

Written particulars of terms and conditions of employment

Although there is no general legal requirement that an employment contract should be in writing, the law requires employees to be issued with a written statement of their main terms and conditions of employment. This statement may be set out in one comprehensive document or it may be provided in instalments. However, the items in the list below marked with an asterisk must be contained in a single document. The complete documentation must be given to the employee within two months from commencement of employment.

Section 1 Employment Rights Act 1996 requires that the written statement must set out the following terms:

- the names of the employer and employee*
- the date on which the employment began*
- the date on which the employee's period of continuous employment began*
- terms and conditions relating to remuneration (ie scale, rate or method of calculating, and intervals at which paid and any provisions relating to overtime)*
- terms and conditions relating to hours of work, including normal working hours*
- entitlement to holidays, including public holidays and holiday pay and the way holiday entitlement is calculated on termination of employment*
- terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay
- terms and conditions relating to pensions and pension schemes including whether a contracting out certificate is in force
- the length of notice which the employee is obliged to give and entitled to receive to terminate the contract of employment
- the employee's job title or, alternatively, a brief description of the work he/she is employed to do (the latter being required if the job title is not accurate or does not reflect the duties to be performed)*
- where 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
- the place of work or, if the employee is required to or permitted to work at various places, an indication of that and the employer's address*
- particulars of any collective agreements which directly affect the employee's terms and conditions (and where the employer is not a party, the persons who are)
- information relating to overseas employment, including, where the employee is to work outside of the UK for more than a month:
 - the period for which he/she will work outside of the UK

- the currency in which he/she will be paid
- details of any additional remuneration or benefits to be paid whilst outside the UK
- terms and conditions relating to his/her return to the UK)
- certain details relating to disciplinary and grievance procedures

Where there are no provisions relating to any of the matters listed above, that fact must be stated.

The written statement must contain all the terms in full with the exception of terms relating to absence through sickness or injury, pension schemes, notice or disciplinary procedures, as long as the employee is referred to some other document. However, in relation to disciplinary or grievance procedures, the written statement itself must state the person to whom the employee may apply if dissatisfied with any disciplinary decision or decision to dismiss, or when seeking redress of any work related grievance. In addition the written statement must specify the manner in which any application to that person must be made (eg in writing). All other details specifying disciplinary rules, procedures, and explanations of further steps when applying to such a person may be in another document, such as a disciplinary policy.

All employers are required to provide information about disciplinary rules and procedures and there is no exemption for small employers. In particular, employers are required to provide information about any procedure applicable to the taking of disciplinary decisions or a decision to dismiss, although this can be contained in another document as indicated above. This should reflect as a minimum the ACAS Code of Practice on Disciplinary and Grievance Procedures that was revised in April 2009. An unreasonable failure to comply with the Code of Practice could not only result in an unfair dismissal but in an uplift of any compensation awarded to an employee of up to 25%. Please see our Guide to Disciplinary Procedures for more details.

If other documents are referred to in the written statement the employer must ensure that they are reasonably accessible to the employee, who knows where they are located and has a reasonable opportunity to read them in the course of his/her employment.

If an existing employee requests a new full written statement one must be provided no later than two months after the request is made.

Over time, there will inevitably be changes in the particulars. When this happens, the employee must be given a written statement of the change. This has to be given at the earliest opportunity, and in any event not later than one month after the change. This would cover such changes as pay rises or other matters which are either agreed or improve the terms and conditions of the employee. However, this does not mean that the employer has the unilateral right to change employees' terms and conditions of employment by giving one month's notice. Changing terms and conditions of employment is a complex area and can easily lead to conflict or even constructive dismissal; legal advice should be taken before making any significant changes.

The statutory written statement of terms and conditions is not in itself a contract of employment. It is issued by the employer and will not become a contract of employment unless this is the clear intention of both parties eg where it includes a statement signed by both parties that this forms the employee's contract of employment. If the employee has a separate written contract of employment, this will override the written particulars in the event of any conflict between them. A contract of employment or a letter of engagement containing the required information will satisfy the employer's statutory obligation to provide a written statement.

If an employer fails to provide written particulars, or these are incomplete or inaccurate, an employee can refer the matter to a tribunal which has the power to determine what the particulars ought to have been so as to comply with the statutory requirements. In this regard, the tribunal should first look for an express agreement on the missing term (eg oral or contained in another document). Where no express agreement can be found, a tribunal should imply a term that all the facts and circumstances show must have been agreed, and finally, it should look at the way the contract has been performed since it began. Employers should beware, therefore, that failure to provide a full written statement of terms may lead to a tribunal declaring that it is bound by a term which it does not regard itself as having agreed to. Additionally, a tribunal has the power to award two or four weeks' pay to an employee where the employer has failed to provide a written statement of particulars or written statement of changes to those particulars. Any dismissal of an employee for requesting a written statement, or bringing tribunal proceedings to enforce this right, will be

automatically unfair.

Contacts

For further information or guidance on this subject, please contact the Employment law team at employmentinfo@blaw.co.uk or call us:

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