



CONTRACTS WITH EMPLOYEES AND OTHER WORKERS

By John Merry, Head of Employment



The current law

At the moment, minimum particulars of employment must be included in a single written statement issued to employees not later than two months after the commencement of their employment detailing at least the following:

- The names of the employer and the employee
- The date(s) on which the employment, and the period of continuous employment, began
- The scale or rate of remuneration, the method of calculating it and the intervals at which it is paid
- Any terms and conditions relating to hours of work (including any normal working hours)
- Any terms and conditions relating to:-
 - entitlement to holidays and holiday pay
 - incapacity for work due to sickness or injury, including any provision for sick pay* (or state none), and
 - pensions and pension schemes* (or state none)
 (* Reference can be made to separate, reasonably accessible documents for details)
- The length of notice which the employee is obliged to give and entitled to receive to terminate the contract
- A job title or brief description of the work for which they are employed
- If the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end
- Either the place of work or, where the employee is required or permitted to work at various places, an indication of that and the address of the employer
- Any collective agreements which directly affect the terms and conditions of the employment (or state none)

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THE LEGAL 500: EMPLOYMENT TEAM IMPROVES ITS RANKING

The Legal 500 directory has recently released the 2020 rankings for law firms across the UK. A special mention must go to our employment department, which now stands apart as the highest ranking employment team in Shropshire and Herefordshire - and is one of only three teams without a Birmingham office ranked in the West Midlands' top four tiers. The directory states:



"Lanyon Bowdler specialises in TUPE and on the employment aspects of business reorganisations. Other areas of expertise include advising schools and colleges on academy conversions and it is also adept at advising senior executives on employment matters. Key contact John Merry advises both employers and employees on employment policy issues and is an experienced advocate in employment tribunal proceedings."

Published testimonials state:

"At every point of being in contact with any team member they demonstrate an excellent professional manner and are helpful".

"Attention to detail - clients are always put first".

"John Merry is an extremely knowledgeable individual who is able to communicate on an appropriate level to ensure my understanding and clarity on my position".

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“ Truly professional at all levels. Thorough with advice and easy to understand. Looked after my personal interests.

TC, Telford

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- Where the employee is required to work outside the UK for more than one month at a time, certain additional terms (or if this doesn't apply, this must be stated).

If any of the details change, this must be confirmed in writing within one month.

Penalty

If an employment tribunal makes any kind of award to an employee (e.g. for unlawful deduction from wages, unfair dismissal or unlawful discrimination) who hasn't been issued with the minimum written particulars / written confirmation of amendments at the date of the incident giving rise to their claim, it must award an additional two weeks' pay, and in its discretion may award four weeks' pay (subject to cap on weekly pay - currently £525).

Changes

For all workers who start on or after 6 April 2020, written particulars must be provided on or before the first day of work and additional information must be included.

The term 'worker' includes not just employees, but any person who contracts to provide their services personally who is not genuinely self-employed. The number of people who fall into the wider category of worker, which covers many zero hours and other casual workers, is ever growing with the expanding gig economy.

The additional particulars to be included relate to:

- Working days
- Whether the working pattern may be variable, and if so how it may vary or how the variation is to be determined
- Any other paid leave to which the worker is entitled (including maternity and paternity leave)
- Details of any other benefits (whether contractual or discretionary and including, for example, commission, bonuses, life insurance and medical insurance)
- Probationary period

- Training entitlement, stating if it is compulsory and also if the employer will not pay for it.

Our recommendations

Statutory minimum particulars are just that - a minimum. Employers should:

- Not just issue written particulars - they should issue well drafted contracts which also include provisions which protect their business, such as in relation to deductions from pay, recoupment of excess holiday pay at the end of the employment, confidentiality and restrictive covenants.
- Not wait until 6 April 2020 to issue contracts to workers who aren't employees: it is important that contracts with workers, like any other contract, are in writing in order to provide certainty, and so minimise the prospect of disputes over terms. Further, a well drafted worker contract can help demonstrate that they do not have employee status.
- Not wait until up to two months after an employee starts before issuing the contract - or from 6 April 2020, the start date of the employee or other worker. Contracts should be issued no later than when the position is offered in order to ensure that their intended terms are binding.

Any employer who is to issue a new written contract after an employee or other worker has already accepted a position, or indeed whilst they are performing a role, should get advice in order to ensure that they do not incur liability for breach of contract or unfair dismissal, or otherwise a failure to consult (including collectively); and in order to ensure enforceability.

Contract reviews

The forthcoming changes mean that this is a good time for businesses to review their existing employment / worker contracts generally. Questions they should ask themselves include:

- When were our contracts last reviewed?
- Do they still refer to compulsory retirement age? If so, can we objectively justify this in accordance with the appropriate legal test, and even if we can, do we wish to risk a potentially expensive dispute in this regard?
- Do we still purport that the employee consents to data processing, when we should not? Have we got a data protection policy, and have we issued every employee with a privacy notice, in accordance with our GDPR obligations?
- When were our restrictive covenants last reviewed?
- How were our current contracts implemented - are they even binding?

Our People, Your Team

Contact **Lanyon Bowdler** to find out about the full range of legal services we offer

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“Clear explanation of legal position and full discussion of options and likely outcomes discussed. Very helpful and honest.

JL, Telford

RETAINER PACKAGES

We offer fixed fee retainer packages for our employment law services to provide pricing certainty and the spreading of cost through manageable instalments. There are four levels of cover designed to suit your business and requirements.

All levels of cover come with the following benefits:

- Advice provided by qualified and experienced solicitors.
- Legal Advice Privilege - all communications with your adviser remain confidential in the event of a tribunal or court claim. This enables you to be completely honest and upfront with your adviser as to your desired outcome in any given scenario. (This cannot generally be provided by HR consultants.)
- A free monthly bulletin updating you on the developments in employment law and HR, including new legislation and case law.
- Discounted legal fees on our other commercial services - including dispute resolution, debt recovery, commercial property, commercial and corporate law and criminal law (e.g. motoring offences in company vehicles, health and safety prosecutions, etc).

The employment advice covered in our retainer packages is delivered by experienced, qualified solicitors from any of our office locations: Shrewsbury, Telford, Hereford, Oswestry Ludlow, Bromyard and Conwy.

Small Business Cover - £35 a week:

Designed for businesses with up to 10 employees, you can expect a face to face meeting with your solicitor at the outset. Your solicitor will provide you with specialist advice on your day-to-day employment law and HR enquiries, delivered by the next working day at the latest. Plus, you can benefit from one online training course per year on employment issues and processes and free attendance at our bi-annual employment law update seminars.

As an optional extra, your dedicated advisor will review your contracts and handbook, or provide these documents for you if they are not already in place (for an upfront cost of £995 plus VAT). We can also offer optional insurance cover for tribunal claims to cover legal fees and non-contractual awards / settlements (£POA).

Bronze Cover - £POA:

The bronze cover is aimed at businesses with more than 10 employees and includes all of the Small Business Cover benefits with the contract and handbook review included in the price of this package. We can advise on any suggested amendments to these documents or, if you prefer, or if you do not presently have such documents, we will provide standard documents for this purpose.

Silver Cover - £POA:

Enjoy all the benefits of Bronze Cover, alongside the following extras:

- Preparation of bespoke contracts and handbooks, with a comprehensive set of recommended policies tailored for the requirements of your business.
- A half day onsite training session for employees and/or managers on a topic of your choosing.
- Two online training courses per year on various employment issues and processes.

Gold Cover - £POA:

In addition to the services included in the Silver Cover, the Gold Cover package has the following exclusive benefits:

- A bespoke manager handbook (in addition to the employee handbook) giving managers guidance on how to implement the various employee policies.
- Out of hours legal advice for urgent matters.
- An additional half day of onsite training.

To find out more about our retainer packages contact our employment law team.

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“William Morse is incredibly responsive, supportive, and knowledgeable”.

Our education department, headed by Will Morse, is also recognised in The Legal 500, and remains the only education team outside Birmingham that is ranked in the West Midlands. The directory states:

“Lanyon Bowdler covers a range of matters for academies, schools and colleges, spanning school conversions to academy, collaboration agreements, academic terminations, compliance matters, development projects, employee contracts and employment disputes.”

The Legal 500 is a highly respected guide, including because client feedback plays a major role in determining rankings. It provides a clear endorsement of the standard of our employment team and the service that it provides to its clients.

“Efficient, friendly and helpful service.
I received prompt and professional emails and letters.”
MS, Shrewsbury

APPRENTICESHIPS

By Charlotte Morris, Associate Solicitor



Apprenticeships have grown in popularity over recent years, including as a result of the apprenticeship levy and, in Wales, the Apprenticeship Programme.

There can still be confusion about an apprentice's employment status, however.

Apprentices used to be engaged exclusively as common law apprentices with rights far beyond those of an ordinary employee.

This actually discouraged some businesses from engaging apprentices because of concerns that it would be difficult to terminate their employment - even if there were serious or persistent performance or conduct issues, or if a redundancy situation arose - without risking breach of contract claims. Such claims could be extremely costly, as they would include not only damages for loss of earnings and training for the remainder of the term (which could be lengthy), but also an award for loss of future career prospects.

Things have changed with the introduction of legislation relating to apprenticeship agreements and, more recently, in England, the approved English

apprenticeship. Apprentices engaged under apprenticeship agreements or approved English apprenticeships have only the same rights as ordinary employees - provided that certain criteria are met and appropriately recorded. This gives employers greater flexibility in managing their business and staffing options.

We see contracts with apprentices that employers intended should be an apprenticeship agreement or an approved English apprenticeship, but which do not meet the necessary statutory requirements - inadvertently giving rise to common law apprenticeships with enhanced rights.

We urge any employer considering taking on an apprentice to seek professional advice from a suitably experienced employment lawyer in order to ensure that the relevant criteria are met, if in Wales, for apprenticeship agreements or, if in England, approved English apprenticeships. Similarly, any employer who has taken on an apprentice and is concerned that the contract that they have in place might be deficient should have this reviewed in order that any deficiencies might be remedied.

SPOTLIGHT ON CHARLOTTE MORRIS

Charlotte joined Lanyon Bowdler in 2018 as an associate and has specialised in employment law since qualifying as a solicitor in 2010. She assists clients across Shropshire, Mid and North Wales.

Charlotte has experience within a number of sectors including transport and logistics, manufacturing and retail. She also has a number of years' experience advising and providing training to clients within the education sector.

Charlotte also has extensive litigation experience acting for clients at employment tribunals and assisting them in resolving disputes. She advises both employers and employees on a wide range of employment matters including:

- Discrimination
- Harassment
- Disciplinary and grievances
- TUPE transfers
- Unfair dismissal
- Equal pay
- Redundancies

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