

Your contract of employment

This is one of a series of advice sheets for members of NEU Leadership - senior leaders in education in membership of the National Education Union. These advice sheets aim to give you advice on your position as an employee, which reflects your particular position as a leader and manager.

You can read other NEU advice and find out more about NEU Leadership, about the NEU's model of ethical leadership in education and about the NEU's Guild Community, which offers you peer support from fellow NEU Leadership members, at neu.org.uk/leadership

Introduction

The contract of employment is the basis of the relationship between employer and employee. While statute law gives many rights to employees, it is the terms of the contract of employment that govern most aspects of your work in terms of your obligations and entitlements. When disagreement arises the terms of the contract and evidence that they apply are very important.

What exactly is my contract of employment?

Your contract of employment is an agreement between you and your employer to work for payment. It need not be in writing, although most NEU Leadership members will have a signed written contract. Other parts of the contract may be made up of:

- the original appointment letter setting out the job offer
- any written documents about how the work is to be carried out
- a written statement of the main terms (the legal minimum that must be provided in writing if not already covered in a written contract)
- any provisions deriving from statutory documents or from collective agreements between employers and trade unions that are incorporated into your individual contract.

For NEU members employed as leaders in the maintained sector or employed by or transferred to multi-academy trusts, many contractual terms and conditions are covered by the statutory School Teachers' Pay and Conditions Document (the STPCD or Blue Book), and the National Conditions of Service for School Teachers in England and Wales collective agreement (the Burgundy Book). The STPCD allows some flexibility for employers to decide how to apply its terms; the Burgundy Book's terms should always be applied unamended.

Forming the contract of employment

The contract is formed when you accept a job offer in return for payment that is made by the employer. The job offer must be capable of immediate acceptance and so be sufficiently clear to enable you to accept without further negotiation. If you are required to negotiate further, then the offer is in effect being rejected and you will be making a counter offer.

Sometimes an offer is conditional (e.g. upon receipt of satisfactory references or a criminal records check). In such circumstances, the contract will not normally take effect until the condition has been met. Offers and acceptances need not be in writing, but clearly there is less chance of a misunderstanding if they are.

For many NEU Leadership members, the initial contract formation will be followed up by the signing of a written contract of employment. If this has terms that differ from the original offer, then these will require your agreement (see below).

What are the terms of my contract?

Express terms are those that have been spelt out, either in writing or verbally. All the items in your written contract would be express terms.

Implied terms are those that are taken to exist but have not been spelt out. They cover terms that are central to the employment relationship (eg, fidelity and good faith), terms that are too obvious to write down (eg, exercising reasonable care and skill), or the custom and practice of a particular trade or industry (see below).

Incorporated terms are those specifically incorporated into your contract from some other source, such as collective agreements with trades unions or workplace rules.

Statutory terms are those derived from law, such as the right to be given minimum periods of notice.

Some matters (including your maternity rights and your rights to notice) may be covered by more than one of the above types of term.

Custom and practice

Terms may be implied through custom and practice into a contract of employment if they are regularly adopted by a particular trade or industry, in a particular locality or by a particular employer. It is assumed that the parties are aware of the term and have tacitly agreed that it should be part of their contract without any need to put it in writing.

The key requirements are that the custom and practice must be reasonable, well known and clear cut. In particular, the matter should have been drawn to the employee's attention or otherwise be sufficiently well known; and should have operated for a substantial period of time.

Arbitrary application of a custom or practice does not count. Nor does a single incident. Also, it is very unlikely that anything relying upon an employer's discretion will be deemed custom and practice.

Conduct of the parties

How the parties have acted or operated a contract of employment can imply a contractual term. It happens where a contract has been performed in such a way as to suggest a particular term exists, even though it was never expressly agreed. However, the conduct must in effect be intended from the time the contract is first entered into and not as a result of a later change of mind.

Obvious terms

A term may also be implied if it is so obvious that the parties must have intended it and their responses to the suggestion of a bystander would have been “yes of course we meant that” (the “officious bystander” test). For example, a contract for the only part time employee at a company may not say expressly that their holiday entitlement would be pro rata, but the obvious intention would be precisely this. A term may also be implied if it is necessary to make the whole contract workable.

What happens if my contract is unclear?

The terms in a contract can sometimes be vague. Problems can also arise when express terms are not in writing, or when an implied term is disputed. Indeed, the interpretation of any term, even a statutory one, can lead to difficulties.

What about my job description?

The status of your job description deserves a special mention. It is not normal for your job description to be incorporated into your contract of employment (the contract will say so if it has been). This gives the employer flexibility to alter your duties, so long as the effect doesn't make your job significantly different.

Can my employer change the terms of my contract?

The terms of your employment contract can be changed lawfully in the following ways:

- **by mutual consent** - there should be consultation with you the employee, and subsequent agreement on the amended terms
- **by changing an incorporated collective agreement** - the classic example here is a union negotiated pay rise by providing for change in the contract itself - you might have a term in your contract that allows for other terms to be changed without consent, but, in practice, these tend to be limited to specific items such as your place of work.

In addition, your employer might change contractual terms in the following ways.

- **by imposing the change:** This is in effect a breach of contract (see below) and you can make a claim for any loss in a county court. However, you need to act early. If you simply work on, without protest, then by default you are agreeing to the change. The longer you work to the new contract without complaint then the less likelihood there is that a claim for breach of contract will succeed.
- **by dismissal and re-engagement:** Your employer could dismiss you and then offer to re-engage you on the new terms. Clearly you could say no in which case you might be at risk of being out of a job. However, the very act of dismissal must be undertaken for a fair reason, using a fair process and with proper notice. Otherwise, you would be able to claim unfair dismissal even if you accepted the offer of re-engagement.

If there is any likelihood that your contract will be varied, it is good practice for the employer to consult fully with the NEU and yourself. Indeed, the employer should offer something in consideration for the change they are seeking. Sometimes this may simply be the promise of continued employment, but it could be an incentive to agree the change (eg, small one-off lump sum payment). As such, it is advisable not to agree to any change without first consulting the NEU.

What is breach of contract?

If your employer simply imposes a change without your consent, this will be a breach of contract. You can continue working under protest, and, if you suffer any financial loss as a result, you can take legal action, either at the county court or other civil court. If your employment is terminated, you can claim breach of contract at an employment tribunal (as well perhaps as making a claim for unfair dismissal). In all breach of contract cases, it is very important to make your objections known at an early stage. If your contract is breached in a fundamental way (normally a serious breach where the employer no longer feels bound by the original contract) you may feel it necessary to resign. You are then entitled to claim unfair “constructive” dismissal at an employment tribunal. This is a risky strategy as constructive dismissal is a difficult claim to win. Indeed, even if the dismissal was deemed “constructive,” it still has to be unfair for you to be successful. You will also be expected to mitigate your losses otherwise any damages for the breach or award for the dismissal will be reduced.

In need of help and support?

If you need any advice or help on what your contract says, what the law says, or on how to deal with a problem arising from the terms of your contract, please contact your workplace NEU rep or [contact your local NEU branch](#) or call the NEU AdviceLine at 0345 811 8111 (Monday to Friday, 9am to 7pm) or advice@neu.org.uk

If there is a specific issue not covered in this or other advice sheets which you would like the NEU to look at, or if you simply want to let the union know about something from a leadership perspective as an NEU Leadership member, then please contact the NEU’s National Official (Leadership) on steve.cooper@neu.org.uk