



Flynn O'Driscoll Legal Update

Employing Staff?

How Watertight Contracts Can Save Time And Money

Introduction

More and more SMEs are hiring staff but there are potentially high costs to an employer if they get it wrong, here's how to ensure your new hire is the right fit for your organisation.

Terms of Employment

A well drafted contract ensures that employees are aware of their duties and responsibilities and will protect employers from preventable claims.

An employee handbook (containing information about company policies and procedures) should provide a road map for dealing with issues which may arise including matters such as grievance and disciplinary issues, sick pay and leave entitlements. Appropriate policies, when adhered to, prevent grey areas and will bolster an employer's position in the face of an employment law claim.

- Employers have a legislative requirement to issue employees with a statement of their main terms and

conditions within two months of the employee's start date.

- An employee may bring a complaint to a Rights Commissioner, during their employment or within six months of leaving if the employer fails to do so.
- An employee may be awarded up to 4 weeks pay if their claim is upheld.

Probation

- Any good contract of employment should always include a probationary period allowing the employer time, usually six months, to assess the suitability of a new employee. It should also include a short notice period and note that dismissals during this period is at the discretion of the employer.
- At the end of this period, the employee must be informed as to whether their appointment will be made permanent.



- Employees without twelve months continuous service cannot rely on the unfair dismissals legislation, if dismissed, but may succeed with a wrongful dismissal claim via the courts.
- The benefit therefore of a probation period, is that it allows an employee's employment to be terminated without the employer engaging in a disciplinary procedure, as it would otherwise be required to, and it limits the chances of a successful wrongful dismissal claim via the courts.
- The employer must still follow any rules it has set down in relation to its probation policy to avail of the above protection.
- The rules surrounding how the probationary periods work should be contained in the contract.
 - Employers should structure the probationary period to ensure that:
- The employee is made aware from the outset how the employer will monitor the employee's performance during the period.
 - Employers should do this at bi-monthly intervals.
- Clear feedback should be given to the employee on their progress and whether or not they are meeting the employer's expectations. An employee may not appreciate that informal feedback is intended to let them know that they are not meeting expectations.
- A record should be kept of all feedback given to the employee. The outcome, including any extension of the probationary period and any steps required of the employee going forward, should be confirmed in writing.
- They are conscious of when the probation period will end so as to reduce the chance of an employee successfully completing their probation simply because the end of the probationary period passes without being noticed.

Extending a probationary period

Where considered necessary and only if the employer has a contractual right to extend, the employer can notify the employee, before the original period expires, that their probation is being extended.

Notification should include the following:

- The reasons why the employer is unable to confirm permanent employment.
- Setting identifiable goals the employee needs to achieve.
- The date on which the employee's probation will now end.

It is important to note that probationary periods when extended should never exceed 12 months, any applicable notice period should be included in the calculation of this 12 months. After such time the employee will automatically gain rights under the unfair dismissals legislation.

Should you have any queries arising out of the foregoing please contact Claire McDermott or any member of our team, who will be happy to assist.



Claire McDermott

Associate

E: clairemcdermott@fod.ie

P: 01 6424259

Dublin:

1 Grants Row, Lower Mount Street,
Dublin 2, Ireland

Phone: +353 1 6424220

Fax: +353 1 6618918

Galway:

Unit 23, Galway Technology Centre,
Mervue Business Park, Galway, Ireland

Phone: +353 91 396540

Fax: +353 91 792649