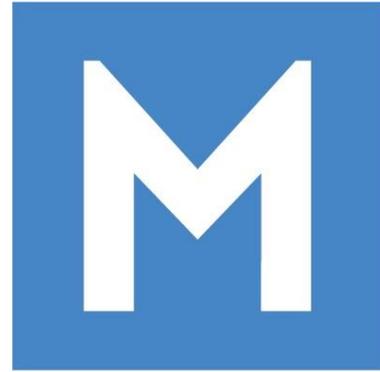




Advanced



People



Management

The Contract of Employment Explained

We offer a quality service at a price that all businesses can afford

Legal Disclaimer

Our eBooks guides and templates explain the general requirements of the employment relationship and are not a detailed explanation of employment law. We outline the minimum mandatory requirements that no employer can fall below, requirements that need to be in place within all organisations, large or small that employ people. It is essential that you get independent legal advice, for any specific individual situation and issue. Our eBooks, guides and templates give general outlines only and do not constitute specific, individualised legal advice.

Advanced People Management is a competitively priced HR and Employment Law consultancy. We specialise in Employment Relations, Employment Law and Employment Tribunal representation for all businesses. With the support of our professional HR Managers and Employment Law Litigators (all CIPD accredited), our work focuses on employee relations and employment law; making sure your business understands its legal requirements around:

- ❖ All UK Employment Legislation and the legal rights employees have
- ❖ Contracts of Employment including Company/Employee Handbooks
- ❖ Drafting Policies and Procedures specific to your business needs
- ❖ Investigations: how they should be done when problems arise
- ❖ Disciplinary Procedures
- ❖ Grievance Procedures
- ❖ Short and Long-Term Absence Management
- ❖ Conduct and Capability Issues
- ❖ Appeals
- ❖ Help with Employment Tribunal Claims Documentation
- ❖ Employment Tribunal Litigation and Full Representation

Contact Us:

Tel: 07977 234796

Email: info@advancedpeoplemanagement.co.uk

www.advancedpeoplemanagement.co.uk

All of our eBooks, guides and template documents are available in Microsoft Word. If you require them contact us: info@advancedpeoplemanagement.co.uk and we will send them out to you.

But remember we will want to sign your company up as a customer so be prepared for a phone call off one of us trying to get some business out of you.

'Just being honest that's all'

The Contract of Employment

A Contract of Employment (the contract) can be written or oral or a mixture of both and so by default it can be a formal agreement (written) or an informal agreement (oral) between two people or more. Either way, it is an agreement between parties about the employment relationship and how each will conduct themselves during the term of employment.

Even though the contract does not have to be written down employers still have a legal duty under section 1 of the Employment Rights Act 1996 (ERA) to give to the employee, within 2 months of the start of employment, a Written Statement of Employment Particulars (APM have a template of this available). The ERA then goes on to describe exactly what clauses need to be included in the statement. Whilst the Written Statement of Employment Particulars is not technically a contract the statement still carries a considerable amount of weight in law because it contains some very important terms that are usually found in a contract. The written statement, therefore, can be used as evidence which outlines the employment agreement that the parties reached from the start of the employment relationship.

The ERA also states that if you give an employee a Contract of Employment and it contains all of the terms that a Written Statement of Employment Particulars should contain then the contract will be all that you need to give to the employee.

The ERA also allows 'some other document' that the employee has had a 'reasonable' opportunity to access and read and is available to them throughout the employment to form part of both any contract or written particulars. For practical purposes what this means is that an Employee Handbook or a Company Handbook and other documents such as a Deductions Policy or Company Car Policy can form part of the contract or written terms. From a technical standpoint though it is very important that you link the documents together. A simple statement in the contract and in the documents such as below is a good idea:

I agree to the Terms and Conditions of Employment set out in this contract and I agree that this Contract of Employment along with the Terms and Conditions set out in the Company/Employee Handbook form my complete Terms and Conditions of employment.

It is a good idea also to have a similar linking statement at the start of the Employee/Company Handbook and any other documents that way all the documents are linked and form the complete Terms and Conditions of Employment.

If an employer wants to make changes to either the contract, the written statement, the Employee/Company Handbook or any other contractual document then the law (ERA section 4) states that the employer has to give advanced notice of these changes to the employee. In practical terms what this means is that you have to go into consultation with the employee(s) before you can make any changes to these documents. These changes represent changes to the original working agreement that the employer went into with the employee(s) at the start of the employment relationship. Any changes to this agreement at a later stage should be taken very seriously and not just forced through.

If an employer fails to give an employee a Written Statement of Employment Particulars or a contract within 2 months of the start of employment the ERA section 11 allows the employee to seek financial redress through the Employment Tribunal.

The Contract Terms

Case law, *Autoclenz Ltd v Belcher*, has determined that the written terms in any contract will be scrutinised by a court when a disagreement arises. In the above case, the court found that what was written in the contract did not reflect the reality of the working relationship between the parties, it was not '*a true agreement*'. In this case, concerning a number of self-employed car cleaners, the contract had various clauses around how the work is to be conducted, how they were to be paid, and which party provided equipment to do the job.

However, the court found that in reality, the way in which the car cleaners worked was not a reflection of the terms of the contract. The car cleaners were told what times they worked, they had to phone in and report absences and were subject to other provisions. The court also found that changes had been made to original contract and the car cleaners were not consulted or told about the changes and so were ignorant of them. When all of these issues were taken together, the court decided that the terms in the contract meant nothing, what was more important was the actual working practices that the car cleaners were working under.

Express, Implied and Incorporated Terms

A contract may contain express, implied and incorporated terms. Express terms are those terms that are written into the contract and form the written bases of the agreement. Incorporated terms could be, for example, a collective agreement that has been reached in an unionised workplace. Some terms are not necessarily set out in writing in a contract and are regarded as implied terms. The law regards some things at work so obvious that they do not have to be written down. For example, an employer has a legal duty to protect an employees health at work and to provide a safe working environment. Also, People at work

cannot destroy the mutual trust and confidence that exists in the employment relationship. These issues fall within the remit of the implied terms of a contract.

Custom and Practice is another area in the contract that can be regarded as implied terms. For something to be regarded as custom and practice it has to have been in place for a long time, it is well known among the workforce and employees have to be reasonably certain that they will have always had the practice.

Making Changes to a Contract

You cannot make changes to a contract unless the changes are agreed upon by the parties. That means that neither an employee can make changes to the employment relationship without the agreement of the employer and the employer cannot make changes without the agreement of the employee.

The best way to change the contractual employment relationship is through an agreement which preferably should be in writing but can also be an oral agreement (make sure you have witnesses).

Another, albeit more complicated way, is through the concept of consent. This is a very complicated and legally dangerous area. An employer could force a change on a contract of employment, by terminating the old contract and giving the employee a new contract. However, the courts have determined that this can only be done in the most extremes of circumstances otherwise an employee can start and probably win a case of unfair dismissal.

Consent may also be implied by an employee if they continue working for the employer, without protest, for a significant amount of time after they have been aware of a change that has been forced through by an employer. Where an employee protests to the change but then continues to work for the employer they can only do so for a limited amount of time and to continue working under protest for a long period can be considered in law as the employee accepting/consenting to the change. However, as always caution needs to be applied as each situation will be determined on its own merits by the courts.

Any change that is made to the contract by the employer without the consent of the employee will be deemed as a breach of contract. If the change significantly affects the working relationship then the employee could resign and claim constructive dismissal and claim damages either in the Employment Tribunal or the County Court.

Legal Disclaimer

Our eBooks guides and templates explain the general requirements of the employment relationship and are not a detailed explanation of employment law. We outline the minimum mandatory requirements that no employer can fall below, requirements that need to be in place within all organisations, large or small, that employ people. It is essential that you get independent legal advice, for any specific individual situation and issue. Our eBooks, guides and templates give general outlines only and do not constitute specific, individualised legal advice.

If you want us to send you this document in Microsoft Word please email us at:

info@advancedpeoplemanagement.co.uk