed that their refusal to sign the contract for this reason may result in the termination of their employment.

They should be given time to go away and reconsider. If they continue to refuse to sign the contract, telephone the HR Helpline for further advice.

If the employee is objecting to a term they did not know about e.g. a restrictive covenant, you should try and negotiate an acceptable compromise with them. You should explain the need and importance of the contractual provision to the employee. If it is not an essential term, you may agree to delete this from the contract. If it is an essential term and you cannot agree a compromise, you may have to eventually terminate the employee's employment. If you reach this stage, telephone the HR Helpline for further advice.

### **How to amend/vary the contract**

First, do you have the contractual right in the contract to do this? For example, you need to change the employee's hours and you have a clause allowing this to happen in the contract. If you do, this helps enormously but does not give you a free reign to change hours by whatever level and as often as you like. The operation of all contractual terms must always be implemented reasonably and if you change an employee's contract by a fundamental degree (whether you have the contractual right to do so or not) you may expose yourself to legal claims.

In all cases of variation, you should first meet with the employee on an informal basis and explain what you want to change and why you want to change it. Many employees when they understand a need for a change will agree. If they do not agree, verbally discuss whether a compromise which is acceptable to both the employee and the employer can be reached. If an agreement is reached, simply write to the employee explaining the change to the terms and conditions of employment and make it clear that the letter is an amendment to their current contract, although all other terms and conditions will remain unaltered

If you cannot reach a compromise with the employee and there is an essential need to change the employee's terms and conditions, telephone the HR Helpline for further advice.

Note that specific rules may apply where you are proposing to change the terms and conditions of 20 or more employees and you are advised to contact the HR Helpline at an early stage for advice.

### **Termination of fixed term contracts**

In all cases of termination at the end of a fixed term, you should write to the employee inviting them to attend a meeting to discuss the end of their fixed term, hold the meeting and confirm the reasons for their termination (as set out below) and confirm the termination in writing, giving them the right to appeal against that termination.

If a fixed term contract is for a specific period, e.g. 6 months, the employment should simply terminate at the end of the period without the need for further notice.

However, you should still need to meet with the employee, following the procedure set out above.

If the contract is fixed for a specific event, e.g. to cover another employee's ill health or maternity absence, you should meet with the employee as soon as you are aware that the other person is returning to work and confirm this and the date of anticipated return in writing, explaining that their contract will terminate on that date. If the fixed term employee has more than one month's service, they will be entitled to be given one week's notice of termination (rising to one week's notice for each continuous year of employment when they have more than two years' service).

As a matter of good practice, you should explore whether there is another alternative position within the company which the fixed term employee could be offered, thereby making their employment permanent.