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# CONTRACTS OF EMPLOYMENT

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## Why issuing contracts is important

### Not Issuing a Contract Of Employment Is Against The Law

The law changed in April 2020, and you now have to give employees a contract of employment on or before their first day of working for you. The content is now a lot stricter too, with specific clauses such as probationary period, paid benefits, statutory benefits i.e. maternity, pension now being part of the main statement of terms.

Whilst there is no penalty for not issuing an employment contract immediately, if you are taken to a tribunal for any other reason (unfair dismissal, discrimination, etc) then it will be added on to the employee's claim – around an extra 3 or 4 weeks money. The Court will put a black mark against you too, as you are not fulfilling your obligations under employment law.

If you don't issue an employment contract, other legal protections still start. For example, protection from discrimination starts from the recruitment stage, with or without a contract. Annual leave will still accrue with or without a contract.

## **Notice Periods**

One of the most important reasons why an employer should issue an employment contract is the notice period.

After the first month of service, the statutory notice period for the employee to give you is just one week. If an employee has been with you for 12 years and gives notice, it is still only week. For a valued employee this may cause you a problem particularly if they have outstanding holiday and decide to take it during that week.

Standard notice periods would normally say, after completion of probationary period, notice would be one month and for more senior roles you might even make it 3 months. Thereby if they resign you have more time to find a replacement.

A bonus of this, is if the employee walks out and refuses to work their notice, you would not have to pay it at all.

Ensure you have adequate notice periods in your employee contracts and state that notice should be in writing. I've spoken previously about heat of the moment resignations and the issues around these.

## **Deductions from wages**

Subject to certain exceptions (for example, income tax and National Insurance deductions), no deduction may be made from an employee's pay unless it is authorised by a relevant provision in the employee's contract of employment, or the employee has previously agreed in writing to the deduction being made. For example, the repayment of loans or overpayments of wages, to recoup annual leave taken in excess of accrued entitlement on termination of employment and to cover the financial cost of loss or damage to your property as a result of the employee's carelessness, negligence or wilful default.

If you make a deduction from pay without the requisite authority, you will be in breach of the law. If the employee is then successful at employment tribunal in a claim for unauthorised deductions from wages, you are liable not only to repay the amount of the deduction made but also you will be unable to recover the amount in question by any other means and you could be liable to compensate the employee for any financial loss they suffered as a result of the unauthorised deduction, for example bank charges.

## Garden Leave

You can't legally send an employee home on garden leave instead of working their notice unless the employment contract states this. There are situations when an employee has resigned, but instead of working their notice, the employer would rather they see out their notice on garden leave.

**Why would you put an employee on garden leave?** You may be worried they could cause problems being at work, for example being awkward / disruptive or even damaging the business - this would of course depend on the reason for the resignation. Whilst on garden leave, although they can't work for someone else, they can look for work. Effectively you would be paying them to sit at home in the garden.

So if you have not issued a contract of employment, then you don't have a paragraph in their contract saying you have the right to put the employee on gardening leave. If you do this or even pay them in lieu of notice, you will be removing their right to provide you with work, which is a breach of contract

## PILON (Payment in Lieu of Notice)

If you want an employee to leave immediately, then you need a payment in lieu of notice (PILON) clause in the contract. You would then issue the P45, and just pay them for the notice you do not want them to work. Remember though legally you have to pay the notice unless in cases of gross misconduct when an employee could be dismissed summarily i.e. without notice. PILON is normally used when the employer has given notice.

The majority of employees are usually happy to have the PILON option, but you need to have that in the contract. There may always be that one problematic employee who may sue you for breach of contract – why? because they didn't have a PILON clause in their contract.

**HELPING BUSINESS OWNERS WITH ALL THEIR  
HR NEEDS**

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