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The Contract of Employment

Who is an employee?

Employee or self-employed

It is sometimes important to know whether someone is an employee or not (e.g. for unfair dismissal claims). For the purposes of the Employment Rights Act (ERA) 1996 an employee is defined as

“someone who works under a contract of employment, express or implied, and (if it is express) whether oral or in writing.”

Whether someone is an employee is a question of fact – the name the parties give to their arrangement is not conclusive. If an Employment Tribunal has to decide the issue it will look at several relevant factors including

- Contractual provisions
- Mutuality of obligation and control
- Organisation of the work
- Payment of tax and NI
- Requirement of personal service

Implied terms of contract of employment

As well as express terms, every contract of employment contains terms implied by statute, (which cannot be contracted out of) and at common law.

Employers owe their employee duties of

- a) Mutual trust and confidence
- b) To ensure, so far as reasonably practicable, his health, safety, and welfare at work
- c) Confidentiality
- d) To insure (minimum £5 million employer's liability insurance)

Employees have a duty to

- a) Obey lawful and reasonable instructions
- b) Exercise reasonable care and skill
- c) Confidentiality

STATEMENT OF TERMS

Section 1 Statement of Terms

Section 1 of ERA 1996 states that an employer must provide his employee with a written statement of the principal terms of his employment within two months of the commencement of employment.

This statement must include basic details including the following:

- Name of employer and employee
- Date of commencement of employment and continuous employment
- Job title
- Normal hours of work
- Salary or rates of pay
- Entitlement to sick pay, pension, holidays
- Notice required to terminate contract

The employee must also be provided with information regarding applicable disciplinary and grievance procedures affecting his employment, and may be referred to other documents for details, so long as these are readily accessible to him at work.

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