

## Types of terms in a contract

An employment contract usually includes:

- 'express terms' – specific terms that are usually put in writing, for example the employee's pay or working hours
- 'implied terms' – for example, things that are so obvious they do not need to be written and terms that come from employment law
- 'incorporated terms' – these form part of the contract even though they come from other sources, for example a staff handbook or an agreement affecting many employees

Express terms can be agreed verbally, through conversations. Terms agreed verbally are as legally binding as terms that are written down.

However, it's important to remember:

- employers are required to put in writing any terms which form part of the [written statement of employment particulars](#)
- it's helpful to put all terms in writing – this will mean everyone understands their rights and responsibilities

For example, it might seem obvious that a school caretaker needs to live near the school. However, the employer should put in writing in the contract where the caretaker must live. This would avoid misunderstandings.

Information in the contract must follow the law. For example, an employer cannot include a term stating that an employee is paid £4 per hour. This is because this amount is below the National Minimum Wage.

If an employer does include a term that's against the law, they cannot enforce it.

## Implied terms

Implied terms include terms that are:

- too obvious to be written – for example, not stealing from your employer
- 'statutory' – this means that they come from employment law
- implied through 'custom and practice'

Terms can also be implied if they are:

- necessary for 'business efficacy' – this means they're needed to make the working relationship possible
- conduct terms – this is when people's behaviour suggests they've agreed something, even though they have not written it down or spoken about it

## Terms too obvious to be written

Terms of a contract can be implied when they're so obvious that they do not have to be written.

An employment tribunal judge would consider a term too obvious to be written if it passes the 'officious bystander test'. This is when it's so obvious that the employer and employee intended to include a term, they did not feel they needed to make it an express term.

Even if they're unwritten, these terms are often crucial for an effective working relationship between an employer and employee.

To prevent misunderstandings, the employer should make clear:

- the standards of behaviour expected from employees – for example, anyone who deals with customers should be polite
- what happens if these are not met – for example, the employer will investigate reports of theft and pass them to the police if necessary

The employer should also make clear the standards of behaviour their employees can expect of them. For example, what support they'll put in place to meet their duty of care. This could include an employee assistance programme (EAP) or mental health first aiders.

They should put these in writing, for example in an employee handbook.

## Statutory terms

'Statutory terms' are terms that come from employment law. The employer does not always need to put these types of terms in writing.

For example, employees would be entitled to statutory redundancy pay if they meet the criteria. Their employer does not need to put the statutory pay rate in writing.

The exception is any information that must be in the 'written statement of employment particulars'. For example, if the employer pays an employee the minimum wage, they must include that amount in the written statement. Find out more about [what the written statement must include](#).

An employer cannot override statutory terms with an express term.

## Custom and practice

'Custom and practice' terms are often left unwritten. This type of term could become part of the employment contract when it's:

- 'notorious' – this means the term is generally well-known in the business or industry, usually over a long period of time
- reasonable
- certain

To prevent misunderstandings, employers should discuss with employees and any representatives whether any terms have become implied through custom and practice. They should put the details in writing, [if employment contract changes are agreed](#).

## Example of a term which might be considered implied through custom and practice

An employee might expect a bonus of £100 at the end of the year if their employer has paid that annually for the last 10 years, to everyone in their team.

To prevent misunderstandings, the employer could state in the contract that getting an end of year bonus:

- depends on the business's profits in the latest financial year
- is paid at the employer's discretion

## Contact the Acas helpline

If you have any questions about implied terms, you can [contact the Acas helpline](#).

## Terms restricting an employee's actions

An employer might include a 'restrictive covenant' in an employee's contract. This is a term stating that an employee cannot take certain actions that are in competition with the employer's business. This could apply during their employment or once it ends.

For example, a term might say that after the employee has left the organisation, they are not allowed to approach the employer's customers for business.

'Non-compete clauses' are a type of restrictive covenant.

An employer will not usually be able to enforce restrictive covenants unless they're clear, specific and time-restricted. Even then, this area of the law can be complex.

If you have questions you can [contact the Acas helpline](#).

If you're an employer, you should consider [getting legal advice](#) before including restrictive covenants in contracts.

## Exclusivity clauses

An employer might include 'exclusivity clauses' to stop employees from working for another employer while they're still employed with them.

[Find out more about exclusivity clauses](#)

## Employer and employee duties

Employers and employees have certain duties that automatically form part of the employment contract. They cannot be overridden by any express term.

[Find out more about employer and employee duties](#)