

Employment contracts and the law

1 . What an employment contract is

Employment contracts are legally binding agreements between employers and workers.

They can be agreed:

- verbally – through conversations
- in writing – for example, a job offer letter or through emails
- through conduct – when people's actions show there's an agreement

Some employment contract terms can also come from the law. For example, all employment contracts include the right to be paid at least the minimum wage.

Employment status

Employment status is someone's legal status at work. It affects:

- the employment rights they're entitled to
- both theirs and their employer's responsibilities

The terms of a contract can help work out someone's employment status.

Employees

Anyone with the [legal status of employee](#) has either a 'contract of employment' or a 'contract of service' with their employer.

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

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

By law, there are certain terms that employees are always entitled to. For example, employees have the right to a minimum notice period if they're dismissed or made redundant.

Workers

Anyone with the [legal status of worker](#) has a different kind of contract with their employer. Workers are sometimes referred to as 'limb (b)' workers. This term comes from the Employment Rights Act 1996.

A limb (b) worker is someone who has a contract to perform work or services personally for someone else. This is different to a contract of employment.

Workers have some employment rights, but not as many as employees.

The difference between a contract and a written statement

Someone has the right to a 'written statement of employment particulars' if they are:

- 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

If there's no written statement

Employers must provide the written statement on or before the first day of work.

Workers and employees should raise the issue with their employer if they've not received the written statement. It's a good idea to do this informally first by [talking with their employer](#).

Training

Acas also provides:

- [training courses on employment contracts](#)
- [free e-learning on employment contracts and written statements](#)

2. Written or verbally agreed terms

An employment contract is made up of different types of terms. This includes terms that are:

- written down
- verbally agreed – in conversations between the employer and worker

Express terms

Some terms will be explicitly agreed. These are called 'express terms'.

Express terms are usually put down in writing. This might be in the 'written statement of employment particulars' or a job offer letter.

Terms that are agreed verbally

Express terms can also be agreed verbally, in conversations between a worker and their employer.

Terms agreed verbally are usually still legally binding. This means that they are still part of the legal contract.

However, some terms [must be written down in the written statement](#). This includes things like pay, working hours and holidays.

In general, it's a good idea to put everything in writing. This helps everyone to understand their rights and responsibilities.

Incorporated terms

Some employment contract terms might be written in other documents. These are called 'incorporated terms'.

They might be found in:

- employee handbooks
- collective agreements
- company policies

Incorporated terms might not have been agreed specifically between an individual worker and their employer. But they are still part of the employment contract.

3. Implied and imposed terms

An employment contract is made up of different types of terms. Usually these terms will be explicitly agreed by employers and workers. But the employment contract can also include terms that:

- haven't been written down or explicitly agreed – but can be implied into the contract in different ways
- come from the law

Implied terms

Some terms can be 'implied' in the employment contract, even if they have not been written down.

Implied terms often fill in gaps where things have not been written down or agreed verbally. But they are still part of the contract.

This could be because they:

- are necessary to make the contract work – for example, a delivery driver needing a valid driving license
- were too obvious to write down – for example, employees not stealing from their employer
- are clear in the conduct of the employer and worker – for example, always being paid on a certain day of the week
- have become part of the contract through [custom and practice](#)

An implied term cannot contradict a written term.

In general, it's best to write down anything that you intend to be part of the employment contract. This helps to avoid confusion. It will ensure that everyone understands their rights and responsibilities.

Imposed terms

Some terms are part of the employment contract because they're required by law. These are known as 'imposed terms'.

Imposed terms can come from:

- acts of law
- judge-made law – decisions made by judges in higher-level courts, like the Employment Appeal Tribunal or the Court of Appeal

Imposed terms that come from acts of law are sometimes known as 'statutory terms'. For example, that workers should be paid at least the minimum wage.

Employers cannot include anything in a contract that contradicts an imposed term. This is even if they write it down or discuss it directly with the worker.

Employer and worker duties

There are certain duties that are always part of an employment contract. These are:

- duty of care
- duty of trust and confidence
- duty of fidelity

These duties are a type of imposed term because they come from the law. But they are generally known as 'implied duties'.

[Find out more about implied duties](#)

4. Custom and practice

Sometimes things that are not written down can become part of an employment contract through 'custom and practice'.

To be implied through custom and practice, something must be:

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

Example of custom and practice

An employer always gives more than the statutory minimum redundancy pay when they make redundancies. This is called enhanced redundancy pay.

Their written contracts don't say how much redundancy pay they give. But it is well known throughout the organisation that they always pay the same enhanced redundancy pay. They've done so every time they've made redundancies, over a long period of time.

The right to enhanced redundancy pay might have become part of the contract through custom and practice.

Writing things down

Something cannot become part of the contract through custom and practice if it contradicts a written term.

If an employer does not want something to be part of the contract, it's best to write this down.

For example, a company wants to give bonuses to workers at the end of the year. But they do not want this to become part of the contract. They should make sure the employment contract includes a written term saying that all bonuses are discretionary.

If there's a disagreement

If a worker is not sure whether something is part of their employment contract, they could raise this with their employer. It's usually best to raise it informally first. They can do this by [talking with their employer](#).

If there's a disagreement about whether something is part of the employment contract, the worker could [raise a grievance](#). This is where they make a formal complaint to their employer.

If they've tried these options without success, workers might be able to make a claim to an [employment tribunal](#).

5. Terms restricting a worker's actions

Sometimes employers might include employment contract terms that restrict a worker's actions.

This might include stopping them from:

- working for another employer – known as an 'exclusivity clause'
- taking specific actions after they leave that are in conflict with their employer's interests – known as a 'restrictive covenant'

Exclusivity clauses

Exclusivity 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 is £125 per week (£129 from 6 April 2026).

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](#).

Restrictive covenants

In some circumstances, employers can include a 'restrictive covenant' in an employment contract. They are used in the contracts of those 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

Restrictive covenants restrict employee's activities after they leave, to protect the employer's business interests.

Some examples of restrictive covenants include:

- 'non-competition' – preventing employees from working for a competitor or starting a competing business for a period of time, or within a certain distance
- 'non-disclosure' – preventing employees from sharing sensitive or confidential information after they leave
- 'anti-poaching' – preventing employees from encouraging others to leave with them
- 'non-solicitation' – preventing former employees from trying to get the business of their previous employer's clients or customers

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.

6. 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](#).