

GUIDANCE NOTES FOR COMPLETING A CONTRACT OF EMPLOYMENT

GENERAL

The law has recently changed. From 6 April 2020 you will have to ensure all employees are given a written statement of the terms of their employment (contract of employment) from day one of employment¹. This is a significant change from the two-month window you currently have. The contract will also have to

- be specific on the days and times that an employee will be required to work¹
- calculate holiday pay differently if pay varies because of regular commission or overtime worked during the year¹
- state what family leave and pay entitlement employees have¹
- state any benefits in addition to pay¹
- state if any mandatory training is required and how this will be funded¹

Our template contracts will help you comply with existing and new requirements.

COMPLETING THE TEMPLATE CONTRACT

TEAM MEMBER (NON GOC REGISTRANT) CONTRACT

Section 1 – Enter the name and address of your organisation and the name and address of the employee.

Section 2 – Enter the date when the employee's employment begins. It is also a legal requirement that the contract states whether there is any earlier employment which the employee can count towards their continuity of employment. There may be some earlier employment that can count towards continuity of employment – e.g. where there has been a TUPE transfer. Usually the date when their continuous employment commenced is the same as their start date.

Section 4 – Enter the job title

Section 5 – Remuneration. Enter the salary payable per annum or the hourly rate and delete the other provision, as applicable. Enter the date your staff are paid each month.

Section 6 – Normal place of work. Enter the name and address of the normal place of work.

¹ This change will not affect you if you are based in Northern Ireland.

Section 7 – Normal hours of work. Unless you are based in Northern Ireland, from 6th April 2020, you will have to be specific about the number of hours an employee is required to work each week and the days and times that they may be required to work. You will also have to set out whether or not such hours or days may be variable, and if so how they vary or how that variation is to be determined. To help you with this, we have included a number of options to choose from. Pick the option which best describes the employee's working pattern and delete the other examples.

Section 8 – Sunday working. Employees have a right to opt out of Sunday working if they give their employer notice that they object to working on a Sunday. By including this section employees that do not want to work on a Sunday will have to give you three months' notice. If you do not include this section employees will only have to give you one month's notice.

Section 9 – Overtime. Chose the appropriate option which reflects the way in which the employee will be compensated for additional hours work (if at all).

Section 10 – Holiday. You need to include the number of days that the employee is entitled to take as holidays including the 8 bank holidays (9 bank holidays in Scotland). Please note that the minimum annual holiday entitlement for a full time employee is 28 days which can include the 8 bank holidays. Holidays for part time staff is pro rata that for full time staff depending on the number of days worked.

There is an optional section you can include if the employee may be required to work on bank holidays. In that case they should be given a day of holiday at another time.

You need to complete details of your holiday year which may run – e.g. From 1st January to 31st December.

If an employee's pay varies - e.g. because of regular commission or overtime payments – then you will need to calculate a week's holiday pay by reference to their average pay in the 12-week period prior to the holiday. From 6 April 2020, unless you are based in Northern Ireland, this calculation will have to be based on the last 52 weeks rather than 12. The government has introduced this to ensure these employees are not disadvantaged by having to take holidays at a quiet time of year.

Section 11 – Sick pay. This section refers only to employer's obligation to Statutory Sick Pay. If you have an enhanced Sick Pay Scheme you should insert details about your scheme here.

Section 13 – Family Leave and Pay. From 6th April 2020 you must state within the contract whether employees are entitled to statutory basic legal entitlement to family leave (maternity, paternity and adoption) and pay or state details of any enhanced scheme you have in place. This is not a requirement in Northern Ireland.

The template contract assumes that you only pay the statutory minimum entitlement. If you offer an enhanced scheme, you should include details in section 13.

Section 14 – Benefits. From 6 April 2020 you will need to

- give details of any benefits other than pay that the employee is entitled to. This includes non-monetary benefits – e.g. vouchers or meals. You should give details of any such benefits in the “Other Benefits” section of the contract or delete this section if it is not applicable
- state if the employee must do any mandatory training for the job and state if you will not be meeting the cost of this
- highlight any other training entitlement provided

This is not a requirement in Northern Ireland.

Section 15 - Training. From 6th April 2020 you must give details of any training to be provided by you and details of any mandatory training that the employee must complete.

This is not a requirement in Northern Ireland.

Section 16 (section 13 NI) – Contractual notice. The contract template includes the legal minimum notice period. This is one week’s notice after 4 weeks service. Then for each complete year of service the employee must be given an additional week’s notice, up to a maximum of 12 weeks’ notice. If you find yourself in a position that you have to dismiss an employee because of poor performance or misconduct, it is likely you will want to pay the employee in lieu of notice rather than allowing them to work their notice. If you include the legal minimum notice periods in your contract you will keep any payment in lieu of notice to a minimum in such circumstances.

You need to enter the length of notice that you want the employee to give if they choose to resign. Examples are included, but you might opt for different notice periods for different roles. You should be mindful of and comply with the Equality Act 2010 at all times.

Section 17 (section 14 NI) – Garden leave. This allows you to insist that an employee stays away from the workplace and does not communicate with customers, suppliers and colleagues during their notice period. It is a clause you might have to invoke for example if you believe that an employee may try to poach customers or staff whilst working out their notice.

Section 20 (section 17 NI) - Deductions. This is a clause that allows you to make deductions from salary either during the course of the employee’s employment or on termination. This allows you to make deductions from salary if the employee owes money to the company. Please note that an employer cannot make deductions from salary unless the contract permits this. It is therefore an important clause to include in the contract.

Section 21 (section 18 NI) – Collective Agreement. These are agreements with employees’ representatives (from trade unions) that allow negotiations on terms and conditions. These are uncommon in primary and community care settings. It is a

legal requirement that a contract of employment gives details of any collective agreements that apply to the contract and states if there are no such agreements.

Section 22 (section 19 NI) – Lay Off. As an employer you cannot lay off employees during periods when there is a temporary shortage of work unless the contract permits this. If you do not have a clause in the contract allowing you to lay employees off then you may be required to pay employees even though you are unable to provide them with work - e.g. if there is a downturn in work or if you are unable to open the business for a reason outside of your control. You might choose to delete this section if you do not feel it is necessary.

Section 23 (section 20 NI) – Right to Search. Please note that even with this clause you cannot force an employee to submit to a search. However, if they refused to be searched they would be in breach of contract. You might choose to delete this section if you do not feel it is necessary.

Section 24 (section 21 NI) – Training recoupment. You may delete this section if it is not appropriate for the employee.

Section 25 (section 22 NI) – Criminal Convictions. You may delete this section if there is no need to carry out a criminal record check on the employee.

Working Time Opt Out – The Working Time Regulations limit the average working week to 48 hours. This clause allows an employee to waive the right not to work more than 48 hours per week on average under the Working Time Regulations. If the employee wishes to withdraw from this agreement they may do so by giving the employer not less than 3 months' notice.

TEAM MEMBER (GOC REGISTRANT) CONTRACT

This contract is suitable for professional staff such as optometrists and dispensing opticians (if you would like a copy for audiologists you employ please contact us info@fodo.com).

You should complete this contract template using the instructions for the team member contract as set out above. In addition, this contract contains a section dealing with Continuing Education and Training (CET)/Continued Professional Development (CPD).

There are optional post termination restrictions. If you simply include post termination restrictions in all of your employees' contracts, there is some risk that they may not be enforceable against some or all of them; their effect may only be to act as a deterrent.

If it is important that you have the protection of effective restrictions in some or all of your employment contracts, then you should use them sparingly and only in the contracts for those staff who in a real position to have an adverse impact on your organisation because of their relationships with clients or their access to confidential information such as sales staff and senior staff.

EMPLOYEE HANDBOOK

You should complete the name of your company in the highlighted areas on the first 2 pages of the handbook. You may also want to include your Company logo on the front cover sheet.

Section 3.4 Sickness Absence states that staff must ring in sick as soon as possible but in any event before their start time. You may want to amend this section if you have a different deadline for sickness reporting.

Section 3.8 Annual leave asks that staff give at least 4 weeks' notice when they want to book a holiday. Again, you may want to amend this section to reflect your current rules.

The handbook includes details of family rights. These are the minimum legal rights including the rights to statutory maternity / adoption / paternity leave and pay. If you offer any enhanced schemes you will need to include these details within the policies.

NEED MORE HELP?

If you need any additional help get in touch: hr@fodo.com