

Making & breaking employment contracts

Hiring and firing employees can be very stressful for managers, and employees are often confused about their rights. Both employers and employees can make things easier for themselves by thoughtful drafting of contracts of employment. An understanding of their respective rights and obligations improves matters if and when the employer brings the employment to an end.

Employment contracts

There is no mystery about an employment contract. It is simply the terms which an employer and employee agree will apply to their relationship. Often this agreement is not written down and many aspects of it are left unspoken. It is still a contract of employment. However, it is much better for both employer and employee if all aspects of the employment contract are written down so that everybody knows where they stand and so that provision can be made for eventualities which may occur in the future.

By statute, an employer must provide employees with a written statement of certain particulars of their employment, such as the date the employment began, the amount and frequency of pay and the job title. It is often convenient to use this statement as the basis of the contract.

Employers should always consider including more than this bare minimum. For example, an employer may want the employee to travel to different parts of the country in the course of his work or undertake different sorts of activities. An employer may also want to restrict an employee's ability to compete with him after leaving his employment. This must all go into the contract.

Dismissal

1 Breach of contract

Unless the employee is guilty of gross misconduct, the employer must give the employee notice of the termination of his employment. This notice period will be whatever was agreed in the contract of employment or, if longer, the notice period laid down by statute. Subject to a minimum employment of a month, this is one week's notice until the employment has lasted two full years. It is then one week for every complete year up to a maximum of 12 weeks.

If the employer does not give the employee sufficient notice of dismissal, the employee will be "wrongfully dismissed" and may be able to claim everything he would have earned under the contract for the correct period of notice.

2 Unfair dismissal

If they fulfil certain qualifying conditions, employees can also claim unfair dismissal in an employment tribunal. The most important of these conditions, in the majority of cases, is that they must have one year's continuous employment with the employer. The employee's claim will be successful if he or she can show that the employer did not have one of certain specified potentially fair reasons for the dismissal or that the employer did not handle the dismissal in a fair and reasonable manner. However, an employee does not need one year's employment to bring a claim if the main reason for dismissal was for a number of specified reasons. Some examples of these are:

Head Office
3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 540170

Thames Gateway
The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

Making & breaking employment contracts (continued)

- 1 Trade union membership or non membership.
- 2 Pregnancy and exercising rights to maternity and parental leave.
- 3 Certain health and safety related grounds.
- 4 The employee was an employee representative for statutory collective consultation purposes.
- 5 The employee has raised a complaint to the employer that the employer was contravening his or her statutory employment rights.
- 6 The employee's refusal to co-operate with the employer over the Working Time Regulations.
- 7 The employee asserted his or her rights under the National Minimum Wage Act.
- 8 The employee has made a qualifying disclosure under the Public Interest Disclosure Act.
- 9 The employee has asserted their rights under the Part-time or Fixed-term Workers Regulations or taken statutory time off to care for dependants.

The employee must make the claim to an employment tribunal within three months of the dismissal and can claim reinstatement in employment and compensation.

Various factors are taken into consideration by the tribunal in assessing how much compensation should be paid, but the current maximum compensatory award since 1 February 2012 for unfair dismissal is, in most cases, £72,300 plus a basic award calculated using a formula based on age, length of service and weekly salary capped at £430.

If the employee was not unfairly dismissed, he may still be successful in a claim for a redundancy payment from his former employer if the reason for the dismissal was redundancy.

3 Discrimination

Employees can recover compensation for a dismissal if it constitutes unlawful sex, race or disability discrimination. In such circumstances, there is no qualifying period of employment and no limit to the level of compensation which can be awarded.

Although this information sheet highlights some key issues relating to employment contracts and dismissals, it should not be considered comprehensive and is not a substitute for seeking professional advice on specific issues.

For further information and to ensure that you are sent information sheets on other employment issues, please contact Nick Hobden on 01892 510000 or by email at:

nick.hobden@ts-p.co.uk.

© Thomson Snell & Passmore All Rights Reserved