

TOP 5 EMPLOYMENT CONTRACT MISTAKES

Why you should check your contracts now



We look at a lot of employment contracts. We review, negotiate, draft and litigate them.

We frequently hear employers say that there is nothing wrong with their employment contract templates or that one contract is as good as another. As a result, they sometimes see limited value in getting them reviewed by us, even though we don't charge for an initial review.

Unfortunately, however, we repeatedly see poorly drafted or outdated contracts which include costly mistakes that are often discovered too late.

We have, therefore, highlighted below five very basic and common mistakes, which employers should, as a minimum, check now.

1. Protection of connections and information

It is astonishing how few of the contracts that we are asked to review, provide adequate protection once an employee has left employment.

"We review contracts without charge – it gives us the opportunity to demonstrate that not all contracts, or all employment law providers, are the same"

Confidentiality clauses are a must in nearly all contracts, but are often missed or poorly drafted.

Well drafted post-employment restrictions preventing the poaching of customers or employees can be enforceable and should be put in place for key employees and sales staff.

Restrictions should be periodically reviewed to ensure they are likely to be enforceable and, as a rough rule of thumb, they should definitely be checked if they:

- last for more than 9 months after termination;
- don't have a geographical limit;
- aren't offset against a period of garden leave;
- aren't limited to only protecting the contacts and activities that the employee has been involved with in the last 12 months of employment.

2. Contracts working against the employer

A number of insurance backed HR service providers (who shall remain nameless) insist that their clients have contractual disciplinary procedures.

This leaves the employer bound to follow that process for every disciplinary issue and any failure could result in a breach of contract claim, regardless of the employee's length of service.

Contractual policies may be great for ensuring that claims are never brought against your HR provider's insurance, but may not give you the flexibility you need to run your business.

3. Signed, sealed and delivered

Do your contracts need to be signed as a deed, if so, do you know what is required? Are any new contracts issued to your existing employees enforceable even if signed?

If you want certain protections in your employment contract, often relating to intellectual property or directorships, then how the contract is signed is crucial. Often contracts incorrectly specify that they merely need to be signed, but this could render sections unenforceable.

A mere signature of a new employment contract by an existing employee, without any additional benefit, could also render any post-termination restrictions unenforceable.

4. Benefits, bonuses and commission failures

Does your contract actually reflect the benefits, bonuses and commission you offer? Does it give you sufficient flexibility to vary those benefits in future?

We often find that contracts fail to deal with fundamental questions, such as:

- Do you have flexibility to change the terms of a benefit or commission scheme?
- If you discover misconduct, are you able to clawback any bonuses paid?
- Do the benefits offered impact on the calculation of holiday pay?

5. Contracts for board directors

Do you have service agreements for your company directors? If not, you probably should.

These are the individuals who have overall responsibility for the running of the company and have specific legal obligations. You need to ensure that all of their obligations are documented and that the relationship between their employment and their statutory role is stated.

Time for a review?

If you aren't sure if your contract templates are up to scratch, or would like a no-obligation free review, please contact Ian Machray on 0118 951 6225 or at ian.machray@fsp-law.com.

If you decide to proceed with any suggestions we make, once we have got your documents in order we will typically review them again every year without charge and store them in a secure online precedent bank, so you can access an up to date document whenever needed.