



## **Self help guide**

# **Preparing a Statement of Main Terms and Conditions of Employment**

September 2009

**This guide should be read in conjunction with the Sample Statement of Main Terms and Conditions of Employment.**

# **Self help guide - Preparing a written statement**

This guide gives general advice about preparing a written statement of particulars of employment and is to be read in conjunction with the Sample Written Statement of Main Terms and Conditions of Employment. The information given in this guide is not an authoritative interpretation of the law. Such an interpretation can be given only by the employment tribunals and by the courts.

## **What is a contract of employment?**

It is a legally binding agreement between employer and employee which is formed when an employee agrees to work for an employer in return for pay. It may be made orally, but should be in writing to avoid dispute. You are legally required to put some of the main particulars of employment in writing.

## **What is a written statement?**

It is a summary in writing of an employee's main particulars of employment. It is not itself a contract of employment but is evidence of the contract of employment.

## **Why produce a written statement?**

Because the law requires you to give written statements to all employees who have been in your employment for at least one month. It helps to avoid misunderstanding and disputes about employees' particulars of employment. Written statements should be given to all employees.

## **Who is not entitled to a written statement?**

Anyone who is not an employee, for example, an independent contractor or freelance agent, certain mariners and employees who ordinarily work outside Great Britain.

## **When should it be given?**

You are required by law to give employees their written statements within two months of the start of their employment - ideally on their first day. You may provide the written statement in the form of a letter of engagement and/or a written contract before the employee begins work. Go through the statement with employees to clarify any points and to answer any queries they may have about their employment.

## Keep it simple

Write straightforward English and don't use jargon or legalistic language. This leaflet gives you further general guidance on how to draw up a written statement.

## Tailor it to your own needs

The sample of a written statement given in conjunction with this guide is only an example which should be adapted to suit your own organisation. Refer employees to other documents where permitted. The law allows you to refer employees to other documents for information on: sickness provisions, pensions, notice periods (but only collective agreements or legislation) and certain disciplinary/grievance matters. All other information on the employment particulars must be included in the written statement and, in practice, it is usually better in a smaller company to put all information in one document.

## Seek advice

This guide should enable you to draft a written statement. The Labour Relations Agency offers assistance in producing and reviewing employment documents and you are strongly advised to forward your draft document for review.

Before implementing your finalised written statement you should consult directly with employees and their representatives.

If you would like to have your document reviewed you can email, fax, or post your documents to the Agency.

✉ [alan.wilson@lra.org.uk](mailto:alan.wilson@lra.org.uk)

☎ For the attention of Advisory Services 028 9033 7424

📄 Labour Relations Agency, 2-8 Gordon Street, Belfast, BT1 2LG.

The Agency also runs Advisory Workshops to assist employers in drawing up the written statement of the main terms and conditions of employment.

Workshops are held on the Agency premises in either Belfast or Londonderry on specified dates. There is no charge for attendance at these workshops. For more details on workshops and to book online visit the Agency's website at [www.lra.org.uk](http://www.lra.org.uk) or contact us at the telephone number above.

If there is no provision for any of the items listed in the Statement this must be made clear. For instance, in item 7 on Pay, if there is no overtime rate payable, then the written statement should clearly say so.

## Statutory requirements

Some terms and conditions of employment are subject to statutory requirements, e.g. rates of pay, working hours and holidays, notice of termination of employment and disciplinary and grievance procedures.

For more information see:

### **The National Minimum Wage at**

<http://www.nibusinessinfo.co.uk/bdotg/action/layer?site=191&topicId=1081657912>

**Guide to the Working Time Regulations** (which contains information on hours, rest periods and holidays) at

<http://www.nibusinessinfo.co.uk/bdotg/action/layer?site=191&topicId=1074014258>

**Written statement of employment particulars (ER 2)** at

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er2.htm>

**Rights to notice and reasons for dismissal (ER 15)** at

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er15.htm>

**Resolving disputes at work – key information for employers** at

<http://www.delni.gov.uk/resolving-disputes-at-work-key-information-for-employers>

**Resolving disputes at work – a guide for employees** at

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/other-employment-rights-publications/resolving-disputes-at-work-a-guide-for-employees.htm>

**Information on Statutory Sick Pay** at

<http://www.hmrc.gov.uk/employers/ssp-faq.htm>

**Information on Pensions** at <http://www.hmrc.gov.uk/stakepension> and

<http://www.thepensionsservice.gov.uk/pdf/pm/pm7jan08.pdf>

Further information can be obtained from the Labour Relations Agency Helpline on 028 9032 1442.

## Guidance notes

### Date of issue.

The Statement must be issued within 2 months of the employee's date of starting employment. When there has been a change of employer a new and full written statement must normally be issued to the employee within 2 months of that change.

If only the name changes without any change in the employer's identity, or if the identity changes in circumstances where the employee's continuity of employment is preserved (see below), then provided that there is no other change in terms and conditions a new statement is not required. The employees must however be given individual written notification of the change at the earliest opportunity, and in any event within one month of when it occurs.

Insert date of issue.

### 1. Name and address of Employer and Employee.

Insert name and address of the employer and the employee.

### 2. Date of Commencement of Employment

Insert date that the employee started with the employer as named in 1 above.

### 3. Continuity of Employment

A number of statutory employment rights depend upon the employee having a certain period of 'continuous employment'. A period of employment counts towards the employee's continuous service only if it is unbroken. Work with a previous employer may sometimes count towards the employee's continuous service. This will usually be the case where there has been a merger or takeover of your old company. The rules on this are not simple and if in doubt you should seek advice from the Agency or a solicitor.

State if previous employment with the current or any other employer **does not count** as part of the period of continuous employment.

If previous employment with any other employer **does count** as part of the period of continuous employment the name of the previous employer and the date the employee started with that employer should be stated.

#### 4. Period of employment

A **permanent contract** is one with no defined termination date and is ended by notice or retirement.

A **temporary contract** is offered for a period of continuous employment which has a limited duration, e.g. for maternity or sickness cover, to replace employees on training etc. In these cases employees should be aware that the employment is temporary and the estimated duration.

A **fixed-term contract** is a contract that is for

- a fixed period of time and ends when a specific date is reached, or
- is for the purposes of fulfilling a specific task and ends when the task has been completed, or
- where the contract is for a specific event, ends when that event does or does not happen.

State what type of contract the employee is employed under.

If it is **temporary**, state the period of likely duration.

If it is for a **fixed term**, state what date it expires on.

#### 5. Job Title (or a brief Job Description)

The law requires you to include a brief description of the work involved or a job title. It is important that the employee understands the range of duties to be undertaken.

Insert the Job Title or a brief description of the work involved

#### 6. Place of Work.

You should state the precise location of the job. You should also outline clearly whether the employee is required to work at more than one location in an area, or anywhere in the UK, or in posts overseas if appropriate.

State either the place of work or, if the employee is required or allowed to work in more than one location, an indication of this and the employer's address.

## 7. Pay

Provide employees with clear, comprehensive information about their pay and other benefits. If it is appropriate to your organisation, you should include the following information in the written statement:

- details of bonus schemes
- overtime rates and when they apply (See Section 9 below)
- deductions from pay
- methods of payment
- standby arrangements and payments.

It is also useful to give details of any other benefits you provide such as:

- allowances for clothing or travel
- company cars/vehicles.

State the basic rate of pay per hour/per week/per month/per annum and the intervals of payment,

[You cannot pay below the National Minimum Wage rate. For more details see <http://www.nibusinessinfo.co.uk/bdotg/action/layer?site=191&topicId=1081657912>

**You should also note that the National Minimum Wage Guide for Employers states that**

**“Deductions which you make to cover the cost of an item or expenses, for example uniforms, transport or meals, do not count towards minimum wage pay. If you make deductions for these things then your workers’ pay after the deductions must still be at least the minimum wage”. <http://www.berr.gov.uk/files/file48127.pdf>**

**This is very important if your employees are paid on or close to the National Minimum Wage.**

**If you want any further advice on this matter then you should contact the Pay and Work Rights Helpline on 0800 917 2368**

In the case of a weekly paid employee, state the day that the pay week ends and when he/she will be paid for that week of work.

State the method of payment – cash or cheque or credit transfer

## 8. Hours of Work

Any terms and conditions relating to normal working hours should be included. Describe any arrangements for flexibility in hours of work. Where appropriate outline arrangements for shift working or flexitime. Outline any special arrangements for part-time workers. State whether overtime is voluntary or compulsory (See 9. Below)

### The maximum average working week

- an employer is required to take all reasonable steps to ensure that workers do not work more than an average of 48 hours a week over a 17-week period. However, individual workers may choose to agree to work more than the 48-hour average weekly limit. If they do so, the agreement must be in writing and must allow the worker to bring the agreement to an end (**See example opt-out agreement below**) For employees under 18 the maximum working week is 40 hours. These hours may not be averaged out and there is no opt-out available.
- a worker is also entitled to
  - a rest period of 11 consecutive hours between each working day; (Young employees, aged 16 and 17, must have 12 hours' rest between each working day)
  - an uninterrupted rest period of not less than 24 hours in each seven-day period (Young employees, aged 16 and 17, must have two days off every week, normally two consecutive days) and to
  - an uninterrupted break of 20 minutes when daily working time is more than six hours. (Young employees, aged 16 and 17, should take at least 30 minute break if they work more than four and a half hours).

**Night Work**: Employers are required to take all reasonable steps to ensure that the 'normal' hours of their night workers do not exceed an average of eight hours for each 24 hours over a 17-week period. The average period may be extended in certain circumstances.

(In general, employees under 18 are not permitted to work at night).

**It is important that you read guidance material on Working Time Regulations at <http://www.nibusinessinfo.co.uk/bdotg/action/layer?site=191&topicId=1081657912>**

You should check whether employees wish to work more than 48 hours per week and ask them to complete an opt-out agreement. See example below:

### **Example of opt-out agreement**

*"I (name) agree that I may work for more than an average of 48 hours a week.*

*If I change my mind, I will give my employer (amount of time – up to three months) notice in writing to end this agreement".*

*Signed.....*

*Dated.....*

### **The rules about working on Sunday**

The rules about Sunday working depends on what is in the contract of employment for most employees, but special rules apply to shop and betting employees.

The Shops (Sunday Trading & c.) (NI) Order 1997 gives all shop workers in Northern Ireland (except those employed to work only on Sunday) the following rights:-

- the right not to be dismissed for refusing to work on Sunday;
- the right not to be selected for redundancy for refusing to work on Sunday; and
- the right not to suffer any other detriment for refusing to work on Sunday e.g. exclusion from a general pay rise or bonus and discrimination in promotion or training opportunities.

For further information see - <http://www.delni.gov.uk/index/publications/pubs-employment-rights/erpublications/the-shops-sunday-trading-and-c-ni-order-1997.htm>

In section 8 insert the number of working hours. Where appropriate, state the actual hours and days of work. You should also state the breaks and whether these are paid or unpaid.

### **9. Overtime/Additional Hours**

If you expect employees to work **overtime/additional hours**, you should state this clearly, together with:

- whether overtime is compulsory or voluntary
- rates of overtime pay
- whether time off in lieu is given
- when overtime pay is payable
- any notice arrangements for overtime working

In this section you have to make a distinction between overtime which is **voluntary** and that which is a **condition of employment**.

Overtime rates are for you to agree with your employees. There are no minimum statutory levels but rates may be fixed by an industry-wide agreement.

You should insert the overtime rate, where appropriate, or whether time off in lieu with pay is given instead of overtime payment.

## **10. Holiday Entitlement**

### **Annual Days**

Under the Working Time Regulations 1998 a worker is entitled to at least 5.6 weeks' paid leave each year. If you wish to offer the employee longer holidays than the minimum entitlement, then it is a matter for negotiation between you and the employee or employee representatives. The law requires particulars of **all** terms and conditions relating to holiday entitlement, including public holidays and holiday pay to be included in the written statement. The particulars should be sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on termination, to be precisely calculated.

For example, if appropriate, the statement should include particulars relating to:

- how holiday pay is calculated, i.e. does it include commission, shift allowances, overtime pay?
- how holiday pay is accrued (including for part-timers). (Part-time employees are entitled to the same holidays as full-time employees but this is calculated on a pro rata basis).

It is also useful to include information on:

- restrictions on when holidays may be taken
- methods of resolving disputes about when holidays may be taken
- details of annual shutdowns
- carrying forward holidays not taken into the next holiday year.

### **The leave year**

You may decide when your business' leave year starts. In the absence of written leave arrangements a leave year will start on the date an employee's employment begins, if the employee started work after 23 November 1998.

Employees whose leave year is tied to your business' leave year and who start working for you part-way through that year are entitled to paid leave proportionate to the rest of that leave year.

The whole of an employee's statutory leave entitlement exists from the beginning of each leave year - but in the first year of their employment you may restrict your employees to accruing leave monthly at the rate of one twelfth of the annual entitlement.

Insert the leave year. This can be your organisation's normal leave year or the date the employee's employment began. (See Section 2 above).

Insert the number of hours or days or weeks leave that the employee is entitled to during the leave year.

### **Customary Days**

Generally, customary days include bank holidays, holidays by Royal Proclamation and 'common law holidays'. When customary days in the Christmas and New Year period fall on Saturdays and Sundays, alternative week days are generally declared public holidays.

#### **There is no statutory entitlement to paid leave for customary days.**

Paid time off does not legally have to be given for customary days, and if it is it can be included in your employees' **minimum leave** entitlement of 5.6 weeks per annum.

Any right to paid time off for such holidays depends on the terms of the employee's written statement. If customary days are not expressly covered in the written statement, the right to paid leave may have built up through custom and practice.

Part-time employees have the same entitlement to leave as full-time employees, so if full-time employees are given paid leave for customary days, part-time employees should also be granted payment on a pro rata basis. **(See Part time work: the law and best practice - A detailed guide for employers and employees at**

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/other-employment-rights-publications/part-time-work-the-law-and-best-practice.htm>

If you **do not** recognise any customary days you should state this.

If you **do** recognise customary days and they are **in addition** to annual leave or **part of** the annual leave you should state this and insert the customary days that you recognise. You must also state whether the customary days sit separately from annual leave i.e. they are not counted for calculation of holidays or holiday pay on termination of employment.

If they are **part of** the annual leave entitlement you should state this and insert the customary days that you recognise.

If there is a requirement to work on some of these customary days then this should be stated. You should also state what compensation is made for this i.e. a day off in lieu on an agreed date or payment at the basic or enhanced rate.

## **On termination of your employment**

When your employee leaves - even if you have dismissed them without notice for gross misconduct - they must receive pay for any holiday they are entitled to in the current leave year but have not taken.

This entitlement is not subject to a minimum period of employment.

## **11. Annual Holiday arrangements**

### **Restrictions and notice**

Employees must give notice that they wish to take leave. You can agree the notice period with your employees and should set this out in writing. If there is no agreement, they must give notice of at least twice the length of intended leave. You must reply within the same length of time as the intended leave, e.g. the employee gives two days' notice for one day's leave and you must reply within one day. Even if sufficient notice is given, you may still refuse the request but be as reasonable as you can.

You may **restrict the taking of leave**. Restrictions will usually be stated in employment contracts, built up from custom and practice, or negotiated with a trade union or employee representatives. Examples include:

- shutting down for certain periods, e.g. Christmas/New Year
- specifying periods when leave may or may not be taken
- capping the amount of leave that can be taken at any one time
- If you don't have an agreement for taking leave and you want employees to take all or part of their leave entitlement on certain dates, you must give notice of at least twice as long as the leave period.

Employees can refer to the business' **grievance procedures** to resolve disputes over the time when they are allowed to take their paid annual leave. **See Self Help Guide - Producing a Grievance Procedure.**

If a employee is prevented from taking their full holiday entitlement in a leave year, they can complain to an industrial tribunal.

You should include a section on any rules relating to booking/taking of holidays. These should cover wording which reflects the notice requirements provided in the Working Time Regulations or any agreed variation of them.

**See the wording in Sample Statement**

## 12. Holiday Pay

The rate of holiday pay is generally the normal rate for the employee. So for those employees who are paid monthly, their annual salary is divided into 12 equal payments and when they take holiday it has no effect on their pay slip for that month.

You only have to work out a special payment where your employees have varying pay rates, such as **piece work**. In those cases, the holiday pay will be equal to the average rate over the 12 weeks before the holiday.

For each week of their statutory leave entitlement workers are entitled to be paid a normal week's pay calculated in accordance with Part I, Chapter IV of the Employment Rights (Northern Ireland) Order 1996.

An interactive tool to enable employers to calculate annual holiday entitlements is available on businesslink at

<http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1079427399>

**See the wording in Sample Statement**

## 13. Sickness absence

You need to let employees know what to do if they are sick or are absent for other reasons. Tell employees what they should do if they are unable to come to work, such as who they should inform the method of informing and by what time they should contact their workplace. There is no legal obligation to pay full pay to an employee who is absent due to sickness.

You should however outline an employee's statutory rights to sick pay.

## See Self Help Guide - Producing an Absence Notification and Certification Procedure.

If your organisation offers more favourable conditions than the statutory scheme then describe these terms. Make clear whether leave is paid or unpaid.

[See the wording in Sample Statement](#)

### 14. Pension Scheme

You must tell the employee **whether or not** there is a pension scheme

Employers with five or more employees who do not operate a pension scheme are required to provide access to a stakeholder pension scheme. They must:

- name a stakeholder provider
- provide information to employees
- offer a pay roll deduction facility for employee contributions
- enable staff to join the scheme within three months of starting their job.

Firms and individuals (such as trustees) are liable to fines for non-compliance. See <http://www.hmrc.gov.uk/stakepension>

Where there is a scheme, the rules and regulations are usually too complex to be contained in full in written statements and the law allows you to refer the employee to another document, such as a leaflet or a company handbook, for comprehensive information on your pension scheme.

Contracting out is the term used when an employee leaves (contracts out of) the State Second Pension. An employee can do this if they join a contracted-out occupational pension scheme a personal pension or a stakeholder pension scheme.

If the employee decides to contract out, they will lose some or all of their entitlement to the State Second Pension. In general they only lose this for the time they are contracted out. The decision to contract out will not affect their right to the basic State Pension. For more details on contracting out see <http://www.thepensionerservice.gov.uk/pdf/pm/pm7jan08.pdf>

[See the wording in Sample Statement](#)

### 15. Notice of Termination

You are required to give the employee details of the notice that you **will give** an employee if you are terminating their employment and the notice that **you require** from an employee who decides to leave your employment.

#### Statutory notice periods

An employee who has worked for you **continuously for one month or more** must be given notice of dismissal.

The **minimum legal notice period to be given by you** is:

- one week's notice if the employee has been employed by you continuously for one month or more, but for less than two years
- two weeks' notice if the employee has been employed by you continuously for two years, and
- one additional week's notice for each further complete year of continuous employment, up to a maximum of 12 weeks

An employee who has worked for you **continuously for one month or more** must give you at least one week's notice. **Note that the minimum notice period to be given by an employee does not increase with longer service.**

Unless a contract states otherwise, notice can be given on any day of the week. The notice period runs from the start of the day after the day on which notice was given. So if a week's notice is given on a Monday, the period of notice will begin on the Tuesday and expire at the end of the following Monday.

**See the wording in Sample Statement- this reflects the statutory provisions.**

### **Contractual notice periods**

You can include longer periods of notice in the employment contract e.g. you could require an employee to give more notice than the minimum of one week's notice.

**NOTE:** Under the Employment Equality (Age) Regulations (Northern Ireland) 2006, employers are now obliged to notify employees in writing of their right to request to work beyond normal retirement age.

### **16. Collective Agreements**

You must give details of any collective agreements with trade unions that directly affect the terms and conditions of employment. Where there are no details to be given you should say so.

**See the wording in Sample Statement**

### **17. Requirement to work outside the UK**

If the employee is required to work abroad for more than **a month** you must give details of any terms relating to employment such as:

- the period they will be employed abroad
- the currency in which they will be paid
- any additional pay or benefits provided because of employment abroad
- terms relating to their return to the UK

If you have an employee who is going to work abroad for more than a month within two months of starting work, you must give them their written statement before they leave.

Where they are not required to work outside the UK you should say so.

[See the wording in Sample Statement](#)

## 18. Individual Grievance Procedure

(See Self help guide - Preparing a grievance procedure)

## 19. Discipline and Dismissal Procedures

(See Self help guide - Preparing a disciplinary procedure)

## 20. Changes in Terms and Conditions

You must tell the employee in writing about any changes to the written statement no later than one month after you have made the change. **A change to the statement will still require the employee's consent.** For further details see the Agency's Advisory Guide - [Advice on agreeing and changing contracts of employment.](#)

[See the wording in Sample Statement](#)

## 21. Employees Signature

There is no legal requirement that an employee should sign his or her written statement. However, employees who are asked to sign the statement are probably more likely to have read and questioned its contents and there is less likelihood of future disputes over the terms of these particulars of employment. You can ask for acknowledgement of receipt, which just records that the employee received the document, or you can ask for confirmation that it is correct. You should not, however, put undue pressure on employees to accept what may be your view of the particulars and not theirs.

## Relevant Agreement

The Working Time Regulations state that where the employer deviates from the fallback position in that legislation with regard to the holiday year, notice in relation to taking holidays and compensation on termination of employment for overtaking annual leave, there should be an agreement in writing to this effect. This agreement should be attached to the written statement.

[See the wording in Sample Statement](#)