



## **Guide To Contracts of Employment –**

A Contract of Employment is the very basis of the legal relationship between an employer and employee. We cannot stress too much the importance of getting it right. There are two reasons for this. Firstly if an employer gets it wrong the employee may well have claims against the employer under various pieces of employment law. Secondly, if it does not comply with the law the employee can obtain up to four weeks wages for not setting out the contract correctly.

A Contract of Employment sets out certain basic information which must be provided to an employee.

It sets out other rules and regulations relating to the organisation of the relationship between an employer and an employee.

### What terms must be included in a Contract of Employment.

All employees are entitled to a written statement of their terms and conditions of employment which must be furnished within 2 months of the commencement of the employment. This is set out in Section 3 Terms of Employment (Information) Act 1994.

This statement must include the following minimum terms.

1. The full name of the employer
2. The full name of the employee
3. The address of the employer in the State or the address of the principal place of the relevant business or the registered office. The term registered office is that meant by the Companies Act 1963.
4. The place of work. Where there is no fixed place of work a statement setting out that the employee is required or permitted to work at various places.
5. The job title or the nature of the work.
6. The date of commencement of the contract of employment. By this we mean the start date.
7. In the case of a temporary contract the expected duration of if it is for a fixed term the date in which the contract expires.
8. The rate or method of calculating the employees' wages / salary and the pay reference period for the purposes of the National Minimum Wage Act 2000.



9. That the employee may, under Section 23 of the National Minimum Wage Act 2000 request from the employer written statement of the average hourly rate of pay for any pay reference period as provided.
10. When the salary / wages will be paid whether a week, a month or such other intervals as are set out.
11. Any terms and conditions relating to hours of work including overtime.
12. Any terms and conditions relating to paid leave other than paid sick leave. This normally means holidays.
13. Any terms and conditions relating to in capacity for work due to sickness or injury and paid sick leave.
14. Particulars of any pension or pension scheme.
15. The period of notice which the employee is required to give and entitled to receive.
16. A reference to any collective agreement which affects the terms and conditions of the employees employment.
17. This statement must be given to the employee. It must be signed and dated for or on behalf of the employer. It must be provided within 2 months of the commencement date being the start of the employment.

We would point out that there is no legal obligation, at the present time to pay sick leave. From 1 January employees will not be able to claim Social Welfare for sick leave periods unless they are absent from work for 6 days.

#### What conditions should also be included in an employment contract

We recommend as a minimum that the following should be included in any employment contract.

1. A probationary period and policy allowing for extensions.
2. A Disciplinary Procedure
3. A Grievance Procedure
4. Internet and mobile phone usage
5. Social Media Policy
6. Bullying and Harassment Policy



7. Retirement age. We would point out that you must be able to justify a retirement age.
8. Provisions for deduction from pay for example to include damage to property owned by the employer.
9. Policies relating to flexibilities which would include duties and/ or job location and/or change of start and finishing times.
10. A lay- off and short time policy to include non-payment of wages during lay-off or short time except for the period of time that the employee actually works.
11. A pay review and performance review policy.
12. A non-compete clause post termination.
13. A non-solicitation clause of your clients / customers after the contract ends.
14. Confidentiality clause during the employment and post termination.
15. Data Protection
16. A right to alter or amend the contract.
17. A Garden Leave provision namely that during a notice period you can require the employee not to attend at work.
18. Sexual harassment policy.
19. A clause confirming that the employer handbook will form part of the contract of employment as amended from time to time.
20. For Fixed term workers a clause excluding the Unfair Dismissal Acts.

We always advise where a Contract is being put in place that an employer considers having an Employment Handbook. The handbook will usually cover such matters as;

1. Grievance procedures
2. Disciplinary procedures
3. Internet and mobile phone usage
4. Anti-Bullying / Anti-Harassment policy



5. Sexual Harassment Policy
6. Your policy on Sick Leave to include reporting requirements and the right for the employer to have the employee medically assessed in certain circumstances together with an obligation for the employee to cooperate with same.
7. A Holiday Leave Policy. This can include the giving of notice for holidays or specifying certain times in the year when holidays cannot be taken or alternatively specifying times at which holidays must be taken.
8. A Maternity Leave policy
9. Parental Leave Policy
10. Carers Leave Policy
11. Particulars relating to the Pension Scheme or PRSA as applicable.
12. Detailed rules on hours of work, flexible working, time off from work, and overtime.
13. Health and Safety Policy
14. Reporting accidents in the workplace
15. Detailed particulars on the appropriate use of Social Media including ownership by the employer of all contract details.
16. Depending on the type of business there will be particular conditions applicable to particular industries. This may include compliance with Regulatory Rules relating to certain professions or jobs. It may include policies dealing with compliance with the Central Bank or a Regulatory Body requirements for staff.

While many of the clauses in staff handbooks will be relatively standard they must be tailored to the individual requirements of the individual employer.

A procedure which may be appropriate for a large employer may be inappropriate for a small employer. Equally a policy which may be appropriate for a small employer may be completely inappropriate for a larger employer.

When designing a Contract of Employment and Staff Handbooks this is a combination of Legal, HR and Industrial Relations issues.

Contracts of Employment and Staff Handbooks bind not only the employees but also the employer. It is therefore important that everybody understands their rights and obligations and particularly that employers understand that policies and procedures which they put in place and that the employers comply with same.

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**The firm of Richard Grogan & Associates would be delighted to assist you in putting together your employment documentation or advising you on existing employment documentation. Our employment law practice is headed up by Richard Grogan who can be contacted at 01 6177856 or [richard@grogansolicitors.ie](mailto:richard@grogansolicitors.ie).**

**This document does not purport to be legal advice. It is a guide only. Before acting or refraining from anything contained in this document appropriate legal advice must always be obtained.**