

Understanding the Contract of Employment

A contract is an agreement that specifies the terms and conditions under which an individual agrees to perform duties as directed by the employer, under specific terms and conditions in return for an agreed wage or salary. The contract of employment can be expressed orally, in writing or implied. It is the norm within the employment relationship in the public and private sectors, for formal contracts of employment to be entered into. This has been made so by virtue of the fact that the law of the land regulates the employment relationship, while the collective bargaining arrangement establishes the framework under which the negotiation process is completed.

The contract of employment is basically a legal instrument which outlines the understanding of the employment relationship between the employer and the employee. It specifically addresses the rights and responsibilities of both parties to the agreement. It can be deduced from this that the purpose of the employment contract is to ensure there is a clear understanding of what is expected of the parties during the term of employment.

As it stands, the contract of employment serves a twofold purpose. It regulates the behaviour of the employee in the workplace and it serves to protect the employer. Based on this, it is best to ensure that the employment contract is expressed in writing so as to avoid any misrepresentation by either party of the terms and conditions which apply. Although a contract may be expressed either orally or in writing, the importance of a written contract is underscored by the fact that it is legally enforceable in a court of law. A contract is more than an understanding or an arrangement reached between two parties, which to all intents and purposes may be subject to the misinterpretation of expectations. Where the terms and conditions are not documented, the understandings reached are subject to reliance on the memory of the parties; which the recall may conveniently differ. It ought to be understood that the contract is intended to eliminate potential disputes but chances are that issues of misinterpretation of the provisions of the contract may lead to contention.

In the recruitment of persons for employment, the terms of engagement can take the form of a full time, part time, temporary, fixed term, agency, free-lance and/or zero-hours contract. From an employee perspective, the full-time contract is generally the preferred option, since it provides for security of tenure. It therefore

offers permanent employment along with such benefits as holiday with pay, sick leave, pension benefits, maternity and parental leave. It is the norm for full time employees to work for a forty-hour work week.

Part-time, temporary and fixed term contracts do not provide for permanent employment. Under part-time employment, the employee may work for fewer contracted hours than a full-time employee. Such employees have the option to work overtime, and the opportunity to be engaged in employment elsewhere. Fixed-term contracts usually have an agreed start and terminal date. In some instances, fixed-term contracts may not include an exact timeframe, but will instead end when a specific task has been completed or fulfilled. Fixed-term employees enjoy all of the same rights and benefits as is the case with any other permanent contracted employees. Holiday entitlement will depend on the length of the contract.

Temporary contracts are similar to fixed-term contracts in that they have an end date. The date can be subject to change, where there is the intention to extend the life of the contract. Temporary contracts are offered where permanent employment is not available. One of the salient features of the temporary contract is that temporary employees are entitled to the same rights as any other member of staff under a full-time contract.

The freelance or contracted employee is considered as a self-employed worker. The contract which may be negotiated by the individual, may include start and end dates, the salary or payment arrangement based on the deliverables of a set project or piece work. Freelance and contract workers may not be entitled to the same rights as more permanent members of staff.

Persons who are contracted by an agency shop can also be considered as freelance or contracted workers. Under the agency contract, employees are recruited by the consultancy or employment agency, which negotiates the contract and manages it on the behalf of the employee. The agency assumes responsibility for the protection of the rights of the freelance or contracted worker.

Another popular form of contracts is known as the zero hour contract. It is referred to as the casual contract as it is built on the basis of need or as required. There are no set hours of work, and the employee exercises flexibility in the performance of the job. Basically, the worker can refuse work that is offered. Additionally, the

individual can negotiate the wage to be paid or the sum payable for completion of the job or task.

With an understanding of how contracts are determined and managed, employers should guard themselves against being accused of being hostile to the contract of employment. By this, they should be wary of how to treat to the termination of employment, and not become obsessed with the fact that they have the right to hire and fire. They must be conscious of the fact that the contract of employment is basically a contract of service, in which the legal conditions are set out on how to terminate the agreement by either the employer or employee. The point must be stressed that there is a procedure to be followed in moving to terminate the contract of employment.

As a safeguard, it is important for employers to recognize that it is not in their best interest to enter into implied contracts, because it can be difficult to prove what specific terms and conditions apply. It should be noted that these contracts are binding. This type of contract has validity where an employee can prove that an implied contract was established. The ability of the employee to point out actions, statements, policies and practices of the company that lead the individual to conclude that they were reasonable grounds for a legitimate expectation, is all that is required.