

# Employment Contracts - What to look out for

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## Introduction

**The contract of employment is the fundamental legal agreement between an employer and employee. The purpose of this note is to highlight some of the key provisions employers and employees should focus on.**

## Requirement for an Employment Contract

All employees are required by law to receive a written statement of their terms of employment no later than 4 weeks after they commence employment.

## Content of an Employment Contract

The Employment (Jersey) Law 2003 (the “Employment Law”) specifies that the written statement of the terms of employment must include, at a minimum:

- The names of the employer and the employee
- The start date of the employment
- The date on which the employee’s period of continuous employment began
- Details of pay, including when the employee will be paid and how often
- Minimum hours of work
- Any terms and conditions relating to:
  - Holiday
  - Sickness pay
  - Pension
  - Parental leave
  - Redundancy
  - Disciplinary and grievance procedures
- Notice periods in the event of resignation or termination of employment
- If it is not a permanent role, the anticipated duration of the role
- Job title and brief job description
- Whether there are any agreements that the employer has entered with any recognised trade union that directly affects the employee’s terms and conditions of employment

It is permissible for a contract of employment to refer an employee to another document (such as a Staff Handbook) to satisfy these minimum requirements. In this instance, it is important that employees understand that their contractual terms are not simply those detailed in their contract of employment.

## Important Terms

Obviously it is important to ensure that the principal details are correct. Items such as salary, holiday entitlement, job title and role description will be of primary importance and must be accurately recorded. There are, however, other terms which are frequently seen in contracts of employment which both employers and employees should give some thought to.

## Probationary Periods

It is not uncommon for a probation period to be agreed. This is a period at the start of an employment relationship during which both the employer and the employee can assess the role and determine whether or not they wish to enter a permanent contract. The scope and terms of a probation period should be set out in the contract of employment.

It is often the case that employees on probation do not benefit from certain contractual or non-contractual benefits offered by the employer, such as a pension contribution, or private health cover.

It is also common practice to provide for a shorter notice period for both the employer and the employee during the probation period.

However it is important to note that probationary periods do not affect an employee’s statutory rights under the Employment Law.

It is permissible to extend a probationary period if contract of employment permits it. Where there is not an express contractual right to extend the probation period, this can nevertheless be agreed between the employer and employee.

## Restrictive Covenants

Employers will naturally wish to protect their business in the event of employees leaving.

Often an employer will seek to do this by including ‘restrictive covenants’. These are contractual terms which only take effect after the contract of employment has been terminated.

They impose restrictions on what an employee can and cannot do for a period of time following the termination of their employment.

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Restrictive covenants are designed to protect an employer's business from the impact of an employee leaving.

Usual terms include restrictions on the ability of a departing employee to establish or work for a rival business, interact with clients of the business, or seek to recruit continuing employees of the business. Not all restrictive covenants will, ultimately, be enforceable (the Court will only enforce a restrictive covenant that is reasonable in scope) but it is important to be clear as to what the terms of any restrictive covenants are and whether or not they are likely to be enforceable.

### Entire Agreement Clauses

An 'entire agreement clause' is one which means that all of the terms governing the relationship between the employer and the employee are contained in the contract of employment (and any other documents specified). In some cases the parties may have engaged in pre-contractual negotiations.

If there is an entire agreement clause in the contract of employment and the terms of the contract do not record matters which may have been agreed in pre-contractual negotiations, those pre-contractual negotiations cannot be relied upon.

### Notice for termination of employment

Notice is usually required to terminate a contract of employment unless the contract is for a fixed term where it simply expires on a certain date or event.

The Employment Law imposes a statutory obligation on both an employer and employee to provide each other with a minimum period of notice to terminate an employment contract.

The length of notice ultimately depends on the length of the employer-employee relationship; the longer the relationship, the longer the notice period. Where the contract of employment imposes a contractual notice period that is in excess of this minimum period, the contractual notice period will take priority.

A failure to provide the required notice can constitute a breach of contract.

There can be a provision in the contract of employment that, following the issuance of a notice to terminate, the employee can be placed on 'garden leave' whereby they remain bound by the terms of their contract of employment for the duration of the notice period but are not required to attend their place of work or undertake any work-related duties.

There may also be a clause in a contract of employment permitting an employer to pay the employee in lieu of their notice period. If this provision is not contained in a contract of employment and the employer nevertheless sought to do this without the consent of the employee, it could constitute a breach of contract.

There will also typically be a clause permitting an employer to terminate the contract of employment without notice due to the employee having engaged in some form of misconduct. This would typically be reserved for acts that are considered to be gross misconduct.

Once notice to terminate has been issued, the employee would typically be entitled to be paid their salary and have the benefit of all other contractual benefits for the duration of the notice period (or a payment in lieu of the same if the employer has the ability to do so).

Where the employment is terminated without notice, the employee's entitlement to all future pay and benefits ceases on the date that the employment is terminated.

A payment would of course have to be made for any pay and benefits that the employee had accrued before their employment was terminated without notice.

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the details below.

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