



# *GUIDANCE ON* **THE CONTRACT OF EMPLOYMENT**

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**What is the Employment Contract?**

**Who is an Employee?**

**What are the Terms of a Contract of Employment?**

**Amending a Contract of Employment**

**Sample Contract of Employment**

# What is an Employment Contract?

By law, an employer must provide anyone who's classed as an employee with the terms of their employment in writing (a 'statement of initial employment particulars'). This document must contain a summary of the main terms of employment, such as pay and working hours.

The statement of initial employment particulars is often referred to as the 'employment contract'. But by law the employment contract is broader than just these written terms. For example, employment law is also part of an employee's contract but usually the law will not be written in full in the document.

At a minimum to comply with the law an employer who has more than 2 employees MUST provide a statement of initial employment particulars to any employee:

The statement must contain particulars of -

- (a) the names of the employer and employee;
- (b) the date when the employment began;
- (c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period);
- (d) the place of work or, if the employee is required or permitted to work at various places, an indication of such place or places;
- (e) the title of the job which the employee is employed to do or a brief description of the work for which he or she is employed;
- (f) if the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;
- (g) the scale or rate of remuneration or the method of calculating remuneration;
- (h) the intervals at which remuneration is payable;
- (i) any terms and conditions relating to hours of work;
- (j) any terms and conditions relating to entitlement to holidays, including public holidays, and holiday pay;
- (k) the number of paid sick absence days to which the employee is entitled;
- (l) any terms and conditions relating to entitlement to unpaid emergency time off to care for dependents and parental leave;
- (m) any applicable pensions and pension schemes;
- (n) the length of notice which the employee is obliged to give and entitled to receive to terminate the contract of employment;
- (o) information relating to disciplinary and grievance procedures if the employer employs 10 or more employees;
- (p) reference to any collective agreements affecting the employee's conditions of employment;
- (q) if the employee is required to work outside St Helena for a period of more than one month -
  - (i) the period for which he or she is to work outside St Helena;
  - (ii) the currency in which remuneration is to be paid while he or she is working outside St Helena;
  - (iii) any additional remuneration payable to the employee, and any benefits to be provided to or in respect of the employee, by reason of the employee being required to work outside St Helena; and

# Who is an Employee?

An employee:

- i) usually has an employment contract from their employer, formed when they accept the job;
- ii) tends to be provided regular work by their employer;
- iii) is employed to do the work personally; and
- iv) must do the work

Just because the employer has not provided a statement of employment particulars does not mean the person working is not an employee. Some people may still be employees even if they have traditionally be seen as self-employed, for example fishermen.

There is a detailed definition of employee within the Employment Rights Ordinance, 2010

# What are the Terms of a Contract of Employment?

An employment contract is made up of:

- a) specific terms agreed in writing ('express terms'), as contained in the statement of initial employment particulars
- b) terms that are part of employment law ('statutory terms')
- c) terms too obvious to be written ('implied terms') – it can still be a good idea to put these in writing, so everyone's clear about their rights and responsibilities. This includes 'custom and practice' terms
- d) terms put into the contract from other sources ('incorporated terms') such as a staff handbook or an agreement affecting many employees

Information in the contract must follow the law. For example, stating that an employee is paid £3 per hour would be against the law, because this amount is below the minimum wage.

## **Terms too obvious to be written**

There are some terms that are so obvious that they do not have to be written (such as not stealing from your employer).

Even if they're unwritten, these types of terms are often crucial for an effective working relationship between an employer and employee.

To prevent misunderstandings, it's still a good idea for the employer to make the following clear (for example, by writing them in an employee handbook):

- i) the standards of behaviour expected from employees – for example, anyone who deals with customers should be polite when doing so
- ii) what happens if these are not met – for example, the employer will report any thefts to the police

## **Custom and practice**

'Custom and practice' terms are often unwritten. This type of term could become part of the employment contract, when all of these apply:

- i) it's generally well-known in the business or industry, usually over a period of time ('notorious')
- ii) it's reasonable
- iii) it's certain

For example, an employee could expect a Christmas bonus of £100 this year if their employer has paid that annually for the last 10 years, to everyone in their team. To prevent misunderstandings, it's still a good idea for the employer to put specific custom and practice terms into writing. For example, that getting a Christmas bonus depends on the business's profit in the latest financial year.

## **What if an employer does not provide a statement of initial employment particulars?**

An employer must give to an employee the statement of initial employment particulars within 2 months of commencing the employment, however it is good practice to provide this right at the very start so that any misunderstandings can be ironed out at the beginning.

If an employee does not receive the statement of initial employment particulars he or she can make a complaint to the Labour Regulating Authority who can direct that the statement be provided to the employee, fine the employer up to £200 and order compensation to the employee for any financial loss or inconvenience.

If an employee believes that his or her statement of initial employment particulars is incomplete and information is missing then, if the employer refuses to provide this information or believes it is unnecessary, the matter can be referred to the Labour Regulating Authority who may decide.

In all circumstances employees are strongly urged to try to resolve matters amicably with their employers before involving the Labour Regulating Authority.

# Amending a Contract of Employment

The Labour Regulating Authority has issued guidance on changing a contract of employment which can be found on the [Labour Regulating Authority](#) page of the SHG Website.

# Sample Contract of Employment

There is a sample statement of initial employment particulars on the [Labour Regulating Authority](#) page of the SHG Website.