Contract of Service

What is a Contract of Service?



A contract of service is any agreement whether in writing or verbal, expressed or implied, whereby

- One person agrees to employ another as an employee; and
- The other person agrees to serve the employer as an employee.

An apprenticeship contract or agreement is also considered a contract of service.

A contract of service can be in the form of a letter of appointment/employment.

The employer cannot change the terms and conditions of employment unless the employee agree

Any terms and conditions of employment, in a contract of service, that is less favourable than the r
take precedence over a particular contractual term that is less favourable.

Difference between a Contract of Service and a Contract fo

A contract for service differs from a contract of service.

A contract of service is an agreement whereby one person agrees to employ another as an emplo
employer must contribute CPF, and provide relevant statutory benefits such as annual leave, sick

A contract for services, however, is an agreement whereby a person is engaged as an independer
assignment or a project for the company. Under such a work arrangement, there is no employer-e

There is no single conclusive test to distinguish a contract of employment from a contract for servi

1. Control
    - Who decides on the recruitment and dismissal of employees?
    - Who pays for the employees' wages and in what ways?
    - Who determines the production process, timing and method of production?
    - Who is responsible for the provision of work?
- Ownership of factors of production
    - Who provides the tools and equipment?
    - Who provides the working place and materials?
- Economic considerations
    - Does he carry on business on his own account or carry on the business for the emplo
    - Does he involve in any prospect of profit or is he liable to any risk of loss?
    - How are his earnings calculated and profits derived?

Essential clauses of Contract of Service

A contract of service must include the following clauses:

- Commencement of employment;
- Appointment – job title and job scope;
- Hours of work;
- Probation period, if any;
- Remuneration;
- Employee's benefits (e.g. sick leave, annual leave, maternity leave);
- Termination of contract – notice period; and
- Code of conduct (e.g. punctuality, no fighting at work).

Starting a Contract of Service

If a new recruit who has signed the letter of employment fails to turn up for work

If a new recruit has signed the letter of employment but subsequently informed the employer that h
Employment Act does not apply as the employer-employee relationship has not started.

Hence the employer will not be able to claim notice pay or any compensation under the Employme

If the employer wishes to claim compensation from the recruit, he should pursue a civil claim throu

Confirmation of employees

There is no provision in the Employment Act on the conditions for the confirmation of an employee
contract. The length of an employee's service is calculated from the date on which the employee s

Terminating a Contract of Service

Both an employer and an employee can terminate a contract of service. A termination may arise fr
period of time).

- Termination of Contract with Notice
- Termination of Contract without Notice
- Changes to Employee's Terms and Conditions of Work
- Rejection of an employee's resignation
- Compensation from employees for terminating a contract

Termination of Contract with Notice

The party who intends to terminate the contract must give notice to the other party in writing.

The notice period to be given depends on what is agreed in the written contract. If there is no writt

If there is no such period previously agreed upon, the following shall apply:

Length of Service	
Less than 26 weeks	1 day
26 weeks to less than 2 years	
2 years to less than 5 years	
5 years and above	

The day on which the notice is given shall be included in the notice period.

The length of notice to be given by an employee (in a resignation) and an employer (in a terminati

By mutual consent, notice can be waived.

Taking of annual leave during notice period

As the notice period is meant to be served, the employer cannot force his employee to go on leave can be encashed by the employee.

Offsetting of annual leave

An employee can use his annual leave to offset the notice period for termination of contract. If an e work, **he would only be paid till his last day of work** and the annual leave used to offset his lea longer considered an employee of the company and hence he may start work immediately with his

If an employee chooses to offset his leave during the notice period, it is different from situation wh

If an employee applies for annual leave to cover all or part of his notice period and approval has b he is considered as an employee of the company until the last day of his notice period. If he wants

Taking sick leave during notice period

If the employee was on sick leave (whether paid or unpaid) during the notice period, the sick leave

notice from the employee.

Starting work with new employer while serving notice of termination with current employer

The employee serving the notice of termination is still considered an employee of his current empl
the date of termination, he has to seek written permission from his current employer to do so.

Using reservist period as notice of termination

As the notice period is meant to be served, the reservist training cannot be used to offset the notic

Salary-in-lieu of notice (Notice Pay)

Salary-in-lieu of notice does not attract CPF contribution. However if an employee has fully served
contributions must be made by both the employer and employee for the salary earned if the emplo
hence prohibited to join another company during the notice period.

Termination of contract without notice

Both employer and employee may terminate a contract of service without waiting for the required n
earned by the employee during the required period of notice.

An employee may terminate an employment relationship without giving notice to the other party, if:

- The employer fails to pay his/her salary within seven days after salary is due; or
- He/she is called upon to do work that is not within the terms of the contract of service.

An employer may terminate an employment relationship without giving notice to the other party, if:

- The employee is absent from work continuously for more than two working days, without ap
- The employee is absent from work continuously for more than two working days without info
  contract will have to pay to the other party salary in-lieu of notice.

Changes to employee's terms and conditions of work

Employers cannot change the terms and conditions of employment, unless his employee agrees to
and try to negotiate for an acceptable agreement to both parties. If there is no agreement to the di

notice to the other party.

Rejection of employee's resignation

An employer cannot reject an employee's resignation. The employee has the right to resign at any
Failure of the employer to allow an employee to leave his service is an offence. The employer sha
exceeding six months or to both.

Compensation from employees for terminating a contract

Contracts that require employees to pay a monetary compensation (in addition to notice pay) to th
covered by the Employment Act. An employee can resign at any time by serving the required notic

The terms pertaining to monetary compensation (in addition to the notice pay) for terminating the c
are disputes, the civil court will have jurisdiction in deciding the outcome.

Employee misconduct, dismissals and appeals

Misconduct

An employer may, after an inquiry, terminate an employee's services without notice if the employe
employment.

Inquiry to follow the rules of natural justice:

- no man shall be a judge in his own cause
- no man shall be condemned unheard

Misconduct refers to a breach of duty or discipline which is inconsistent with the express or implied
disorderly or immoral conduct at work, willful insubordination etc.

If the employee has committed an act of misconduct, the employer should conduct an inquiry befo

Procedures of an inquiry

The employer must hold an inquiry into the misconduct. If, after the inquiry, the employee is found

a. terminate the employee's service without notice; or

b. instantly downgrade the employee; or

c. instantly suspend him from work without payment of salary for a period not exceeding one w

There is no prescribed procedure for conducting an inquiry into an act of misconduct. As a genera

1. the person hearing the inquiry should not be in a position which may suggest bias; and

2. the employee being investigated for misconduct should have the opportunity to present his

Under the Employment Act, the employer may suspend the employee from work during an inquiry, for the suspended period.

If the inquiry does not disclose any misconduct on the part of the employee, the employer must res

Appeals

Employees who feel that they have been unfairly dismissed* by their employers may appeal to the executives earning basic monthly salaries of not more than $4,500 who are dismissed with the nec employer before they can seek redress.

Appeals must be made in writing within one month of dismissal.

If the employer has given notice and the contractual terms of termination are complied with, the on Manpower will continue to be stringent in assessing such appeals.

If it can be established that an employee was unfairly dismissed, the Minister may consider reinsta the Minister deems fit.

* Dismissal means termination of the contract of service of an employee by his employer, with or w

Transfer of employees

An employer has the right to transfer his employees to another employer. He may do so if there is take-over, sale of parts of the employer's operation or setting up a subsidiary company. The emplo company, or to a totally unrelated company.

Obligations of an employer to his employees in a Transfer

The employer is required to:

a. notify the affected employees or their union within a reasonable time of the impending trans
b. inform the affected employees about the terms of transfer so as to enable the employees or
c. ensure that there is continuity of the period of employment of the affected employees when favourable than what they have been enjoying before the transfer.

Rights and obligations of employees in a transfer

The rights of the employees are:

a. to be notified by the employer of the transfer and matters relating to the transfer;
b. to be given the opportunity to have consultation with the employer; and
c. to hold the period of employment and terms and conditions of employment with the original

The obligation of the employee is:

- On his transfer, he is to serve the new employer as if the latter is the original employer who

Obligations of transferee (employer who takes over the transferred employees)

The transferee must inform the transferor (previous employer) of matters relating to the transfer wh
within a reasonable period.

On the completion of a transfer, the transferee shall take over from the previous employer all rights
with the employee's union before the transfer.

The transferee is not allowed to change any terms and conditions of employment of the transferred

Dispute or disagreement between transferred employee or transferee

Either party to the dispute or disagreement may refer the matter to the Commissioner for Labour fo

The Commissioner is empowered to:

a. delay or prohibit the transfer of the employee concerned, or

b. order the transfer of the employee and set such terms as the Commissioner considers just.

Workplace Grievances

A workplace grievance refers to discontent or feeling of being victimised at work. In such a work en misunderstandings will affect employees' morale and productivity.

Employees who feel that they are victimised (e.g. arising from management style or lack of sensitiv grievance handling channels within the company. They could also report the supervisor's behaviou for assistance. Cases which involve threat of or actual physical harm should be reported to the pol

In situations where workplace grievances have resulted in employees feeling emotionally distresse

It is in the interest of employers to address such situations by treating their employees with respec employment practices. They should ensure that lines of communication are kept open, and that the and address the grievance appropriately. This includes informing all employees of the channels an complaint against the behaviour of particular supervisors.

READ ALSO

- What is a contract of service?
- Starting a contract of service
- Terminating a contract of service
- Employee Misconduct, Dismissals & Appeals
- Transfer of employees

SERVICES

- e-Calculator
- Maternity Leave Self-Assessment Tool
- Childcare Leave Self-Assessment Tool
- Employment Standards Online (ESOL) for Individual Users
- Employment Standards Online (ESOL) for Business Users

- Notification of Retrenchment Exercise

FORMS

- Application for Overtime Exemption - 12 hours
- Application for Overtime Exemption (72 hours a month)
- Notification of Young Person Employed in an Industrial Undertaking

- See more at: http://www.mom.gov.sg/employment-practices/employment-rights-conditions/contract-of-service-termination/Pages/contracts-of-service-and-termination.aspx#sthash.UfStfp2n.dpuf