

# Factsheet

## 23: 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 individual agrees to work for an employer in return for consideration (pay or something else of value). A contract does not have to be in writing, and is made up several parts: **Implied terms** are those that are too obvious to mention (such as turning up for work), are necessary to make the contract workable, or are custom and practice of the industry concerned or the employer (for example an employer which always allows employees to leave an hour early on Friday).

**Express terms:** terms that are clearly outlined and agreed. They are generally included in written terms and conditions of employment, but do not have to be. Something included in the job description, or offered verbally in a job interview or in a discussion after a person is employed, may well form part of the contract.

**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, such as the obligation to pay minimum wage, provide maternity and paternity leave and pay and other parental rights, and pay statutory redundancy pay.

### 2. The statement of particulars

An employer is legally required to give every employee who will work for one month or more a written statement of the main 'particulars' of the contract within two months of them beginning work, though ideally it should be given to a new employee before they start work, on their first day, or as soon as possible thereafter. The statement sets out the main terms and conditions of employment. Some of the particulars must be in a single document, called the principal statement, while others can be either in the principal statement or separate documents.

The Business Link website at [www.businesslink.gov.uk](http://www.businesslink.gov.uk) has a template for a statement of particulars that can be printed out and filled in.

The principal statement must include:

- full name of employee and employer
- date employment begins or began; whether the employment is continuous with any previous employment, and if so the date when continuous employment began
- pay; the pay scale or method of calculating pay, if applicable; any other benefits; the intervals at which the employee is paid
- working hours, with terms and conditions relating to normal working hours and, if applicable, overtime
- holiday and holiday pay entitlements
- job title or a brief description of the work (the job description should not be included in the particulars or as part of the contract)
- address of the employer; the place of work or, if the employee is going to be working in several places, details of that

- details of who an employee dissatisfied with a disciplinary or dismissal decision relating to him or her or who has a grievance should apply to, and the process for making such application

The following may be included in the principal statement or separate documents:

- for employment which is not intended to be permanent, the period for which it is expected to continue or the date on which fixed-term employment is to end
- details of any workplace collective agreements
- if an employee is going to be required to work outside the UK for more than one month, details of the period, the currency in which pay will be made outside the UK, any additional pay or benefits, and terms and conditions relating to returning to the UK

The following information may be included in the principal statement or a written contract of employment, or the statement may include reference to another document (such as a staff handbook) or documents which are reasonably accessible to the employee:

- period of notice to terminate employment – for this, there can be reference to the statutory provision or a collective agreement, if these are reasonably accessible
- incapacity for work due to sickness or injury, including sick pay or lack of it
- pension details, as applicable
- details of any disciplinary rules, and procedures for taking disciplinary and dismissal decisions relating to the employee

Many employers include additional terms and conditions and call the document a ‘contract of employment’ or ‘statement of employment terms and conditions’. This is fine, provided the document satisfies the requirements for a statement of particulars.

Many employers and employees think that if there’s nothing in writing, a contract doesn’t exist. This is not the case. A contract exists as soon as the employer unconditionally offers employment in return for pay or other consideration, and the individual unconditionally accepts the offer. 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.

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. A permanent contract has no fixed end date, and ends when it is terminated by the employer or employee. You can include a sentence in the contract that clarifies that the job is permanent subject to continued funding, but even with this statement the employer would still have to give notice of termination in the usual way.

If you have funding for a specific project, you may wish to offer a fixed-term contract, which runs for a specified period. The statement of particulars must specify that the contract is for a fixed term, and must include the date it ends.

Even with this statement, the employer must still give notice of termination.

The statement of particulars should also make clear that the contract can be ended by the employer or employee before the specified ending date. In general an employee on a fixed term contract has the same legal rights as a permanent employee, including the right to statutory redundancy pay if the fixed term contract – or a series of fixed terms contracts – last more than two years.

### **3. Details of some contractual conditions**

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 in all of their paid employments together is 48, averaged over a 17 week period, unless the employee has 'opted out' of the Working Time Regulations. There are exceptions to the 48-hour rule, and if you would like to ask an employee to opt out or think an exception might apply, contact the Pay and work rights helpline can advise [see end of factsheet].

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 or weekend activities. Working specific core hours, with other hours arranged around that can be very useful for staff who have caring responsibilities.

Employees can be asked to work overtime only if the contract allows for this. If it does, the contract should state whether this is paid or unpaid, or if Time Off In Lieu (TOIL) is given. It is good practice to make clear that overtime working, or overtime working or more than a specified amount, must be authorised in advance; and that if TOIL is offered it must be taken within a specified period (usually within the following month) and can be carried over further only if authorised.

#### **Pay**

From 1 October 2012 the national minimum wage for workers aged 21 and over is £6.19 per hour. For workers aged 18-20 inclusive it is £4.98 per hour, and £3.68 for 16 and 17 year olds who are above school leaving age and are not apprentices. The apprentice minimum wage is £2.65 for apprentices aged under 19, or over 19 and in the first year of their apprenticeship. This applies to apprentices on traditional contracts of apprenticeship, and employed apprentices on government-supported level 2 and 3 schemes.

Where accommodation is offered, there is a specified rate that can be set against minimum wage (the accommodation offset rate).

You must operate a PAYE (Pay As You Earn) system for all employees, although you may not need to deduct tax or national insurance contributions (NICs) if the employee's earnings are below the thresholds for tax and national insurance.

In setting a pay rate, compare the '*going rate*' for the job you're offering by looking at job adverts to see what other organisations pay. There is no obligation to offer pay increments and/or inflationary increases, and a clear decision should be made about whether you are going to do so. Some community organisations link their pay scales to local authority National Joint Council (NJC) payscales, but if you are going to do this, be aware that you will be obliged to adjust pay on the basis of external scales over which you have no control. The current NJC scales can be found on the NAVCA website [see end of factsheet]. These are amended every year to include the cost of inflation.

### **Holidays**

Every employee is entitled to 5.6 weeks paid holiday a year including bank holidays or equivalent time off, so if your employees work a five-day week they get 28 days holiday. Part time workers are entitled to the same level of holiday pro rata (so 5.6 times your usual working week e.g. 22.4 days for someone working four days a week). 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 offer, for example, 30 days plus bank holidays, you may need to find cover for 38 work days – nearly eight weeks – each year. There is no statutory right to time off on bank holidays.

### **Sick leave**

An employee earning £107 or more per week is entitled to Statutory Sick Pay (SSP) when s/he has had an illness or injury that has prevented or would prevent them from working for four or more days in a row (including weekends or other days that would normally be non-work days). The rules about SSP are very complex, so it is important to check the Directgov and Business Link websites [see end of factsheet] for details of how to operate the SSP scheme.

Some organisations provide contractual sick pay, above the statutory minimum, when an employee is off work due to illness or injury. Contractual sick pay is typically – but does not have to be - full pay for a specified period, then half pay for a further period. Again it is important when including contractual sick pay in the contract for the employer to be realistic about what it can afford and to take into account that it might have to pay to cover the post during a long period of sick leave.

### **Other leaves**

The rules around statutory maternity, paternity and adoption leave and pay, parental leave to look after children, carers' leave to look after certain adults, leave to deal with emergencies relating to dependants, and other rights of parents and carers are complex and change regularly. Full information is available from the Business Link and Directgov websites [see end of factsheet].

## **Pensions**

Starting with the largest employers in October 2012 and moving down to the smallest (employers with fewer than 30 employees) in 2016-17, every 'jobholder' aged between 22 and state pension age who earns more than a minimum threshold and is not in an employer's qualifying pension scheme will have to be automatically enrolled (auto-enrolled) in the national employment savings trust (NEST) unless they opt out. A jobholder is anyone working in Great Britain under a contract, including a temporary contract. Jobholders with earnings less than the threshold or aged 16-21 or above state pension age will be able to opt in to the scheme.

Both the employer and employee will have to contribute to the pension scheme.

Until the 'staging date' when an employer becomes obliged to start auto enrolment, there is no obligation to offer employees a pension or contribute to one. However, the employer must offer all employees access to information regarding pensions.

People looking for a job will weigh up the benefits of an adequate salary with good pension provision, against a more generous salary with no pension provision. Organisations which can afford it should consider offering a pension scheme to which the organisation makes a contribution.

Information about pensions and the auto-enrolment scheme is available from the Pensions Regulator [see below].

### **4. Further help**

**Manchester Community Central** – [www.manchestercommunitycentral.org](http://www.manchestercommunitycentral.org) contact 0333 321 3021, or email: [info@mcrcommunitycentral.org](mailto:info@mcrcommunitycentral.org)

**HM Revenue and Customs employers helpline** – 08457 143 143

**HM Revenue and Customs new employers helpline** – 0845 60 70 143

**Business Link** – [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

**Directgov** – [www.direct.gov.uk](http://www.direct.gov.uk)

**ACAS** – [www.acas.org.uk](http://www.acas.org.uk) contact 08457 47 47 47

**Pay and Work Rights helpline** – contact 0800 917 2368 (takes calls in more than 100 languages)

**Pensions Regulator** – [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

**NAVCA** (for NJC payscales) – [www.navca.org.uk/localvs/scales](http://www.navca.org.uk/localvs/scales)

**Legal update website for voluntary organisations** (for updates) – [www.sandy-a.co.uk/employment.htm](http://www.sandy-a.co.uk/employment.htm)

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