

## **THE CONTRACT OF EMPLOYMENT**

Employment contracts are probably the most important document you will have concerning an employee yet many employers do not review their contracts for years at a time and others do not have a contract which is adequate to protect the needs of the business.

### **Important update:**

You should ensure that an employee's holiday entitlement is consistent with the Working Time Regulations 1998. Since 1 April 2009 the minimum holiday entitlement has been increased to 5.6 weeks a year (28 days for a full-time worker). Part-time workers should have a pro-rata equivalent.

Since 1 April 2009, leave in excess of the statutory 5.6 weeks can be paid in lieu if the parties agree.

### **Hints and tips:**

1. Make sure that as a minimum, each employee has a section 1 statement within two months of them starting work. A failure to provide this statement not only means that you may lose control of what the contract ultimately says but can also result in the employee making a successful claim against you for between 2 and 4 week's salary;
2. Have you included a probationary period in the contract of employment? This can be very useful if an employee is not performing adequately in their early stages;
3. Make sure that there is a deductions clause in each contract of employment. This will allow you to lawfully deduct any money (including holiday) that the employee owes at the end of their employment from their final salary payment;
4. Although it can be useful to specify an employee's duties in their contract of employment make sure that the duties are not so specific that it becomes inflexible- a catch all provision is often helpful;
5. If you are asking employees to work more than 48 hours per week, have you asked them to opt out of the working-time directive;
6. If you are operating a business where it is vital for employees to be present at certain times of the year have you made it clear that they cannot take annual leave during these periods;

7. If you want to change an employee's contract of employment make sure that you either obtain their consent to the changes in writing or if this is not possible look at other options such as dismissing and re-engaging the employee, a failure to do so may mean that you are in breach of contract;
8. Make sure you keep notes of all discussions with employees regarding their contract and potential changes;
9. Depending on the seniority of the employees involved it may be vital to have post-termination restraints in place in order to protect the business once the employee leaves. However, extreme care should be taken when drafting or amending restraints as if they are too onerous they may be held to be invalid;
10. Have you got restraints in place covering confidentiality and if necessary intellectual property rights. Ideally these provisions should be drafted as widely as possible so that the business is protected both during and after employment.

This note does not constitute legal advice and is intended as general guidance only. If you would like further information or would like to arrange a meeting please

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