

CONTRACTS OF EMPLOYMENT

Introduction

Employers often avoid putting contracts of employment in place because this seems like a time-consuming bureaucratic exercise. However, once a job offer has been accepted, a contract of employment comes into existence regardless of whether or not a written contract exists. An oral contract is as binding as a written one but in order to avoid misunderstandings and possible disputes later in the course of employment, it makes sense to have a written, rather than a verbal, contract.

Employers also have a legal duty to provide employees, whose employment lasts for at least one month, with a written statement of main employment particulars within two months of the start of their employment with the organisation. The written statement is not in itself a contract of employment. It is that part of the contract of employment that employers are required to put in writing. However, if you provide a contract that contains all the items required in a written statement, then you have met your legal obligations. If you fail to provide a written statement, an employee can approach the Industrial Tribunal who can require the employer to provide a written statement. In certain situations if an employee has made another claim to a tribunal the employee could obtain an award of two to four weeks' pay.

The advantage of a contract is that it can include clauses the employer may want but which are not required by law. For example, a written statement does not require clauses on lay-off or short time working but unless these terms have been agreed an employer cannot implement either short time working or lay-off without employees' consent.

The offer letter should reflect the terms of the contract but it may be useful to include a clause in the contract which states that in the event of any inconsistency, it is the contract which will prevail.

Ultimately, however, it would be up to an Industrial Tribunal (or an Independent Arbitrator who may now also hear cases) to decide which prevails.

Items to include in a contract of employment

If the contract is to meet legal requirements of a principal statement (the written statement of employment particulars) it should contain the following information:

- The date the written statement was issued.
- The legal name of the employer company - it is a good idea also to include the trading name, if different.
- The name of the employee.
- The date the current employment began.
- Any earlier date upon which employment with a previous employer began which is treated as 'continuous' with the current employment.
- The employee's pay, or how it is calculated, and the intervals at which it will be paid e.g. weekly or monthly.
- The employee's hours of work.
- Entitlement to holidays including public holidays and holiday pay. The information must be accurate enough to allow precise calculation of accrued entitlement.
- Job title or a brief description of the work.
- The address of the employee's place of work. If the employee will be working in more than one place you should indicate this along with the employer's address.
- The name or job title of the person the employee should apply to in order to resolve a grievance, and how this application should be made.
- The name or job title of the person the employee should apply to if they are dissatisfied with any disciplinary decision or decision to dismiss them, and how this application should be made.
- If a new employee will normally work in the UK but you need them to work abroad for more than a month at a time, the written statement you give them must include the following details:
 - the currency in which they will be paid;
 - the period they will be employed abroad;
 - terms relating to their return to the UK; and
 - any additional pay or benefits provided because of employment abroad.
- Period of employment - where the employment is temporary, the period for which it is to continue, or if it is a fixed-term contract, the date it is to end.
- Notice periods - the length of notice required from both parties which should be in line with statutory provisions.
- Collective agreements - details of any collective agreements with trade unions that directly affect the terms and conditions of employment.
- Any terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay; and
- Particulars of Pension and pension schemes including whether the employment is covered by a pensions contracting-out certificate and where further information can be obtained.

SECTION 3

The employer may refer the employee to another document such as a company handbook for details of the following. Any separate document must be easily accessible to all employees:

- **Disciplinary rules** - any disciplinary rules that you have.
- **Disciplinary or dismissal procedures** - any disciplinary or dismissal procedures that you have.
- **Grievance** - any further steps that follow an application to resolve a grievance or if the employee is dissatisfied with a disciplinary or dismissal decision.

Employers may also include other optional clauses relating to the following in the contract:

- Probationary periods;
- Flexibility in relation to duties performed;
- Lay-off and temporary short time working.

Note that if any clause infringes an employee's statutory rights it will be invalid.

When a written contract is issued, it should include a term stating that it replaces all previous discussions and correspondence in relation to terms of employment provided the employee has agreed to such changes.

A company handbook can be a useful method for collating all relevant policies such as those mentioned above but also policies on health and safety, email and internet use, equal opportunities, bullying and harassment, maternity and paternity etc. Having such policies will hopefully prevent issues arising in these areas and will also establish a procedure for dealing with any problems that do occur.

The law also recognises certain employee rights even if these are not explicitly stated in the contract of employment, such as the right not to be discriminated against on certain grounds and to equal pay, as well as the right not to suffer an unlawful deduction of wages. The law also recognises that employees have certain duties, such as the duties of fidelity, obedience and confidentiality. Similarly, there are implied duties on employers such as the duty to provide work and to pay wages.

In addition, there are numerous other legal rights that protect employees and it is recommended that in the event of any contractual or other dispute during the course of employment, legal advice is obtained where appropriate.

The Labour Relations Agency provides a free service to assist employers to prepare and review the Written Statement of employment particulars and also provides a Self Help Guide on their website www.lra.org.uk

The NI Business Info website (www.nibusinessinfo.co.uk) contains an interactive tool to help employers prepare a written statement of employment. See a sample contract of employment at Appendix 3A.

Changing an employee's contract

You may wish to change an employee's agreed contract of employment because your business has changed, for example through economic circumstances. Areas you may want to change can include pay, hours worked, different duties or a new workplace.

Sometimes an employee may wish to change the contract, perhaps to get better pay or working conditions, or to switch to flexible working.

Before altering any of your employees' contracts it is important to check exactly what is in the original documents and consult as far as possible with your employees. (See below). You should also put any agreed changes in writing within one month.

Consulting employees about changes to their terms of employment

Some contracts may contain terms that allow employers to make changes in working conditions. These should be reasonable, for example performing additional tasks to reflect seasonal fluctuations in demand or to work in other locations. Do not rely on such terms to make more fundamental changes because your employee may then claim the contract has been breached and may make various legal claims against you, for example breach of contract.

Individual consultation can take place on a one-to-one basis or in the form of group briefings. Whichever method you choose, you should provide an opportunity for employees to ask questions about why the change is needed and so on. Employees are more likely to agree the change if they understand why it is needed. Be prepared to answer these questions and ensure employees have the relevant information they need to prepare for the meeting. Always consider an individual's particular circumstances.

SECTION 3

Failure to agree to employment contract changes

Sometimes, despite negotiation, you may not be able to reach agreement with an employee over changes to a contract.

But if you impose changes without agreement, there will be a **breach of contract**.

If the breach is a fundamental one, for instance if it involves a significant change in pay or working hours, an employee could resign and regard themselves as having been given no other choice than to do so ('constructively dismissed'). If they have one year or more of continuous employment with you, they will be able to claim **unfair constructive dismissal** in an industrial tribunal. If the breach of contract has caused them a measurable financial loss, employees can also sue for damages, either in industrial tribunals or in the ordinary courts. Industrial tribunal claims must normally be made within three months of the employment ending but civil court claims may be made up to six years from the breach of contract. Awards for damages in industrial tribunals are limited but there is no limit in the ordinary courts.

If employees are unable to seek damages because they have not suffered financial loss, the court may require the employer to abide by the original contract.

If you have tried to consult about change but have been unable to reach agreement on the change, you can consider terminating the original contract (dismissing the employee), provided you give the required notice and offer a new, revised contract to the dismissed employee. You should provide the minimum statutory notice period, or the notice specified in the employment contract, whichever is longer. In such instances there is no break in employment and continuity of employment is preserved.

If the employee believes the dismissal was unfair, and they have one year or more of continuous employment with you, they may complain to an industrial tribunal. It would be up to the tribunal to decide whether the dismissal was fair or unfair.

The offer of a new contract could reduce the amount of a tribunal award because the employee's financial loss has been lessened by accepting the revised terms or because by rejecting the offer, they have not complied with their duty to mitigate the loss.

APPENDIX 3A

CLAUSES HIGHLIGHTED IN BLUE SHOULD BE CONSIDERED IN TERMS OF COMPANY POLICY.

CLAUSES HIGHLIGHTED IN GREY SHOULD BE ADJUSTED FOR EACH INDIVIDUAL.

CLAUSES IN RED TYPE ARE FOR EMPLOYER GUIDANCE AND SHOULD BE REMOVED BEFORE ISSUE TO EMPLOYEES.

SAMPLE

COMPANY NAME

CONTRACT OF EMPLOYMENT

In compliance with the Employment Rights (Northern Ireland) Order 1996, this statement sets out certain terms and conditions of your employment contract which are relevant on dd/mm/yyyy.

1. **Name and address of employer:**

2. **Name of employee:** xxxxxxxxxxxxxxxxx

3. **Date of commencement of employment:** dd/mm/yyyy

4. **Date of continuous employment:**

Previous employment with this or any other employer, prior to the date specified (at 3), will not count as part of your period of continuous employment.

OR

Previous employment with (insert Company Name) will count as part of your period of continuous employment, which therefore began on dd/mm/yyyy.

5. **Period of employment**

Your employment is permanent subject to the Sections on Probation and Notice of this Statement.

OR

Your employment contract is for a fixed term and expires on dd/mm/yyyy.
This is subject to the Sections on Probation and Notice of this Statement.

(Employer Guidance - If a fixed term employee has their contract renewed when they already have a period of 4 or more years of continuous employment, the new contract takes effect as a permanent contract unless it can be objectively justified to do otherwise. Employers are advised to seek additional guidance on this issue which the LRA can provide.)

OR

Your employment is temporary and is expected to continue for (period of likely duration).
However, circumstances may dictate an earlier or later termination. This is subject to the Sections on Probation and Notice of this Statement.

6. **Job title:** xxxxxxxxxxxxxxxxx

However as and when considered necessary or appropriate you are liable to transfer to or undertake other duties, within competence and within reason, in order to meet fluctuations or priorities in work demands.

7. Probation (New Employees):

You will be on probation initially for a period of (e.g. six) months during which time your progress will be monitored, and feedback provided. At the end of this period, provided a satisfactory standard is achieved and maintained, your employment will be confirmed. In the event of unsatisfactory progress, the appropriate procedures will be implemented and the probationary period may be extended or your employment terminated either during or at the end of probation.

8. Collective Agreements:

There are no collective agreements in force that directly affect the terms and conditions of your employment.

OR

The collective agreements which directly affect the terms and conditions of your employment are:

(If you are not a party to the collective agreement/s, also indicate the parties who made it/them.)

9. Place of Work:

Your place of work is _____.

OR

You are based at _____ but you may be required to work at the following places _____.

OR

You are based at _____ but due to the nature of your job you are required to work at any place where the employer has clients or prospective clients.

10. Requirement to work outside the UK

You are not required to work outside the UK (for more than one month).

OR

You are not required to work outside the UK for more than one month. You may however be required to work in the Republic of Ireland for periods of short duration.

OR

You are liable under your contract of employment to work outside the UK. Particulars currently applicable to such situations, where the duration of the period of working is to exceed one month are as follows:-

(Under each of the 4 headings listed below specify the relevant particulars if such exist. If there are no relevant particulars which can be entered under any particular heading at the time of issue of the statement, then state that fact under the particular heading.) Employer guidance - this should be removed when issued to employee.

1. Duration of the period _____
2. Currency of remuneration during the period _____
3. Additional remuneration or benefits applicable during the period _____
4. Terms and conditions applicable on return to UK _____

Where there is any change in the information provided at 1 to 4 above, you will be individually notified in writing, within one month of the change or before the date on which you leave to work outside the UK for more than a month, if this date is less than one month from the change.

11. Pay Rate:

Your rate of pay *on commencement will be/*is currently £_____ (gross) per hour/week/month/annum and thereafter as itemised on the pay/salary slip which you receive with your pay/salary.

Pay Arrangements:

The pay week runs from _____ to _____ and you will be paid weekly (*in arrears) on _____ by cash/cheque/credit transfer.

OR

You will be paid monthly, on the last banking day of each month by cheque/credit transfer.

Optional:

In addition the company operates a *bonus/*commission scheme. Written details of the scheme will be provided to you separately.

12. Pension Scheme:

The Company will comply with its employer pension duties in accordance with relevant legislation (if applicable). Details in this respect will be furnished to you separately.

A contracting out certificate *is/*is not in force in respect of the employment.

OR: (The following wording is appropriate where the employer has reached their staging date. Employer guidance - to be removed before issuing)

You will be automatically enrolled, have the right to opt in or be entitled to join a pension scheme provided by the Employer. The category which you qualify under will be determined by your age and earnings at the end of each pay period. If you meet the criteria which requires you to be auto enrolled in the pension scheme, you will be entitled to opt out. Further details will be provided to you by _____.

There is/is no contracting-out certificate in force for the Scheme.

(Due to new pensions regulations all employers will be required to automatically enroll certain employees into a "qualifying" pension scheme. This obligation commenced in October 2012, however, it is being phased in over a number of years depending upon the size of the employer's PAYE scheme. Full guidance, including dates when the auto enrolment obligation will apply for employers, is available on the Pensions Regulator website. Employer guidance - this should be removed when issued to employee.)

13. Hours of Work and Breaks:

Your normal hours of work are _____ hours per week (e.g. 9.00 am to 5.00 pm Monday to Friday). You will receive a (paid/unpaid meal break of xx minutes and a paid/unpaid morning/afternoon tea break of e.g. 15 minutes.)

OR

Your employment shall be _____ net hours per week and your daily working hours, including paid/unpaid meal breaks and paid/unpaid tea breaks, shall be in accordance with a (variable) rota determined by management. Details of the rota are posted in the _____.

OR

Your employment shall be ____ hours per week and your daily hours of work shall be as follows:-

Monday	_____	am/pm to	_____	am/pm
Tuesday	_____	am/pm to	_____	am/pm
Wednesday	_____	am/pm to	_____	am/pm
Thursday	_____	am/pm to	_____	am/pm
Friday	_____	am/pm to	_____	am/pm
Saturday	_____	am/pm to	_____	am/pm
Sunday	_____	am/pm to	_____	am/pm

You will receive a paid/unpaid meal break of ____ minutes and a paid/unpaid tea break of ____ minutes in the morning/afternoon.

Optional:

You will be required to clock in and out at the beginning and end of the day and also for your lunch and at any other time that you leave the premises for any reason.

14. Overtime

Requirement

Overtime/additional hours may arise from time to time. When called upon to do so, you will be expected to work a reasonable amount of overtime/additional hours.

OR

Overtime/additional hours may arise from time to time and it is a condition of employment that you will be required to work a reasonable amount of overtime/additional hours when called upon to do so.

Payment/Compensation for overtime/additional hours

(Employer Guidance - There is no requirement to pay for overtime. Overtime rates are for the employer to agree with the employee)

Payment for overtime/additional hours worked shall be at the basic hourly rate/rate of £____.

OR

When you work in excess of ____ hours each week you shall be paid at the rate of £____.

OR

You will not receive payment for additional hours worked. You will however receive equivalent time off in lieu. This must be taken within 1 month, at a time to be agreed with management.

15. Holidays:

Annual Days

The holiday year runs from dd/mm/yyyy to dd/mm/yyyy.

If you are in this employment for a full holiday year, you will be entitled to xxxxx hours/days/weeks paid holiday in that year.

(The minimum paid leave entitlement is 5.6 weeks based on the employee's contracted hours. Part-time employees are entitled to the same holidays, on a pro rata basis, as a comparable full time employee. You must ensure when completing this document for part-time employees that you clearly outline the part-time employee's holiday entitlement. Employer guidance - this should be removed when issued to employee.)

If you join this employer after the commencement of a holiday year, you shall be entitled in that holiday year to annual holiday with pay proportional to your length of service in the remainder of that holiday year.

Customary Days

(The statutory entitlement to 5.6 weeks' holiday may include customary days – although the employer may choose to provide more than the statutory minimum. Employer guidance - this should be removed when issued to employee.)

This employer does not recognise any customary days.

OR

This employer recognises the following customary holidays with pay:

(a) in addition to your annual leave entitlement.

OR

(b) as part of your annual leave entitlement.

New Year's Day, St Patrick's Day, Easter Monday, Easter Tuesday, May Day, Spring Bank Holiday, July 12 and 13, August Bank Holiday, Christmas Day and Boxing Day. *(Choose from this list the days you recognise)*

Part time employees are entitled to customary holidays on a pro rata basis.

Due to the nature of the business/organisation you will be required to work on some, if not all, of these days. When you are required to work on any of these days, you shall be paid at your basic rate/at the rate of ____ and receive a day off in lieu to be mutually agreed.

(If this clause is used in a situation where the employer's holidays in total meet but do not exceed the statutory minimum, a paid day off in lieu must be given i.e. it should not be optional. Employer guidance - this should be removed when issued to employee.)

On termination of your employment

You shall be entitled to annual holiday with pay, or pay in lieu thereof, proportional to your length of service in that holiday year, less any annual holidays already taken. If you leave employment and have taken more leave than you have earned, the employer will recover from your final pay, monies equivalent to the leave you have taken, in excess of your entitlement.

16. Annual Holiday Arrangements

(You may wish to include in this section any rules relating to booking/ taking of holidays. The proposed wordings included here reflect the notice requirements provided in the Working Time Regulations. You are free to change these with the agreement of the employee. Employer guidance - this should be removed when issued to employee.)

Employee Notification

Advance notice must be given to (Position title) when you wish to seek approval for holiday dates. The notice must be at least twice as long as the holiday being requested.

In your own interest, you should not make any holiday bookings until you receive approval.

OR

Employee/Employer Notification and Closures

The business closes down for holiday at certain times/on certain days during the year and you are required to take all/part of your holidays at these times/on these days which are as follows; *(enter the details)*

The exact dates of these close-down periods will be notified to you in advance each year.

The dates for the balance of holidays must be approved in advance by (Position title).

The notice to be given must be at least twice as long as the holiday being requested.

In your own interest, you should not make any holiday bookings until you receive approval.

Employer Refusals

If the employer is unable to approve the dates you requested for holidays, you will be given notice of refusal in advance of the first requested day. The notice will be at least as long as the number of days/weeks of holiday being requested.

Carryover

Holidays may not be carried forward into the next holiday year. Unused holidays will be forfeited without compensation.

OR

Holidays in excess of 4 weeks may be carried over into the next holiday year. Unused holidays in excess of your carry over entitlement, will be forfeited without compensation.

(An employer can allow carryover of any leave in excess of 4 weeks but cannot offer payment in lieu. Employers must allow carryover of at least 4 weeks' leave where an employee has not taken their leave due to absence from work due to illness. Employers can however set a limit on the period over which holidays can accrue during periods of sickness. Current case law suggests that carryover can be limited to any leave accrued in the previous 18 months. Under current EU case law this leave must be used within 18 months of the leave year in which it accrued. Employer guidance - this should be removed when issued to employee.)

17. Holiday Pay

During holidays, those employees with entitlement to holiday pay will be paid at their normal rate of pay.

OR

If you are entitled to holiday pay, it will be based on your average earnings over the last 12 working weeks prior to the holiday.

OR

Annual leave will be paid each year to the extent required by the current law.

(Employer Guidance - remove before issuing - You should seek up to date legal advice on what to pay employees who do not have a 'normal' pay e.g. commission or bonus based or pay for additional hours the employee normally works.)

18. Sickness Absence and Sick Pay

There is no Employer's Sick Pay Scheme relating to your employment. Provided you meet the qualifying conditions, you will be paid sick pay according to the rules and regulations of the Statutory Sick Pay Scheme (SSP) for a maximum of 28 weeks subject to compliance with the Company's Sickness/Absence Notification and Sick Pay Procedure as set out in Annex A of this document. Your attention is drawn to this Procedure. It is your responsibility to familiarise yourself with and to comply with it at all times.

You agree to consent to a medical examination (at our expense) by a doctor nominated by the Company should the Company so require. You agree that any report produced in connection with any such examination may be disclosed to the Company and the Company may discuss the contents of the report with the relevant doctor.

19. Notice Entitlement/Requirement

(The sample reflects the minimum statutory provisions. Contractual variations are possible. Employer guidance - this should be removed when issued to employee.)

If you have one month's continuous service or more you must give the employer one week's notice of your intention to terminate your employment.

If you have one month's continuous service you are entitled to receive one week's notice in the event of termination. This increases to 2 weeks after 2 year's continuous service and then by a further week for each complete year of continuous service up to a maximum of 12 weeks.

The employer reserves the right in the case of gross misconduct to dismiss you summarily i.e. without notice and without payment in lieu of notice.

You may be required to take some, or all, of your accrued holidays during the notice period.

The company reserves the right to pay in lieu of notice on termination of employment.

20. Compassionate Leave

(This section is optional but many employers will chose to grant some compassionate leave. Employer guidance - this should be removed when issued to employee.)

In the case of absence due to the death of a close relative (i.e. spouse, child, parent, sibling, parent-in-law) the Company will provide up to three days paid compassionate leave, depending on the circumstances. This is in addition to statutory unpaid time off for dependants to enable employees to deal with emergencies.

21. Grievance Procedure

The procedures relating to handling of grievances are set out in the Company Grievance Procedure which can be found in the Employee Handbook / obtained from the HR department / obtained from the Office Manager *(delete as appropriate)* The procedure does not form part of your contract of employment.

If you wish to raise a grievance you may apply in writing to [POSITION] in accordance with our Grievance Procedure.

Note: the main statement (not an appendix) must contain these details.

(If the grievance procedure forms part of the contract of employment, an employer must abide by the terms of the contract at all times or risk a possible breach of contract claim. For this reason it is recommended that grievance procedures are separated from the contract. Employer Guidance - this should be removed when issued to the employee.)

22. Discipline and Dismissal Procedures

Disciplinary Rules and Procedures for Misconduct

The disciplinary rules and the procedure for dealing with disciplinary matters and appeals are set out in the Disciplinary Rules and Procedure which can be found in the Employee Handbook / obtained from the HR department / obtained from the Office Manager (*delete as appropriate*). You are required to make yourself familiar with this document. The procedure does not form part of your contract of employment.

If you wish to appeal against a disciplinary decision you may apply in writing to [POSITION] in accordance with our Disciplinary Rules and Procedure.

Note: the main statement (not an appendix) must contain these details.

All employers are required to adhere to the Minimum Statutory Procedures for handling disciplinary matters and for dismissal. See Section 18 of this Guide for further detail and a sample policy on disciplinary rules and procedures for misconduct. (As with any policy or procedure, it is possible to incorporate the disciplinary procedure into the contract but this means that an employer must abide by the terms of the procedure at all times or risk a possible breach of contract claim. For this reason it is recommended that disciplinary rules and procedures are clearly separated from the contract. Employer guidance - this should be removed when issued to employee.)

23. Restrictive Covenant

Employers will often insert restrictive covenants/trade clauses in order to protect any confidential information or trade secrets that employees have access to during their employment. These are designed to prevent employees from disclosing or using confidential information, trade secrets, etc, and/or soliciting or dealing with customers during a specified period after leaving the business. Restrictive covenants will NOT be required for all businesses. Legal advice should be obtained on any restrictive covenant since each case will depend on the nature of the business and the particular role.

24. Lay Off and Short Time Working

In the event of a reduction or shortage of work or disruption in the provision of the kind of work you are employed to do, or any other occurrence effecting the normal working of the Company, the Company reserves the right to temporarily lay you off work without pay, save for guarantee payments to which you will be entitled, or alternatively, to reduce your normal working hours and to reduce your pay proportionately. The Company shall give as much notice as is reasonably practicable of any further change to your hours including a return to normal working hours. Where you have been laid off or put on short time working under this rule your employment shall, for all contractual purposes, be deemed to have been continuous throughout that period.

25. Changes in Terms and Conditions

The Company reserves the right to make reasonable changes to any of your terms of employment. You will be notified in writing of any change as soon as possible and in any event within one month of the change.

(An employment contract is a legally binding agreement between the employer and the employee. Therefore, it is subject to the basic principle that one party cannot unilaterally alter the terms of the contract without the other party's consent. The purpose of clause 25 is to give the employer the contractual right to make "reasonable" changes to the terms of employment without the employee's specific consent. This is intended to cover minor or administrative matters which do not fundamentally alter the employee's terms of employment. This clause does not give the employer wide powers to make any substantial changes to the contract, and would be narrowly construed by the courts. Employer guidance - this should be removed when issued to employee).

26. Relevant Agreement

For purposes of the Working Time Regulations (Northern Ireland) 2016, it is agreed that the sections on holidays, including holiday entitlement, annual holiday arrangements and holiday pay of this Statement constitute a relevant agreement and are to be treated as agreed in writing:-

Signature _____ (Employer) _____ (Date)

Signature _____ (Employee) _____ (Date)

Your employment with the Company will be in accordance with and subject to the policies and procedures in force for the duration of your employment. You are required at all times to comply with these policies and procedures in force from time to time. Breaches of company policy/procedure may result in disciplinary action up to and including dismissal. These policies and procedures do not form part of your contract of employment. The Company reserves the right to renew, revise, amend or replace these policies and procedures from time to time to reflect the changing needs of the business. These policies and procedures are available for inspection in the **Managing Director's office/Office Manager's office/HR Department/ in the Employee Handbook.**

(Delete as appropriate.)

(As with any policy or procedure, it is possible to incorporate these procedures into the contract but this means that an employer must abide by the terms of the procedure(s) at all times or risk a possible breach of contract claim. For this reason it is recommended that these procedures are clearly separated from the contract.

On one hand the employer wants policies and procedures that are expressed not to be contractually binding so that it can change them more easily than contractual terms and can avoid a penalty (such as an employee bringing a breach of contract claim) for its inadvertent breach of the non-contractual terms. On the other hand you want the employees to comply with the non-contractual policies and procedures. You can achieve this by including the above statement in employees' contracts of employment. This allows you to take disciplinary action against the employees should they not comply with the non-contractual terms. Employer guidance - this should be removed when issued to employee).

ACKNOWLEDGEMENT OF RECEIPT

I acknowledge receipt of a copy of this Statement, together with the documents listed below.

Annex A Sickness/Absence Notification and Sick Pay Procedure

I have read and understood this Statement

Signed: _____

Dated: _____

ANNEX A

SICKNESS/ABSENCE NOTIFICATION AND SICK PAY PROCEDURE

Management are committed to the health and wellbeing of all staff and recognise that from time to time employees may be ill, or for some other justifiable reason may be unable to attend work. Should this occur, the following procedure must be followed:

1. Notification/Evidence of Sickness/Absence Procedure:

- i) Employees who are unable to attend work must notify (Owner/Managing Director), or in his(her) absence the (second in charge), of the nature and expected duration of the absence. This contact should be made by telephone prior to 9:00 a.m. on the first day of absence. Should the absence continue, you must contact the Company as above on the eighth (8th) day and on a regular basis thereafter.
- ii) If you are ill and your absence extends beyond three (3) working days, you must present a completed HMRC self-certification form SC2. This form is available from doctors' surgeries and must be presented to the Company on the fourth (4th) day of your absence.
- iii) In all cases of absence a self-certification form, which is available from (title of person), must be completed on your return to work and supplied to (title of person). If your absence extends beyond seven (7) calendar days, you must also submit to the Company a Statement of Fitness for Work (Fit Note) covering absence from the eighth (8th) day. The certificate, which can be obtained from your doctor, must be presented to the Company as soon as possible after the eighth (8th) day of your absence.
- iv) Continued absence must also be covered by further medical certificates on a regular basis (i.e. each month thereafter).
- v) The Company may require you to be examined by a Company nominated doctor, as it considers necessary.
- vi) If you are absent on sick leave you may be contacted from time to time by (title of person) in order to discuss your wellbeing, expected length of continued absence from work and any of your work that requires attention. Such contact is intended to provide reassurance and will be kept to a minimum.

If you have any concerns while absent on sick leave, whether about the reason for your absence or your ability to return to work, you should feel free to contact (title of person) at any time.

- vii) Upon return to work, you may be required to attend a Return to Work Interview with the person to whom you report. The purpose of this interview is to update you on any developments in your absence, clarify the impact of the absence on the company, and review whether any action is required in terms of appropriate remedies. *(This is a contractual commitment; employer should consider whether this will take place. Employer guidance - this should be removed when issued to employee).*
 - viii) Unacceptable delays in notifying the Company or failure to provide evidence of incapacity may result in the withholding of any SSP due.
 - ix) Any person who knowingly makes a false statement on a self-certification form shall be dealt with in accordance with the Disciplinary Procedure.
- #### 2. Sick Pay:
- i) Statutory Sick Pay (SSP) is payable to employees for up to twenty-eight (28) weeks of sickness absence.
 - ii) For SSP purposes, Qualifying Days are Monday to Friday.
 - iii) An employee, absent from work due to illness or injury, shall be paid SSP providing the qualifying conditions for receipt of such are satisfied and provided that the requirements in respect of notification and supply of evidence of incapacity as set out in the Notification/Evidence of Incapacity procedure are complied with.

(This procedure is contractual. Employers should therefore be careful when making changes to this procedure to help avoid a breach of contract claim. Employer guidance - this should be removed when issued to employee).