Offering and negotiating employment agreements

The type of employment agreement offered and negotiated in good faith depends on factors such as if the employee is a union member.

Deciding the type of employment

Before offering someone an employment agreement, the employer needs to decide what type of employee they will be, for example, if they’ll be employed on a permanent, fixed-term or intermittent basis. There are extra rules that you need to know if you want to employ someone on a fixed-term agreement (for a set period of time or until a certain event occurs). If the employee will be fixed term, or will only work when work is available and they choose to accept work offered, this must be specified in their individual employment agreement. If the employee will be covered by a collective employment agreement, it’s usually put in their offer letter or additional terms and conditions).

Types of employee has more information on employee types and fixed-term agreements.

Deciding the type of employment agreement

Collective employment agreement covers them - employee a union member

If there’s a collective employment agreement covering their work and the employee is a union member:

- the employee must be on the collective employment agreement while they’re a union member
- the employer and the employee can agree to additional individual terms and conditions as long as these additional terms comfortably sit alongside the collective agreement terms. For example, they could both agree to specific school holiday arrangements
- if the employee has a valid minimum wage exemption permit, they’ll be paid the rate in the permit as long as the union agrees.

If an employee on a collective employment agreement resigns from the union:

- the employee is employed on an individual employment agreement based on the collective agreement (and any additional terms and conditions they had agreed with their employer), and
- they can agree with their employer to vary their agreement, and
- they can’t be on another collective employment agreement until 60 days after the expiry date of the collective employment agreement they were on.

Exemptions has more information on how a minimum wage exemption is put in place.

Collective employment agreement covers their work - employee not a union member

If the employee isn’t a union member, they can’t be on the collective employment agreement (unless they join the union) and need to be on an individual employment agreement. When the employer offers the employee an individual employment agreement, they must:

- tell them that there is a collective agreement covering their work, and
- tell them that they can join the union, and
- tell them how to contact the union. If there is more than one collective agreement covering the work the employee does, then the collective agreement that binds more of the employer’s employees is the one the employer has to tell the employee about, and
- tell them that if the employee joins the union, the collective agreement will bind them, and
- give the employee a copy of the collective agreement, and
- if the employee agrees, promptly inform the union that the employee has been employed on an individual employment agreement.

If the employee decides to join the union at any stage, they automatically join the collective agreement (as long as they are doing work covered by the collective employment agreement).

No collective employment agreement covering them or employee not union member
If there is no collective employment agreement covering the work that the employee does, or the employee is not a union member, the employer and employee must negotiate the terms and conditions of an individual employment agreement.

**Offering an individual employment agreement**

All employees must be given a written copy of the intended employment agreement and the chance, and a reasonable amount of time, to get independent advice on:

- their individual employment agreement, and
- any variation to an individual employment agreement, and
- any additional terms and conditions (to a collective employment agreement)

before they agree to it and sign it. If employers don’t do this, they could receive a penalty.

**Negotiating an individual employment agreement**

Employers and employees can put as many terms as they like in the employment agreement, but there are some that an agreement must contain. An employment agreement can’t have terms which are not as good as the legal minimum even if the employer and employee have agreed on them (if these types of terms are put into an employment agreement, they cannot apply and will have no effect).

Just because an employer gives an employee an intended employment agreement, it does not mean that the employee has to accept it. An employee can choose to turn down the offer, or negotiate any terms they want to change and suggest any additional terms that they would like to be covered. Employers and employees must negotiate in good faith. When entering into an employment agreement, an employer must also inform the employee about the employee’s entitlements under the Holidays Act 2003, and that the employee can obtain further information about their entitlements from a union or by contacting us.

Some of the things which employers and employees should discuss and/or negotiate where relevant include:

- annual holidays – that the employee will get at least 4 weeks and what a week looks like for them
- whether the employee agrees to get annual holidays as Pay-as-you-go if they meet the criteria
- hours of work, including number of guaranteed hours, days of the week work is to be performed, start and finish times, and any flexibility within these
- availability and shift cancellation provisions (if applicable)
- trial period (if applicable)
- if fixed-term employment is being offered, the reason for and the duration of the fixed term
- pay- how much per hour, overtime, allowances, contractual bonuses, incentives and commissions, penal rates
- whether the employee will be required to work on public holidays
- customary closedown period - if there is one, and how it works

<table>
<thead>
<tr>
<th>Employers</th>
<th>Employees</th>
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<tbody>
<tr>
<td><strong>When offering a person an employment agreement you must:</strong></td>
<td><strong>Before you agree to an individual employment agreement (or variation, or additional terms):</strong></td>
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<tr>
<td>Negotiate an agreement in good faith. You can use our Employment Agreement Builder to create an individual agreement for your employee. You can also get advice, eg from an employment lawyer, employer or industry organisation to make sure that the proposed agreement suits your business requirements.</td>
<td>You can negotiate what the agreement will say with your employer, and they must negotiate with you in good faith.</td>
</tr>
<tr>
<td>Give the person a copy of the proposed individual employment agreement.</td>
<td>If your employer gives you an intended employment agreement, you can ask your employer to explain anything you don’t understand.</td>
</tr>
<tr>
<td>Advise the person that they can get independent advice about the proposed agreement.</td>
<td>You can take it away to read it carefully and have a think about it.</td>
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## Employers

**When offering a person an employment agreement you must:**

- Give the person a reasonable time to get independent advice. You can’t give the person independent advice.
- Consider any issues that the person raises and respond to them in good faith.
- Make sure your employment expectations are clear to your new employee and that you have negotiated the terms in the agreement fairly and in good faith.
- Once the employee has signed the letter of offer and/or the employment agreement as appropriate, give the employee a copy. You must keep your copy in a safe place.

## Employees

**Before you agree to an individual employment agreement (or variation, or additional terms):**

- You can ask someone you trust to help you do this. This could be a union representative, lawyer, careers advisor at school, parent, or someone who has been an employer or employee. Your employer can’t give you independent advice. Make sure you understand the proposed employment agreement before you agree to it.
- If you have any questions, or don’t want to agree to something in the agreement, you should talk about this with your employer before you sign the agreement.
- If you don’t agree with the employment agreement you should make this clear to your employer and should not start work until you have agreed your terms and conditions.
- Once you have signed the agreement, ask your employer for a copy, and keep it safe.

### Tools and Resources

**New employee questions - PDF 324KB**

Questions for employees to ask at job interview, or as part of negotiating the employment agreement, or when they start work

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