

**EMPLOYMENT LAW FOR CHARITIES SEMINAR  
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**CONTRACTS AND HANDBOOKS**

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**A reminder of the statutory particulars and matters that we recommend you include in your staff handbook.**

**Introduction**

The first thing that an employee is going to want to see on starting work is confirmation of their salary and what benefits they are entitled to and from an employee's perspective it is a good idea to have something in writing to record the detail of the relationship and outline the rules and guidance of the organisation.

Once these documents are in place both parties should be clearer as to the remit to which they should work.

And then, of course, there is the law which says you must have something in writing. And if you do not, then the employer can be fined up to four months wages for each employee who does not have this.

So the message is: any organisation:

1. which does not have these documents in place for each and every employee, including "atypical" workers such as part-time workers;
2. whose documents are not kept updated;
3. whose staff are not made aware of the existence of these documents; and
4. which does not provide training and consultation as appropriate

is leaving itself at risk of a cost that can easily be avoided.

To now focus on each document in turn – starting with the Written Statement of Employment Particulars.

## Written Statement of Employment Particulars

All employees taken on for one month or more are entitled, further to s1(1) of the Employment Rights Act 1996, to a written statement setting out the main particulars of their employment.

There is a distinction between the Written Particulars and a Contract. They are not the same thing. A contract of employment exists as soon as an employee starts work and, by doing so, proves he or she accepts the offer of work by the employer. Both employer and employee are bound by the terms offered and accepted. Sometimes, although not ideal, the contract is verbally agreed and not written down. The Statement of Written Particulars covers the “essentials” but may not necessarily cover every aspect of the contract, but can provide important evidence of the main terms and conditions.

The contract need not be in writing. Its terms can be **written, oral, implied** or a mixture of all three. This is therefore different to the Statement of Written Particulars which, as its name suggests, must be in writing and must contain specified particulars.

Employers must also consider which items go in the Written Particulars, which in the contract and which in the Staff Handbook. And, of course, if included in the Staff Handbook which are contractual.

A Written Statement is therefore a summary of an employees’ main particulars of employment. It is not itself a contract of employment but is evidence of the existence and terms of the contract of employment.

The Written Statement must cover by law:

1. name of employer;
2. name of employee;
3. date of commencement of employment (and the period of continuous employment).

This is particularly important as certain rights kick in after various periods of continuous employment – for example, whilst all employees are entitled not to be unfairly dismissed they must have at least one year’s continuous employment in order to be eligible to bring a claim (unless one of the ever increasing exceptions applies, such as discrimination, health and safety, etc);

4. job title or brief job description;
5. job location i.e. either the actual place of work, or if the employee in question is required or allowed to work in more than one location, an indication of this and the employers’ address;

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6. remuneration and the intervals at which it is to be paid i.e. weekly, monthly;
7. hours of work; It might also be advisable here to mention the policy in relation to overtime and overtime pay;
8. holiday entitlement. This should include the number of days permitted whether or not this includes public holidays (this is not a right), holiday pay rates as appropriate and details as to from when and to the holiday year runs. In default, the Working Time legislation in which governs statutory holiday has the holiday year running from the month in which they started work and provides for a complicated formula to calculate holiday pay. In addition, recent case law has confirmed the manner in which holiday pay can be paid for yearly paid staff;
9. entitlement to sick leave. This should include entitlement to any company sick pay. For example, an employer might state that employees are not so entitled until they have completed three months continuous employment;
10. pension and pension schemes. Details should include whether the employer has a company pension scheme, from when an employee may be entitled to enter this or whether access to a stakeholder pension scheme is offered and whether or not an employer has a contracting out certificate. All organisations employing five or more people who earn over the lower earnings limit are obliged to offer access to a stakeholder pension scheme if they do not already offer pension provision;
11. the entitlement of employer and employee to notice of termination. This is governed by statute, and the employer is not entitled to give shorter notice than he is entitled to receive;
12. where the job is not permanent, the period of which the employment is expected to continue or, if it is for a fixed term, the date or circumstances when it is to end;
13. details of any relevant trade union collective agreement which directly affect the terms and conditions of the employees' employment – including where the employer is not a party, the persons by which they were made;
14. If an employee is normally employed in the U.K. but will be required to work abroad for the same employer for a period of more than one month, the statement must also cover:
  - the period for which the employment abroad is to last;
  - the currency in which the employee is to be paid;
  - any additional pay or benefits; and
  - terms relating to the employees' return to the U.K.

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Where there are no particulars to be given of one of the items required to be covered in this statement (for example, where there is no pension entitlement), this must also be indicated.

The Statement must also include a note giving certain details of the employer's disciplinary and grievance procedures. From 1 October 2004, this has meant that it must include not only any disciplinary rules but also any disciplinary or dismissal procedures, which must themselves meet the statutory minimum. It must also specify by description or by name, the person to whom the employee can apply and the manner in which an application should be made if he or she is dissatisfied with any disciplinary or dismissal decision relating to him or her or for pursuing a grievance issue relating to his or her employment and cover any further steps which follow from the making of such an application.

Finally, in relation to the Written Statement these items must all be contained in one document:

- names of employer and employee
- date of when employment (and the period of continuous employment) began
- remuneration
- hours of work
- holiday entitlement
- job title/description
- place of work.

The other items:

- sick leave entitlement
- pensions
- disciplinary

may be given by reference to some other document which is reasonably accessible to the employee.

Notice periods of termination and relevant collective agreement can be given by reference to legislation.

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There is no legal requirement that an employee should sign his or her Written Statement. However, employees who are asked to sign the Statement are more likely to have read and questioned its contents reducing the risk of future disputes. An employer should not put undue pressure on employees to accept what may be its view of the particulars and not theirs.

## Contracts of Employment

The contract between an employer and employee exists independently of a Statement of Written Particulars and indeed may cover more than is required under the Statement of Written Particulars. However, an employer may prefer to only produce the one document. If so, then please remember the timescale for ensuring that employees have the required information under the ERA which is all the required particulars must be given within two months of the date when the employee's employment begins.

A contract may be oral or written or a mixture of the two. It may consist of terms which are express, implied, incorporated or imposed.

“Express” means those terms which are explicitly agreed;

“Implied” means either those that are too obvious to mention (e.g. that the employee will not steal from the employer) or those necessary to make the contract workable (so if the person is employed as a driver they must have a current driving licence) or those that are the customs and practice of the industry;

Although obvious it is often better for such terms to be written down. So, while the Copyright Designs and Patents Act 1988 states that all intellectual property rights in work created in the course of employment belongs to the employer, It is generally better, particularly for those staff very involved in design etc, to state this expressly so both parties are clear rather than relying on the statutory provisions;

“Incorporated” by organisation handbooks or collective agreements with trade unions;

“Imposed” by law (for example the right not to be discriminated against on the grounds of sex, race, disability, sexual orientation, religion or belief; maternity pay etc.

A contract in writing should be signed by parties ideally. However, the written document is simply a written record of a contract. A basic contract is formed when one party i.e. the employer makes a job offer to the other and the employee accepts that offer. However, the position can be more complicated. For example, if you offer £20,000 to

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the employee who comes back and says they will accept £30,000, that is a counter-offer, superseding the original offer. So the employee is the offeror in that scenario and the employer must accept (or not) that offer.

The details of the contract is clearly individual to each organisation; some might have a strict no smoking policy, others are precise about the payment of expenses. In general, when comprising their contracts, employers should:

1. consider the capacity of the employer: if you are a trust or unincorporated association and have employees, you should consider incorporation as a company limited by guarantee. It is not correct for a trust to enter into the contract in its own name – it has no legal entity. This would usually be done in the names of individual trustees to whom this responsibility is delegated. This is not ideal for those trustees. Any trust which is considering employer staff should first consider incorporating to help to protect its trustees from personal liability.
2. be clear whether the individual is employed or self-employed. There are various factors which a Court would assess to decide this, for example:
  - 2.1 does the employer know when and how the work is done;
  - 2.2 who supplies the tools and equipment;
  - 2.3 who pays tax and national insurance contributions;
  - 2.4 does the individual do similar work for more than one organisation.

The fact that a worker is described (either by himself or the employer) as being self employed does not necessarily mean this is actually so. And remember that even if you decide that you want the individual to be self-employed they might still be a worker who has various rights under employment legislation (such as under discrimination law).

### 3. **Varying a Contract**

A contract of employment is a legally binding agreement. It is therefore worth noting that this means mutual consent is needed for any change – unless the agreement already provides, for example, that the employer can require the employee to work in a different place of work or do different types of work or other working conditions. Terms are also varied by force of changes to collective agreements which is then binding on employees or the employer may terminate the existing contract and substitute a new one. This is, in effect, a unilateral variation by the employer.

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If an employee refused to authorise a variation then it is open to the employer to dismiss, subject to the usual statutory procedures and requirements and with the caveat to be wary of claims to an employment tribunal.

4. I would suggest the following list of other clauses which should be contractual – whether found in the actual contract or whether in the Staff Handbook and the employee should be notified whether it is contractual or not:
  - 4.1 probationary period. Provision should also be made for termination if during a probationary period ie. payment in lieu of notice etc;
  - 4.2 reporting/chain of command. This in terms of both day to day work and also factored into your disciplinary and grievance procedure;
  - 4.3 job description. This can be a separate document but reference within the Handbook or contract;
  - 4.4 expenses. It should be clear for what and on what basis these are to be paid, for example if it is necessary to provide receipts;
  - 4.5 sickness policy, including the employer’s right to request that an employee undergo independent medical examination;
  - 4.6 private medical expenses;
  - 4.7 confidentiality. And remember here to include post termination provisions;
  - 4.8 data protection. An employee should confirm that their employer can deal with their personal information in relation to their employment and an employer should confirm that it will comply with the provisions of the Data Protection Act 1998;
  - 4.9 governing law and jurisdiction - England and Wales generally, but be wary if you are regularly sending an employee abroad.
5. It is also worth remembering that there are obligations on the employer to provide the following:
  - 5.1 pay agreed wages and provide work.
  - 5.2 provide reasonable support, for example: Do you have a personnel department? Is an informal grievance procedure clear? Do employees know of external bodies where they can access information, whether about their pension right or stress related problems;
  - 5.3 provide a safe system of work and a safe work place.

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- 5.4 provide a suitable working environment with regard to health and safety issues as well as a general ethos for the organisation. Remember an employer can be held vicariously responsible for members of its staff hurling racial abuse at another employee;
- 5.5 provide a grievance procedure;
- 5.6 inform employees of contractual rights.

The employees' obligations are a duty to:

- 5.7 render faithful service;
- 5.8 obey lawful and reasonable orders;
- 5.9 exercise reasonable care and skill.

Underlying all of this is the mutual term of trust and confidence.

## **Staff Handbook**

To start with its structure, a Handbook might include:

- an introduction;
- an indication as to which sections have a contractual effect; i.e. which parts the employer intends to be incorporated into the contract of employment. This can be done either by separating out the various policies into contractual and/non-contractual sections or if this is not possible indicating in the introduction which are contractual;
- background information on the company. This need only be short but might provide new employees with useful information about the ethics of their new workplace, its mission, vision and values;
- conduct at work, behaviour and appearance, timekeeping, flexibility and overtime;
- personal affairs; i.e. whether staff can use emails, phone calls for personal use and if so, how this may be limited;
- benefits;
- protecting the organisation – confidentiality, security measures, company property, restrictive covenants.

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The handbook is also the place for the company policies on:

- general
- employment
- recruitment
- promotion
- performance and appraisals
- redundancies

Equality and Diversity – age discrimination

Harassment

Flexible Working

Family Friendly:

- maternity
- paternity
- parental leave
- time-off for dependants
- adoption

Health & Safety including:

- smoking
- alcohol and drugs
- stress management
- relevant training and development;

Communication – use of computer, e-mail, internet, telephones, including company mobile phones

Whistle blowing

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Disciplinary and Grievance – in detail. Remember if this is made contractual then any breach of procedure can also result in a breach of contract claim

Absences – short term and long term, various reasons

Other – jury reserved, armed forces service, public duties, training/study leave, employee relationships, disaster recovery planning

Variation i.e. how terms in a contract may be varied.

## **Conclusion**

This document is intended as a brief overview of the Statement of Written Particulars, Contracts of Employment and Staff Handbook.

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