



Essential guide: Employment contracts and policies

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Partner Nick Thomas and associate Lee Harding, of global law firm Morgan Lewis' London employment practice, advise employers on why contracts and policies are vital for protecting business.

If an employer does not have appropriate contracts of employment or employment policies, it faces a greater risk of becoming embroiled in potentially expensive and disruptive employment disputes. Furthermore, an employer will not have in place robust protection against a former employee who tries to damage its business by taking its confidential information, intellectual property rights and customers.



Although an employer is not required to issue a full written contract, it is required to provide an employee with certain mandatory minimum written particulars of employment, including his/her job title, place of work, remuneration, hours of work, holiday and holiday pay, sickness and sick pay, pension and notice period. For this reason, it is customary to simply issue an employee with a written contract of employment, which deals with all (or nearly all) aspects of the employment relationship.

There are many advantages in having a written contract of employment. For example, they may be used so as to:

- (a) clearly set out pay and benefits in a way which properly awards and incentivizes employees while at the same time maintaining some flexibility so as to ensure that certain benefits (especially those arising out of pension or share schemes) do not place an unsustainable burden on an employer in future;
- (b) allow an employer to issue an employee with a shorter period of notice during a probationary period;
- (c) give the employer the unilateral power to make certain changes to terms and conditions in some circumstances (usually an employer needs to obtain the employee's consent);
- (d) impose confidentiality and intellectual property provisions on employees with access to sensitive business information and/or involved in the development of key company products; and

(d) impose post-termination restrictions on employees who are in a position to generate goodwill with the employer's customers and other key business connections (such as those employees involved in sales/marketing roles or senior employees with an important business role).

On termination of employment employers need to give and are entitled to receive, minimum notice in respect of all employees who have at least one month's service. Employers are required to give such employees a week's notice after the first month's service and then an additional week for every year of service up to a maximum of 12 weeks. By contrast, employees are required to give an employer not less than a week's notice after one month's service.

An employer may wish to include in a contract, notice above the statutory minimum entitlements. It may wish to do so, for example, in relation to important employees who are difficult to replace quickly. As an alternative to giving an employee notice, an employer may wish to dismiss an employee immediately and pay him/her in lieu of working notice. Including this option in an employment contract can save money as an employer can limit the amount of the in lieu payment (basic salary only and exclude any bonus or benefits that may have otherwise fallen due).

An employee is entitled to a minimum of 28 days annual leave each leave year. This entitlement includes public holidays. However, it is customary for many employers to offer 28 days annual leave in addition to public holidays. It is unlawful to pay an employee in lieu of annual leave except where that employee's employment has terminated. On dismissal, an employee is entitled to outstanding annual leave for that leave year. There are special rules which apply for the calculation and payment of holiday for part-time employees and employees on long-term sickness absence. Employers need to be careful to take account of these rules in their contracts and policies to avoid unlawful discrimination claims.

Employment policies are useful for managing employee expectations and providing guidance for managers in conducting an employer's business. For example, an equal opportunities policy can set out the employer's values to employees and help it defend a claim for unlawful discrimination. Another key policy is an IT/data protection policy as this can help an employer to monitor employee communications and process personal data without falling foul of legal restrictions.

Other policies such as in relation to travel and expenses may also help manage expectations and aid the smooth running of the employer's business. It is important to have flexibility to review and update policies as needed. For this reason, it is advisable to include a clear statement in the policies that these are not intended to be contractual documents. Some employers store all of their policies in a single handbook or place them on their intranet.

For many businesses, employees are both an employer's greatest asset and greatest threat, which is why contracts and policies are so important for protecting an employer's business both during the employment relationship and after it comes to an end. They not only describe the benefits to which an employee is entitled, but can also be a tool for properly motivating and incentivising higher workforce productivity.

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