



## **The importance of Contract of Employment \***

Sometimes the importance of a Contract of Employment is overlooked. It is in the interest of an employer to obtain a signed contract from each employee. We thought we might set out some of the risks.

### **1. Lack of certainty as to the terms of the contract.**

An employer has a legal application to provide a statement setting out the matters set out in Section 3 of the Terms of Employment (Information) Act. There is a requirement for this to be signed by the employer. There is no requirement that it is signed by the employee. It is however clearly in the employer's interest to obtain a signed agreement. If not it may be difficult to establish that these terms were accepted by the employee. The signature signifies consent.

This can be very important as regards issues such as undertaking additional duties, working from different locations or some other obligation that the employer seeks to have the employee undertake.

### **2. Inability to make a deduction from wages.**

A deduction from wages can only be if it is required or authorised under Statute, is required or authorised under the Contract or the worker has given their prior consent. In particular it must be consent in writing. If there is no written contract providing for deductions from wages it can then be a situation where the employer cannot make those deductions without getting the consent of the employee at the time they wish to make them. It is far easier to get an employee agreeing that deductions can be made if for example there is an accidental overpayment of wages at the time they sign the contract then when you seek to actually make a deduction.

### **3. Confidential information**

If there is no express term agreed then you may have to rely on an implied term of fidelity in relation to confidential information. While the person is in employment there is an implied obligation. This applies to confidential information of the employer which has been obtained. The risk however arises where the employee leaves. The reason for this is that the implied obligation of confidentiality post



termination only relates to a “trade secret” unless you have signed agreement with the employee covering confidentiality.

**4. Inability to place an employee on garden leave.**

If you do not have an agreed clause allowing you to place an employee on garden leave then to do so would be a breach of contract.

**5. Intellectual property rights.**

These are normally covered in a proper contract of employment. If you do not have a signed agreement with the employee then you may have serious difficulties in relation to intellectual property rights that may have been created by the employee during his or her employment with you.

**6. Restraints of trade.**

Without an employee signing up it will be absolutely impossible to stop an employee going to working for a direct competitor.

It would always be our advice that employers ensure that they get a contract properly signed by the employee.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*\*In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**