

## **INFORMATION REQUIRED TO DRAFT A CONTRACT OF EMPLOYMENT OR S1 STATEMENT OF BASIC TERMS**

### **Parties**

- Names and addresses of the employer and the employee.

### **Commencement of employment**

- Date when the employment began, or is to begin.
- Date on which the employee's period of continuous employment began or will begin (if different from above). Does any employment with a previous employer (or the same employer after a break) count towards the employee's continuous service for statutory purposes?
- If the employment is for a fixed term or is temporary, when does the fixed term or the temporary period expire? Is there any procedure for a renewal of the employment?
- Should the employee be subject to a probationary period and, if so, for how long? Does the employer wish to have the right to extend the probationary period?

### **Job Title**

- The employee's job title and a brief job description (if appropriate).
- Who should the employee report to?
- Can the job be performed jointly with other individuals?

### **Place of Work**

- Where is the employee to be employed? Will the employee spend any time working from home?
- Will the employee be required to work at different locations?
- Will the employee be required to live at a particular place in order to carry out the job?
- Will the employer need to be able to change the location of the employee's workplace and, if so, what is the relevant geographical area for such relocation?
- Is the employee required to work abroad for a period of more than one month? If so, in which currency will the employee be paid? Will the employee receive additional pay (for example, a living allowance or bonus)? What terms and conditions apply to the employee's return to the UK?

## **Salary**

- How much is the employee paid? Is this payable weekly, monthly or over some other period? Is it payable in advance or arrears? At what point in each period will it be paid?
- Will the salary be reviewable and, if so, how often and by whom? Does the employer want to identify any factors which might be taken into account in deciding whether to award a pay rise (for example, based on individual performance)?
- Does the employer operate a grade system which will entitle the employee to an automatic salary increase on attending a higher grade?
- What deductions, if any might the employer wish to be able to make from the salary (for example, overpayments, loan repayments)?

## **Hours of work and office rules**

- What are the employee's normal hours of work (if any)?
- Will the employee have to work any overtime? What rate of pay, if any, is paid for overtime? Or will the employee be entitled to take time off in lieu of any overtime worked?
- Will the employee be working full-time or part-time?
- Does the employer operate a shift system and will the employee be required to work shifts?
- Is the employee likely to work more than an average of 48 hours each week over a 17-week reference period? If so, consider a separate opt-out agreement.
- Is there an office manual or staff handbook or other rules and procedures?

## **Holidays**

- What is the employer's holiday year?
- Will employees be allowed to carry non-statutory holiday into the next holiday year or will holiday which has not been taken in a particular holiday year be forfeited?
- What rules apply with regard to taking holiday (for example, notice requirements and number of days that can be taken at one time)?
- Will holiday entitlement increase with years of service?
- Will the employee be entitled to take holiday during a probationary period? (Holiday will continue to accrue in any event).

- Does the employer wish to reserve the right to require the employee to take any outstanding holiday during any period of notice given to terminate the employment (including any garden leave period)?
- Will the employee be required to work public holidays? If not, will public holidays be included within the employee's annual entitlement or be additional day's holiday?
- Does the employer have any annual shut-down periods (eg Christmas to New Year)? Will the employee be required to take holiday during these periods?

### **Sickness absence**

- If the employer operates a sick pay scheme consider:
  - If there should be a waiting period before the employee is eligible (for example, after completion of the probationary period);
  - If there will be a contractual amount of sick pay (for example, full pay or half pay) or whether sick pay will be solely at the employer's discretion?
  - Does the employer wish to reserve the right to require the employee to undergo a medical examination by a doctor at the employer's choice?

### **Termination and notice period**

- Are notice periods to be longer than the employer is obliged to give under section 86 of ERA 1996 (the statutory minimum)?
- If there are restrictive covenants, does the employer wish to have the right to terminate the employment by payment in lieu of notice.
- Identify grounds upon which the employment can be terminated summarily.

### **Disciplinary and grievance procedures**

Does the employer have any disciplinary and grievance procedures. If so, where can they be found?

### **Pensions**

- What is the name of the occupational pension scheme (if any) and where can the employee obtain details of it?
- Will the employer be contributing to the employee's personal pension plan?
- Is there a contracting-out certificate in force in respect of pensions?

### **Collective agreement**

- Are there any collective agreements in force? If so, who are the parties to such agreements and where are copies kept?

### **Normal retirement age**

- Is there a normal retirement age in relation to the employee?

### **Confidential information**

- Does the employee have specific types of confidential information which it would wish to protect after the employee's employment has been terminated?

### **Company property**

- Will the employee have any company property (for example, car, phone, computer, pass, credit card) which should be returned on termination of employment?

### **Director**

- Will the employee be a director of the company? If so, include details of the additional duties to which the employee will be subject.

### **Benefits**

- Will the employee be entitled to receive a bonus? If so, how will the bonus entitlement be calculated (for example, by reference to individual performance or company performance or a mix of both)?
- Will the employee have a company car? If so, the following issues should be considered;
  - Does the employer have its own fleet of cars or does it lease cars for employees from a leasing company?
  - Who should be permitted to drive the car?
  - What level of insurance cover is to be provided (comprehensive or third party only or a combination of both dependent on who is driving)?
  - Is the ability to drive an essential part of the employee's job?
  - Which costs are to be covered by the employer (for example, insurance, maintenance and repair) and which by the employee (for example, petrol for personal journeys and traffic offences)?
  - Is there to be a cash alternative on offer?
- Will the employee be entitled to receive any insurance (for example, private medical insurance, permanent health insurance or life insurance) and, if so, what are the relevant schemes?

### **Intellectual property**

- Is the employee in a creative role and will the employer require an assignment of copyright and intellectual property in relation to work created during the course of the employment?

### **Data protection and monitoring**

- Does the employer need to have the right to process the employee's personal data?
- Does the employer need to have the right to monitor the employee's use of the telephone or email?

### **Garden leave**

- Does the employer wish to reserve the right not to provide the employee with any work and/or exclude the employee from the premises (that is, garden leave) during any notice period?
- Should the employee be entitled to participate in any bonus or commission arrangements while on garden leave?

### **Restrictive covenants**

- Is the employee sufficiently important to the employer's business to mean that the employer wishes to restrict his activities after termination of the employment?
- If so, consider what types of post-termination restrictions would be appropriate:
  - Non-competition clause
    - What is the nature of the employer's business in which the employee has been involved?
    - Which geographical area has the employee operated in?
    - What period of restraint would be necessary in order to protect the employer's legitimate business interest?
  - Non-solicitation and non-dealing clauses
    - Will the employee be materially involved with employees of the business whose departure would materially affect the employer? If so, what period of restraint would be necessary in order to protect the employer's legitimate business interests?
    - Will the employee be materially involved with customers or clients of the business? If so, consider the nature of the goods and/or services supplied and the relevant period of restraint.
    - Will the employee be materially involved in negotiations with prospective customers or clients of the business? If so, consider a restriction on solicitation and dealing the prospective customers or clients of the business.