

Employment Law Dos & Don'ts

Breach of Contract

DO

- Do honour express contractual provisions. It is usually very difficult to avoid these, unless there is some sort of condition which hasn't been met which allows deviation.
- Do check your policies and procedures carefully before taking action. If they are contractual you must follow them closely in order to avoid breaching the contract.
- Do remind departing employees in writing of their contractual duties which survive termination, such as confidentiality and post termination restrictions.
- Do take specialist advice when preparing your employment contracts, especially for senior employees. Investing time, care and money at the start of the relationship can save you a lot of hassle later down the line if things take a turn for the worse.
- Do review restrictive covenants carefully on a case by case basis when issuing new contracts, and consider whether they need to be updated on a promotion.

DON'T

- Don't confuse unfair dismissal with wrongful dismissal. Wrongful dismissal is any dismissal in breach of contract and can apply to all employees, even those with less than two years' service.
- Don't forget that breaching an employee's contract releases them from their post termination restrictions. If these are important to you, don't take action without checking you have the express contractual right to do so (for example, dismissing without notice where there is no right to do so).
- Don't assume that because something is set out in the employment contract the employee is definitely bound by it. Contractual terms are subject to principles of fairness, reasonableness and all those other lovely legal constructs.
- Don't assume that because something is not set out in the employment contract that it isn't binding on either the employee or you as the employer. Entitlements can also become contractual by way of custom and practice.
- Don't get caught out by common HR practices which need to be contained in the employment contract in order for you to carry them out without being in breach. For example: pay in lieu of notice, garden leave and suspension.