



Writing terms and conditions of employment



When recruiting a new employee it is clearly sensible to agree terms before the employee starts and to put these in writing with both parties signing to indicate their acceptance. If subsequently there are disputes it can be much easier to resolve them with reference to an unambiguous written agreement.

Contrary to popular belief a contract *does* exist between employer and employee even if there is nothing in writing. In this case the contract is likely to be made up of a verbal agreement (the basis on which the employee accepted the contract), and custom and practice (e.g. always working Monday to Friday). Even if the employee has been given a written statement this is unlikely to contain details of every aspect of the contract. Other documents, such as a staff handbook, may form part of the contract; custom and practice could also apply (e.g. the right to a day off in lieu if working a bank holiday where this has always been the custom); and verbal agreements outside the scope of the written statement.

There is a legal requirement for employers to provide a written statement of employment particulars to all their employees and that is the subject of this datasheet.

The Written Statement

Employees are entitled to receive from their employer a written statement of employment particulars within two months of starting work, provided that their employment lasts longer than one month. This right is provided by Section 1 of the Employment Rights Act 1996 (ERA 96), which details which particulars need to be included. They do not have to be given to the employee all in one go, but can be given in instalments as long as all the information is given within the two-month deadline. However, the following information *must* be included in a single document and this is often referred to as the 'principal statement':

- The names of the employer and employee
- The date when employment began
- The date when continuous service began (taking account of employment with a previous employer which may count – for instance employment with an associated employer)
- The scale or rate of remuneration or the method of calculating it
- The intervals at which it is paid (e.g. weekly or monthly)
- Any terms and conditions relating to hours of work (if employees may be required to work overtime on occasions it is important to state this)
- Any terms and conditions relating to holiday, including public or bank holidays, and holiday pay. This should include how accrued holiday is calculated on termination
- The job title or a brief description of the job
- The place or places of work (if the employee is mobile this should be indicated)

The following information *can* be provided in instalments in separate documents to be attached to the principal statement

- The length of notice that the employee must give and entitled to receive to terminate the employment *
- Where employment is not intended to be permanent, the period for which it is expected to continue or where it is for a fixed term, the date when it is to end
- Any collective agreements that affect terms and conditions of employment and some information about them and a reference to where they are available for inspection
- Where there is a requirement to work outside the UK for a period of more than one month, the period concerned, the currency in which the employee will be paid, any additional pay or benefits, and any terms relating to the employee's return to the UK
- The person to whom the employee can appeal against a disciplinary or dismissal decision and how the appeal should be lodged, e.g. in writing

- The person to whom the employee can apply in the event of a grievance and how the grievance should be raised, e.g. in writing

*The employees may also be referred to either the relevant legislation (Sections 86-88 of the ERA 96) or a relevant collective agreement to which they have reasonable access whilst at work.

The following information must also be provided, as part of the written statement but the detail does not have to be contained within the written statement itself or even attached to it. In this case it is acceptable for the written statement to contain a clause for each part of this information that refers to another document for the detail, which is reasonably accessible to the employees whilst they are at work:

- Entitlement to sick leave and sick pay and any terms and conditions concerned with absence due to sickness or injury
- Pensions and pension schemes and whether or not there is a contracting-out certificate in force in regard to the employment
- Any disciplinary rules
- The disciplinary and dismissal procedure
- The grievance procedure

If any of the headings mentioned in these three lists are not applicable then this should be stated in the written statement (e.g. if there is no requirement to work outside the UK there should be a statement to that effect)

Consequences of Non-compliance

If an employee is successful in a complaint to an Employment Tribunal about another matter in relation to their employment, the Employee may bring a claim for the failure to provide a written statement. If found liable, the Employer would have to pay damages of either between 2 or 4 weeks pay depending on what is just and equitable. The Employment Tribunal will not hear a claim on this matter as a stand alone claim.

Another consideration for employers, are the possible consequences if an Employment Tribunal is asked to interpret the agreement between the parties when there are no written terms and conditions. The Employment Tribunal can set out the terms that it considers should apply and the employer will then become bound by these terms. Of course this may not be to the employer's advantage and there is also the added cost and inconvenience to consider of defending any claim.

It is important to note that if an employee is dismissed because he/she has asked for a written statement, this would be treated by the Employment Tribunal as an automatically unfair dismissal, irrespective of the employee's length of service.

Producing a Written Statement

Care should be taken when preparing a written statement to ensure that it is accurate and cannot be interpreted in a way that was not intended. For example, under the sick pay provision it may state that employees will receive up to 6 weeks' full pay per year for sickness. That statement may appear quite straightforward but does the employer intend this to apply for each calendar year or for any rolling 12-month period? If the employee falls sick in November and does not return until the end of February he/she may expect to receive 6 weeks' full pay during November and December, and a further period of 6 weeks at full pay during January and February. The employer may have intended that he/she only receive one 6 week period at full pay and will have no further claim to contractual sick pay until 12 months has elapsed.

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