



Apprenticeship Agreements

The law has recently been amended in connection with the status of apprentices. This update explains how you can ensure that apprentices are classed as employees.

Apprenticeships under common law

Apprentices have traditionally been employees but have been given additional protection by the common law. The common law viewed the principal purpose of the apprenticeship to be the training of the individual rather than the individual providing services to the employer. Case law developed to make it very difficult to terminate an apprenticeship prior to the end of the fixed apprenticeship period. For example, save in exceptional circumstances, it was not possible to make an apprentice redundant

If an employer terminated an apprenticeship early, the employer risked being sued not only for compensation until the end of the apprenticeship period but also for alleged losses arising out of the loss of training opportunity and the loss of chance to be a qualified person (and therefore earn more money).

The Apprenticeship, Skills, Children and Learning Act 2009 (Act)

Whilst an Act first published in 2009, the Regulations relevant to the form of an Apprenticeship Agreement only recently (in April 2012) came into force.

The Act refers to an “**Apprenticeship Agreement**” and this is relevant to the status of an apprentice. The Act provides that an Apprenticeship Agreement which satisfies certain conditions will not be a Contract of Apprenticeship for common law or statutory purposes. Instead an Apprenticeship Agreement will be regarded as a Contract of Service (i.e. an employment relationship).

An agreement with the apprentice will be an Apprenticeship Agreement if the following conditions are satisfied:-

- 1 The apprentice agrees to work for the employer under the Apprenticeship Agreement;
- 2 The Apprenticeship Agreement is in the **prescribed form**;
- 3 The Apprenticeship Agreement states that it is governed by the laws of England and Wales;
- 4 The Apprenticeship Agreement states that it is entered into in connection with a qualifying apprenticeship framework.

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Prescribed Form

The second point above is that the Apprenticeship Agreement has to be in the prescribed form. At the time the Act was introduced, the prescribed form had not been published and we expected this to be a model or example document. Instead, the Regulations referring to the prescribed form simply say that the Apprenticeship Agreement must either be:-

- 1 a written statement of particulars of employment under Section 1 of the Employment Rights Act 1996 (this is the basic statement of employment terms); or
- 2 a written contract of employment which contains at least the principal terms to be provided to the employee under Section 1 of the Employment Rights Act 1996 (i.e. a more detailed contract which still has the basic terms required by law).

The Apprenticeship Agreement must also include a statement of the skill, trade or occupation which the apprentice is being trained under the apprenticeship framework.

We recommend that employers using apprentices should consider using Apprenticeship Agreements rather than more traditional contracts of apprenticeship. The advantage will be the ability to terminate the apprentice early without fear of a large claim for damages under the common law relating to apprentices.

If we can be of assistance in advising on or drafting apprenticeship agreements for you please let us know.



Paris Smith LLP • Number 1 London Road • Southampton • SO15 2AE
e: info@parissmith.co.uk • t: 023 8048 2462 • f: 023 8053 1835

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*Need some guidance?
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Clive Dobbin	023	8048	2370
David Roath	023	8048	2238
Stephanie Merritt	023	8048	2364
Jane Biddlecombe	023	8048	2374
Kathryn Casey-Evans	023	8048	2361
Claire Merritt	023	8048	2112