

# Employment contracts and the law

## 1 . What an employment contract is

A contract is a legally binding agreement. This could be a 'contract of employment' or a 'contract of service'.

An employment contract can be agreed:

- verbally – this is when it's agreed through conversations
- in writing – for example, a job offer letter or through emails

Parts of an employment contract can also be agreed through conduct. This is when people's actions show there's an agreement, even though they have not written it down or spoken about it.

## The difference between an employment contract and a written statement

By law (Employment Rights Act 1996), someone has the right to a 'written statement of employment particulars' if they have the legal status of either:

- [an employee](#)
- [a worker](#) – unless they started the job before 6 April 2020

A written statement includes the main terms of someone's employment, for example pay and working hours.

This document is often referred to as the 'employment contract'. But by law, the employment contract is broader than just the written statement.

For example, an employment contract might also include:

- other clauses – for example about keeping sensitive company information confidential
- the organisation's code of conduct
- policies – for example on social media or data protection (GDPR)

[Find out more about the written statement](#)

## When the employment contract begins

An employment contract begins when someone starts work.

This is the case even if the employer has:

- failed to provide the written statement
- not put any other parts of the employment contract in writing

The contract might be formed earlier if all the following apply:

- the employer set out the terms of the job in a clear and definite way, verbally or in writing
- the [job offer](#) was unconditional or the person met all the conditions – for example, the employer was satisfied with their references
- someone accepted the job offer verbally or in writing

## 2. Types of terms in a contract

An employment contract usually includes:

- 'express terms' – specific terms that are usually put in writing, for example pay or working hours
- 'implied terms' – for example, things that are so obvious they might not have been written down
- 'incorporated terms' – these form part of the contract even though they come from other sources, for example a staff handbook or an agreement affecting many employees

Express terms can be agreed verbally, through conversations. Terms agreed verbally are as legally binding as terms that are written down.

However, it's important to remember:

- employers are required to put in writing any terms which form part of the [written statement of employment particulars](#)
- it's helpful to put all terms in writing – this will mean everyone understands their rights and responsibilities

For example, it might seem obvious that a school caretaker needs to live near the school. However, the employer should put in writing in the contract where the caretaker must live. This would avoid misunderstandings.

Information in the contract must follow the law. For example, an employer cannot include a term stating that an employee is paid £4 per hour. This is because this amount is below the National Minimum Wage.

If an employer does include a term that's against the law, they cannot enforce it.

## Who this advice is for

This advice covers anyone with an employment contract. This usually only applies to people with the [legal status of employee](#).

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero hours contract

An employment contract is different to a [written statement of employment particulars](#).

## Implied terms

Implied terms include terms that are:

- too obvious to be written – for example, not stealing from your employer
- 'statutory' – this means that they come from employment law
- implied through 'custom and practice'

Terms can also be implied if they are:

- necessary for 'business efficacy', sometimes called 'business common sense' – this means they're needed to make the working relationship possible
- conduct terms – this is when people's behaviour suggests they've agreed something, even though they have not written it down in the contract or agreed it in a conversation

## Terms too obvious to be written

Terms of a contract can be implied when they're so obvious that they might not have been written down.

An employment tribunal judge would consider a term to be implied if it passes the 'officious bystander test'. This is when it's obvious that the employer and employee were in agreement about a term. So they did not feel they needed to write it down.

Even if they were not written down, these terms are often crucial for an effective working relationship between an employer and employee.

To prevent misunderstandings, the employer should make clear:

- the standards of behaviour expected from employees – for example, anyone who deals with customers should be polite
- what happens if these are not met – for example, the employer will investigate reports of theft and pass them to the police if necessary

The employer should also make clear what to expect from their own behaviour. For example, what support they'll put in place to meet their duty of care. This could include an employee assistance programme (EAP) or mental health first aiders.

They should put these in writing, for example in an employee handbook.

## Statutory terms

'Statutory terms' are terms that come from employment law. The employer does not always need to put these types of terms in writing.

For example, employees would be entitled to statutory redundancy pay if they meet the criteria. Their employer does not need to put the statutory redundancy pay rate in writing.

The exception is any information that must be in the 'written statement of employment particulars'. For example, if the employer pays an employee the minimum wage, they must include that amount in the written statement. Find out more about [what the written statement must include](#).

An employer cannot override statutory terms with an express term.

## Custom and practice

'Custom and practice' terms are often left unwritten. This type of term could become part of the employment contract when it's:

- 'notorious' – this means the term is generally well-known in the business or industry, usually over a long period of time
- reasonable
- certain

To prevent misunderstandings, employers should discuss with employees and any representatives whether any terms have become implied through custom and practice. They should put the details in writing, [if employment contract changes are agreed](#).

## Example of a term which might be considered implied through custom and practice

An employee might expect a bonus of £100 at the end of the year. This is because their employer has paid that annually to everyone in the team for the last 10 years.

To prevent misunderstandings, the employer could state in the contract that getting an end of year bonus:

- depends on the business's profits in the latest financial year
- is paid at the employer's discretion

## Contact the Acas helpline

If you have any questions about implied terms, you can [contact the Acas helpline](#).

## Terms restricting an employee's actions

An employer might include a 'restrictive covenant' in an employee's contract. This is a term stating that an employee cannot take certain actions that are in competition with the employer's business. This could apply during their employment or once it ends.

For example, a term might say that after the employee has left the organisation, they are not allowed to approach the employer's customers for business for 6 months.

'Non-compete clauses' are a type of restrictive covenant.

An employer will not usually be able to enforce restrictive covenants unless they're clear, specific and time-restricted. Even then, this area of the law can be complex.

If you have questions you can [contact the Acas helpline](#).

If you're an employer, you should consider [getting legal advice](#) before including restrictive covenants in contracts.

## Exclusivity clauses

An employer might include 'exclusivity clauses' to stop employees from working for another employer while they're still employed with them.

[Find out more about exclusivity clauses](#)

## Implied duties

There are certain duties that automatically form part of the employment contract. They cannot be overridden by any express term.

[Find out more about implied duties](#)

## 3. Exclusivity clauses

Sometimes employers include 'exclusivity clauses' in contracts. These clauses are to stop a worker from either:

- working for another employer
- working for another employer without consent

## If someone's on a zero-hours contract

By law (Employment Rights Act 1996), if someone is on a [zero-hours contract](#), their employer must not:

- try to stop them working for another employer by putting an exclusivity clause in their contract
- treat them less favourably if they also work for another employer
- dismiss them for working for more than one employer – this could be an [unfair dismissal](#)

## If someone earns below the lower earnings limit

The law banning the use of exclusivity clauses also applies when someone's weekly income is below or equivalent to the lower earnings limit (LEL).

The government sets the lower earnings limit each tax year. The lower earnings limit for 6 April 2024 to 5 April 2025 is £123 per week. From 6 April 2025, the lower earnings limit will be £125 per week.

If you have any questions about the lower earnings limit, [contact HM Revenue and Customs \(HMRC\)](#).

## If an employer includes an exclusivity clause that's against the law

The law banning the use of exclusivity clauses still applies even if the employer:

- has included an exclusivity clause in the contract
- says a worker has broken their contract by working for another employer

This is because an employer cannot enforce a clause that is against the law.

If someone feels that their employer is including a clause that is against the law, it's a good idea to raise this informally first. They can do this by [talking with their employer](#).

## 4. Flexibility clauses

Sometimes employers include 'flexibility clauses' in contracts. They're often called 'variation clauses'.

These clauses are intended to allow employers to change terms in the contract in certain circumstances. Flexibility clauses can be general or specific.

For example, a general flexibility clause might say that an employer can change the terms of a contract, depending on the needs of the business.

A specific flexibility clause might say that an employer can change working hours, but only within the business opening hours.

Employers should make flexibility clauses as clear and specific as possible. This will help to avoid misunderstandings and reduce the risk of legal claims.

Flexibility clauses are likely to only affect people with the [legal status of employee](#). This is because other employment statuses usually already have flexibility around their contract.

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero-hours contract

## Using flexibility clauses to change a contract

Employers must only use flexibility clauses to make changes that are reasonable.

The employer might be in breach of the contract if they:

- try to make changes that are unreasonable
- fail to inform and consult about any proposed change
- do not give reasonable notice for changes

This could be the case even if there's a flexibility clause that seems to allow the change.

For example, an employer is deciding whether it's reasonable to use a flexibility clause to change someone's work location. Things they should consider include whether:

- the new location is within a reasonable commuting distance
- the employee can drive
- there are public transport options available
- the employee has any mobility issues
- the employee has caring responsibilities that would be impacted by a longer commute
- to offset any extra costs from the change in work location
- the work location is among the terms and conditions covered by a 'collective agreement' – this is an agreement with a recognised trade union
- there's any risk of discrimination

Find out more about:

- [proposing employment contract changes](#)
- [if your employer proposes employment contract changes](#)

## Adding a flexibility clause to a contract

If an employer would like to introduce a flexibility clause, they would need to change the employment contract.

An employer must follow certain steps when changing employment contracts.

Employees have different options when deciding how to respond if their employer proposes a change to their contract.

[Find out more about changing an employment contract](#)

## Contact the Acas helpline

If you have any questions about flexibility clauses, you can [contact the Acas helpline](#).