



Breakfast Briefing



12 Employment Contract Clauses of Christmas

6 December 2023

Agenda



- > Clauses now required due to a change in law in April 2020
- > Practical tips for common clauses



Training clause



- (Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018)
- Law changed on 6 April 2020 requiring training information to be included in a s.1 statement of particulars of employment
- Any entitlement to training provided by the employer and whether this is mandatory and/or paid for.
- If no mandatory job specific training, might state "you are entitled to in-house training that may be available from time to time, specific details can be accessed [XXX]"
- If no training routinely available, or necessary for job, required to explicitly state no training will be provided

Benefits clause



- Implemented in April 2020 after Good Work Plan recommendation that the contract should specify all remuneration – not just salary
- Any benefits applicable to the employee should be stated in the contract
- For example: private medical schemes; cycle to work etc.
- If non-contractual/ discretionary, advisable to state they are non-contractual and that they may be amended at any time

Other paid leave clause



- Since April 2020, need to state what other paid leave is available (statutory or contractual)
- For example: maternity, paternity, adoption, parental, parental bereavement, shared parental leave.
- Full details not required in the contract, only to state they are available and where the details can be found
- Introduction of new statutory carer's leave due to commence in 2024 should be added next year
- Any contractual paid leave should be listed (e.g. paid compassionate leave, study leave etc)

Probation clause



- Legal requirement from April 2020
- Must set out conditions and duration legally
- Notice period on probation
- Policies/ procedures?
- Right to extend if there is a period(s) of absence
- Outcome of probation confirmed in writing (helpful to include that in absence of confirmation, employee should assume it continues)

Hours of work clause



- From April 2020, now need to state the days of the week the employee or worker is required to work
- If working hours or days are variable must state so and give details of how they may vary
- Include information on overtime
 - Paid or unpaid
 - Any overtime premiums (pay clause)
- 48-hour WTR opt out in separate document

Deductions from wages clause



- Section 13(1) of the Employment Rights Act 1996 provides that an employer cannot lawfully make deductions from wages unless entitled to by the **contract of employment**, statute or because the worker has previously consented in writing to the deduction
- Usually contained within pay clause but could be standalone
- Authorises company to make deductions from pay in respect of any sums owed to the employer by the employee
- Examples include over payments, repayments of loans, damage or losses
- If no prior agreement to deduct the sum or no deduction from pay clause, it will likely amount to an unlawful deduction from wages
- This is a standalone claim to the Employment Tribunal

Holiday clause considerations



- Best practice to state position on carry over leave
 - Contract may give express right to carry over X number of holiday days
 - Exception if prevented from taking due to sickness absence; statutory family leave etc.
 - Limited to 4 weeks (less any leave taken in holiday year ended) in sickness absence cases
 - Carried over holiday lost if not taken within 18 months
- Public holidays
 - All public holidays v 'the usual' public holidays

Notice clause



- Statutory notice
 - Employer: One week (over 1 month but under 2 years) or one week per complete year of continuous employment up to a max of 12 weeks (over 2 years)
 - Employee: One week
- Contractual notice
- Basic pay or normal pay
- Express right to pay in lieu of notice

Exclusivity clause



- Prevents employees from gaining secondary employment with another employer
- Outright ban v written consent
- Banned for zero-hour contracts
- From 5 December 2022, the law banning the use of exclusivity clauses also applies to employees and workers whose weekly income is below or equivalent to the lower earnings limit (currently £123 per week)

Place of work/mobility clause



- Gives flexibility to the employer to require the employee to move the employee within a reasonable area
- Covers travel for business purposes
- Risk of a breach of the implied term of trust and confidence is used unreasonably

Your normal place of work is West George Street, Glasgow or such other place within the Central Belt which we may reasonably require for the proper performance and exercise of your duties.

You agree to travel on our business (both within the UK or abroad) as may be required for the proper performance of your duties under the Appointment.

Restrictive covenants



- Common types in UK employment contracts:
 - Non-solicitation
 - Non-compete
 - Non-poaching
- Must be reasonable in scope: geography, duration, employee influence/risk
- More likely to be enforceable if drafted specifically for employee after considering risk
- On 12 May 2023, the government confirmed that it would introduce a statutory cap of three months on non-compete clauses in employment and worker contracts

Garden leave clause



- Clause gives employer the contractual right to place employee on garden leave normally for the duration of the notice period
- Still bound by terms and conditions of the contract
- Pay and benefits
- Employee not required to undertake any work or attend premises during notice (unless otherwise agreed)
- Consider company property; communication with staff/customers; and whether you need them to complete any work

Any questions?