Terms & Conditions/Contract of Employment

General Guidelines for Drawing up Staff Contracts.

There is no legal obligation to provide an employee with a contract of employment - however under the Terms of Employment (Information) Acts 1994 and 2001, you do have an obligation to provide employees with terms and conditions of employment.

The difference between the two is:
Contract of employment: anything which is in that contract cannot be changed without full agreement between employer and employee.
Terms of employment: it is at the discretion of the employer to make changes to the terms; however the employee must be notified.

The information contained in the next two sections is not a legal interpretation, anyone seeking further information, support or clarification should seek legal advice.

The Terms of Employment (Information) Acts 1994 and 2001 provide that an employer is obliged to provide an employee with a written statement of terms of employment within the first two months of the commencement of employment.

The statement of terms must include the following information:

- The full name of employer and employee
- The address of the employer
- The place of work
• The title of job or nature of work
• The date the employment started
• If the contract is temporary, the expected duration of the contract
• If the contract of employment is for a fixed term, the details
• The rate of pay or method of calculation of pay
• The pay reference period for the purposes of the National Minimum Wage Act, 2000
• Pay intervals
• Hours of work
• Details of paid leave
• Sick pay and pension (if any)
• Period of notice to be given by employer or employee
• Details of any collective agreements that may affect the employee’s terms of employment

(www.citizensinformation.ie)

What must be included in a contract?

A contract must include:

▪ What type of contract it is - is it for a particular period of time? Is it depending on the continuation of funding?
▪ Is there a probationary period? How long? This is your decision as the employer.
▪ What the salary is? What is the rate of pay?
▪ How often will they be paid?
▪ Are you able to offer increments? If so this should be stated. Also what the percentage increase is and how often it’s paid.
▪ What the procedure for Garda clearance and vetting is?

Usually when a contract is issued it will also include terms and conditions of employment (as mentioned above).
Please note the following:

- All employees are entitled to receive a pay slip which is a written statement of their wages under the Payment of Wages Act 1991.
- By law, the only deductions that an employer is permitted to deduct from wages is PAYE and PRSI.
- All other deductions such as pension, trade union subscription, sick pay etc are at the discretion of the employer and this should be clearly stated in the contract.
- As an employer, you are not legally obliged to contribute to a pension scheme; however you are legally obliged to inform the employee of pension schemes should they wish to contribute themselves. You are also obliged to facilitate this payment through the wages etc.
- As an employer you are not obliged to pay sick leave however, it may be good practice to allow for a number of certified days.
- If the employee may have to work overtime - evenings, weekends etc this requirement must be clearly stated.
- If an employer fails to give written details of the terms of employment/contract, an employee can bring a complaint to a Rights Commissioner using the Rights Commissioner complaint form. The employee must make the complaint while in employment or within 6 months of leaving employment.
Explanation of Sample Staff Contract.

Please refer to the sample contract of employment Appendix 13 for reference: the points listed below refer directly to the sample contract:

1. Type of contract - maybe pending funding.

2. 6 months is usually the norm for probationary periods. An extension of a further three months is acceptable after that. The Unfair Dismissals Acts will not apply to the dismissal of an employee during a period at the beginning of employment when he/she is on probation or undergoing training provided that:
   a. the contract of employment is in writing
   b. the duration of probation or training is one year or less and is specified in the contract

3. Salary - rate of pay, method of payment. Etc Remember all employees are entitled to receive a pay slip.

4. Duties

5. a. Hours of work - daily and weekly working hours. Breaks and rest periods should also be outlined here. Please note: Under the Organisation of Working Time Act 1997 For many employees the maximum average working week cannot exceed 48 hours. This does not mean that a working week can never exceed 48 hours; it is the average that is important. The calculation of 48 hours does not include breaks, annual leave, sick leave or maternity/adoptive/parental leave. The legislation also lays down minimum breaks and rest periods, as well as special provisions in relation to Sunday working.
   (www.citizensinformation.ie )

   b. Time off in lieu: There is no legal requirement to pay overtime, however you may want to have certain provisions such as Time off in Lieu, or you may decide to pay them - this is at your discretion. If an employee occasionally
must work evenings or weekends, this should be stated in the contract. A separate policy for travel allowance, budget for training, TOIL etc should be included in the staff handbook, it doesn’t necessarily need to be included in the contract.

6. Location.

7. Annual Leave: If there is a requirement that annual leave be taken when the service is closed, this should be stated in the contract.

The entitlement for public holidays is set out in the Organisation of Working Time Act 1997. In Ireland there are 9 public holidays. These are:

- New Year’s Day (1 January)
- St. Patrick’s Day (17 March)
- Easter Monday
- First Monday in May, June, August
- Last Monday in October
- Christmas Day (25 December)
- St. Stephen’s Day (26 December)

Good Friday is **not a public holiday.** While some schools and businesses close on that day, you have no automatic entitlement to time off work on that day. It is at your discretion whether you include this as a day off. However you must state this. ([www.citizrnsinformation.ie](http://www.citizrnsinformation.ie))

8. Sick Leave – No legal obligation to pay sick leave. *In general an employee has no right under employment law in Ireland to be paid while on sick leave. Consequently, it is at the discretion of the employer to decide his/her own policy on sick pay and sick leave, subject to the employee’s contract or terms of employment. However there is a legal obligation to make reference to your policy/terms and conditions in the terms of employment/contract issued. If the employee has no entitlement in your terms and conditions of employment*
to be paid during sick leave, they may apply for Illness Benefit if they have enough social insurance contributions. If they do not have enough social insurance contributions, they should contact the Community Welfare Officer of your Local Health Office who will assess the situation.

If the employee is entitled to sick pay, the employer will probably require them to sign over any Illness Benefit payment from the Department of Social and Family Affairs to the employer for as long as the sick pay continues.

Often, a contract of employment will place a **maximum period** of sick pay entitlement in a stated period, for example, one month's sick pay in any 12-month period. Clear rules should be put in place by the employer where an employee is sick and is unavailable for work. For example, it should be clear that if you are sick and unavailable for work, you must contact a specified person by a certain time. If you are out sick for more than three consecutive dates you are usually required to provide your employer with a medical certificate (from your GP or family doctor). The medical certificate should state the nature of your illness and the date you are likely to return to work. If you are likely to be out sick for a longer period, your employer may require you provide weekly medical certificates. (www.citizensinformation.ie)

10. **Grievance Procedures.** The Labour Relations Commission has published the Code of Practice: Grievance and Disciplinary Procedures which states that employers should have written grievance and disciplinary procedures and they should give employees copies of these at the start of their employment. Under the UnfairDismissals Acts 1977-2001 employers are required to give the employee in written notice of the procedures to be followed before an employee is dismissed. This must be
done within 28 days of entering the contract of employment. ([www.citizensinformation.ie](http://www.citizensinformation.ie))


12. Dismissal Procedures. When dismissal is being considered your employer is expected to have disciplinary procedures in place and to follow them. Disciplinary procedures set out the stages and process the employer will follow in relation to alleged shortcomings of an employee. Generally, the procedure allows for informal warnings leading to written warnings and ultimately to dismissal. The Labour Relations Commission has published a Code of Practice on grievance and disciplinary procedures. ([www.citizensinformation.ie](http://www.citizensinformation.ie))

13. Voluntary Notice - There is a legal statutory requirement of one week's notice of an employee wishing to leave the job. However, it could be longer than that. You should consider realistically how long it would take to fill a position when deciding how much notice is required. The principal legislation governing this area employment law in Ireland is the Minimum Notice and Terms of Employment Act 1973.


15. Variation. - This refers to any changes that may be made to the contract and how these changes will be made.