

## Myth busting employment contracts: Five common misunderstandings

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### 1. Do employers need to provide employment terms in writing?

**Yes: legally, employees and workers must receive a written statement of particulars of employment on or before their first day of employment/engagement. The document is often called a “section 1 statement” (the obligation to provide it is contained in section 1 of the Employment Rights Act 1996).**

### 2. So, is a section 1 statement the same as an employment contract?

**No: a section 1 statement is simply a document, provided to the employee, which sets out specific information. It isn't a contract and it doesn't need to be signed.**

**There is a prescribed list of terms (really, the fundamental terms of the employment relationship) which the document must include such as the parties' identities, employment start date and particulars of pay/benefits, working time, holiday and notice.**

### 3. But can employment contracts be used as an alternative to section 1 statements?

**Yes: a section 1 statement complies with the minimum legal formalities. It will be sufficient for some roles. Provided an employer has supplied a section 1 statement there is no legal requirement to also have a separate**



employment contract.

However, most employers do provide an employment contract. Where that contract incorporates the section 1 statement requirements (in writing, includes all prescribed particulars and provided on/before the employee's first day) it is a valid alternative document.

**Benefits of an employment contract include that it can set out additional (often important) terms of employment. An employment contract will normally require an employee's signature (this isn't required for a section 1 statement) and that signature will help evidence their express agreement to the terms. For some terms, which an employer may need (such as the employee granting a power of attorney to them), to take effect the document must be a contract or even a deed.**

#### 4. Should subsequent variations of terms also be recorded in writing?

Normally, yes: any variation to a section 1 statement must be set out in a written statement called a section 4 statement (again imaginatively named as the obligation is contained in section 4 of the Employment Rights Act 1996) and provided within one month of the change taking effect.

In any event, it's best practice to do so: see our additional comments below.

#### 5. Are there consequences for failing to provide a section 1 statement (or employment contract)?

Potentially: if an employer doesn't provide a section 1 statement (or valid employment contract) then an employee can file a claim with the Employment Tribunal. Compensation is capped and can only be awarded where the employee brings another claim – but don't forget that any litigation can result in legal costs, lost management time and a potential impact on reputation and workforce relationships.

More practically, and regardless of any legal obligation, it is best practice to have original terms and any variations in writing and signed by both parties. If a term is only agreed verbally this makes it more likely for confusion to arise between the parties and, if there is a dispute, more difficult to evidence what was agreed.

### So what do employers need to remember?

#### Keep in mind the following:

- Employers are legally required to provide a section 1 statement to employees and workers.
- In most cases, it is necessary and/or sensible to provide a full employment contract instead of a section 1 statement.
- Aside from any legal requirement, it is best practice to incorporate the key terms in one document, record any variations in writing and have all documents signed by both parties.
- Be aware of the potential consequences, legal and otherwise, if you don't comply with the statutory obligations.

### For further assistance

**For advice or assistance with any matter relating to employment documentation please get in touch with our [employment team](#).**



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