Contracts of Employment: Meeting the Legal Requirements

For anyone other than a sole-trader, employment contracts are a necessary part of business. But did you know they can take effect even before an employee starts working with you?

In this edition of our monthly ebriefs brought to you by Jane Fowler, Managing Director of Aquila Advisory, the boutique forensic accounting company, we look at the requirements of a written statement of employment and the importance of getting the detail right.

Make me an offer

The first thing to know about employment contracts is that they can become effective before an employee starts to work for you. Take the scenario that you have just made an offer of employment to someone. There are two types of offers, non-conditional and conditional. Non-conditional is obviously an outright offer of employment, whereas a conditional offer, gives employment to the individual once certain conditions are met, such as the receipt of satisfactory references, credit checks, CRB checks, security clearance or fit and proper status.

So when do the contract terms apply?

Contract law is clear that once an offer is made and accepted a contract for performance exists. So, in the case of a non-conditional offer, the contract becomes effective immediately on acceptance. Whereas if conditions are attached to the offer, the offer doesn't become effective until such time as the conditions are met, and this is more than likely after acceptance by the candidate.

Withdrawing an offer

So what happens if, after making an offer, but before the due start date, you wish to withdraw the offer? Well, as set out above, if the offer was non-conditional a contract already exists, ie a contract of employment is in place with all its usual terms. Therefore to withdraw an offer, perhaps because of a recruitment freeze, you would have to give due notice under the terms of the contract, or risk breaching the contract.

If the offer was conditional, say subject to references, then no contract exists until those references are received. In these circumstances the offer can be withdrawn, up to the time

the conditions are met, without breaching contractual terms. The reason for withdrawing the offer need not be restricted to the conditions not being met, as in the example above it could be due to a recruitment freeze. The important consideration is when the conditions were satisfied, making the offer effective and the contract commencing.

Although not necessarily related to the conditions placed on the offer, the reason for withdrawing the offer must be within the law, so withdrawing an offer because, for example, you discover a women is pregnant, could still lead to a discrimination claim, even if the conditions are outstanding.

The principal statement

As we know from our business lives, contracts don't have to be in writing to be binding. However, although not a contract in itself there is a legal requirement on all employers to provide their employees, within two months of joining, a written statement of employment.

Although you can issue a written statement in installments, certain key information must be included within a single document. This is known as the "principle statement" which includes the following information:

- Name of employer and employee;
- Date employment and continuous employment started;
- Job location;
- Pay and whether it's weekly, monthly etc;
- Working hours;
- Holiday entitlement; and
- Job description / job title.

It will also need to give details of any collective agreement that directly affects the employee's conditions of employment, should that be relevant.

There are also legal requirements for other information to be provided, in writing, although they do not need to be included in the principle statement such as:

- Sick leave and pay entitlement
- Pensions and pension schemes
- Disciplinary and grievance procedures
- Appeals procedure under the disciplinary and grievance procedures.

These are often included in staff handbooks, policy statements or intranet sites.

Why then have a contract of employment?

So if all we need to provide is the mandatory requirements of the written statement, why go to the effort and expense of drafting lengthy contracts of employment and employee handbooks? Well, the written statement focuses on the employment conditions and the employees' rights.

But it's important to also consider the employee's responsibilities and duties to their employer, and their adherence to rules and regulations that a business has to abide by.

Contracts of employment and employee handbooks are where you get to set down your terms of employment; what you expect from the employee and what you require them to do. They also enable you to set down measures that will protect your business should the employee act inappropriately.

These additional terms can be set out in either the contract of employment or the employee handbook, but as a guide we would recommend you spend time considering which document would be most appropriate.

Contracts of employment and employee handbooks – the benefits

Contracts of employment deal fully with those aspects of the employment relationship which could potentially be open to challenge. It must reflect the particular circumstances in which the business operates. An employee handbook, on the other hand, sets out the core employment policies, which are essential to every business, such as grievance, discipline and equal opportunities policies.

A contract of employment is between the company and the individual employee and if the terms are changed it must be by mutual consent. This is fine if the changes are in the employee's favour, but not so easy if not. Furthermore, if you put terms in the contract that are general to everyone and you want to change those terms, you will have to negotiate with everyone individually and re-issue each contract. However, each contract could refer to the terms contained in an employee handbook, which supplement the contract, meaning you need only change the terms in the staff handbook.

Implied terms

Not all terms of employment need be written down to be effective. These are called implied terms and are often based on legal requirements, ie:

- Employees not stealing from their employer
- Employers providing a safe and secure working environment
- The right to a minimum of 28 days paid holiday [number of days based on full time workers, often expressed as 20 days holiday plus 8 days of paid bank holidays]
- A driver having a valid driving license.

Other implied terms could stem from what is called "custom and practice', for example:

- An annual bonus
- An additional day off for the August bank holiday weekend
- Finishing at 2pm on Good Friday or Christmas Eve.

For an employee to be able to claim these occurrences amount to an implied term in their contract, and any removal of the benefit a breach of their contract, they would need to establish that the practice:

- Was well established, in that it had operated over a long period of time [no specific time period is set down in law - it would be for the Employment Tribunal to establish]
- Operated consistently and without exception
- Was well known and expected by all staff.

In summary

When it comes to employment contracts, there are some very compelling reasons to make sure you get it right from the start.

To find out more about how Aquila Advisory can help to protect you and your business, speak to us today. Our specialists are on hand to advise you of your options and to help you make the right decisions for you and your business.

CONTACT AQUILA ADVISORY:

Jane Fowler, Managing Director

Tel: 020 7397 8318
Email: info@aquilaadvisory.co.uk
Website: www.aquilaadvisory.co.uk