

Employment Checks and Contracts

By Chloe Pereira

outset.insight

01622 759 900 www.outsetuk.com



An Insight into Employment Checks and Contracts

Having been through a recruitment exercise ([see Outset.insight of Selection & Recruitment](#)), selected the lucky candidate and offered them the role, what comes next?

The Employment Contract

The employment contract is a biggie. Some employers can be tempted to skimp, use an old template or search for one on Google, for example. I cannot emphasise enough how important and worthwhile it is to invest time and money at this stage – and I'm not just saying that out of self-interest.

Putting aside the fact that by law you are required to set out certain things governing an employee's employment in writing, there are a whole host of other items you will want to cover off if you want the best protection for your business.

EXAMPLE

What happens when your employee commits a heinous act of gross misconduct and you want to suspend them while you carry out your fair process... but you forgot to add that to the contract. Then you want to dismiss them without notice after following a fair process... but you forgot to add the right to do so into the contract. Or you want to make sure they stay at home during their notice period where they can't do any damage to your business but also can't work for anyone else...forgot that one too?

The list of areas where you could find yourself in a tricky position later down the line is long. It's worth investing time and money in having a specialist prepare a contract for you, because they already know what the pitfalls are and how to avoid (or at least minimise) them.

An Insight into Employment Checks and Contracts

References

It's important that the offer of employment you make is subject to the receipt of satisfactory references. If you do receive a poor reference it makes it easier to dismiss/terminate/withdraw the offer if you've made it conditional on references in the first place, especially to do so without notice.

Contrary to popular belief, employers are under no obligation to provide a reference, so some individuals may struggle to obtain references through no fault of their own. Most employers however will at least provide a factual reference which confirms dates of employment and usually the last position held.



An Insight into Employment Checks and Contracts

Right to Work Checks

Regardless of whether you think/know a new recruit is a British/EU citizen, every employer is under a duty to help prevent illegal working and that translates into carrying out right to work checks before an individual starts employment. This means that if it hasn't been covered off already, the first thing your new employee must do when they walk through the door on day 1 is to show you their passport and any other documents proving their right to work in the UK (such as a separate Biometric Residence Permit (BRP) or a visa found within the passport itself). You will then need to take copies of the documents and sign and date those copies as evidence of when the right to work check was undertaken. These must then be stored in an unalterable format and kept in a secure place.

The system for employing migrant workers is complex, and in many cases involves a company going through a detailed application process to become a registered sponsor with the Home Office. Only once you have a sponsor licence are you able to sponsor a non-EU worker so that they can obtain a visa, and then only if they, and the role itself, meet certain conditions (again involving a complex application process). There are certain categories of migrant workers who don't need to be sponsored by the company they work for, for example a dependent spouse of a migrant who has a Tier 2 dependant's visa, allowing them to work. You must check the visa stamp and/or BRP card carefully and take specialist advice if you're unsure of anything.

There are a stricter set of checks which applies to those employees who have a visa granting them permission to work. It's important that you know the difference, carry out the correct checks and keep the right records. Failing to do so can result in criminal and/or civil penalties (see below).

If you fail to carry out checks for all individuals, and only ask for ID for those you think are non-EU citizens, you could face claims of discrimination.

An Insight into Employment Checks and Contracts

Other checks

- **Medical** – you can ask employees to complete a medical questionnaire, or even undergo a medical examination, but this should be exercised with discretion. Think about whether it's really necessary for the role. If you do need to ask questions, limit them to what is absolutely relevant to the tasks to be carried out. For example, if the role involves heavy lifting, it would be reasonable to ask about back problems. It will then be important to consider the results carefully before taking any action, if appropriate, to avoid claims of disability discrimination.
- **Criminal** – the right to carry out a criminal records check is limited, and will only be appropriate (or even possible) for certain roles. For example, work which involves children or vulnerable adults.
- **Qualifications** – does your new employee need certain qualifications or accreditations in order to carry out their role? Make sure you see proof of and verify these.
- **Existing obligations** – check whether your chosen candidate is subject to any existing contractual obligations which might prevent them from dealing with certain clients (non-deal/solicit) or even working for you for a certain time (non-compete). Include wording in the employment contract whereby the individual gives you a warranty that they are not in breach of any existing obligations by starting their employment with you. This will help to provide you with some protection if, for example, you are accused of inducing them to breach their contract.
- **Internet research** – given the social media age we live in plenty of people lead an active online life. This has given rise to a growing trend of recruiters seeing what they can find out online about a potential employee. This can be a double edged sword so think carefully before carrying out such research in the first place, but also what sort of action you can take if you do discover something you're not too impressed with.

An Insight into Employment Checks and Contracts

Handbook

- As well as the contract, make sure you issue your new employee with a copy of the staff handbook and that they provide you with a signed and dated acknowledgment that they have received and read it. Of course no one wants to think negatively at the start of a relationship, but sadly employment claims can come along and setting good foundations at the start can make a huge difference if the worst happens later on.

Induction

- There will be lots of things to introduce your new employee to but along with their desk, colleagues and your IT system, make sure you've covered off the "legal" stuff too. Health and safety, fire evacuation procedures and key employment policies and procedures. Consider whether there is any training they need to be enrolled on, such as equal opportunities.



An Insight into Employment Checks and Contracts

The Consequences

Failing to carry out right work to checks can result in harsh penalties. The Home Office could carry out a surprise spot check at any time (whether you are a sponsor or not) which can be a random check or one initiated because of information supplied to the Home Office from parties unknown! If it turns out you have workers who are not entitled to work in the UK and you're unable to satisfy them that you have carried out appropriate checks and have the correct records, you could be facing civil penalties. A civil penalty of up to £20,000 in respect of each illegal worker could be imposed.

Knowingly employing an illegal worker is a criminal offence and attracts a sanction of up to two years' imprisonment and/or an unlimited fine. Nothing can excuse you from this defence and "knowingly" basically extends to "you should have known". It's always advisable therefore to carry out diligent right to work checks rather than treating it as a tick box exercise.

The other items discussed above can have wide ranging consequences including breach of contract issues and discrimination claims. Having excellent documents, procedures and a paper trail along the way demonstrating that your employee received documents and attended training sessions are key in placing you in the best position possible should you find yourself in the unenviable position of defending a claim, or dealing with a sticky situation with an employee.

If you would like more advice regarding employment checks and contracts, get in touch for a friendly and informal chat today.

Chloe Pereira
Senior Employment Lawyer

Call **01622 759 900** or
email Chloe.Pereira@outsetuk.com

