

Apprentices Factsheet take from CIPD – Autumn 2015

Legally, employers need to be aware that different arrangements offer apprentices different rights.

Contracts

There are two types of apprenticeship arrangements: apprenticeship agreements and apprenticeship contracts. Apprenticeship contracts have been around for hundreds of years and are governed by case law. If an employer has an agreement with an individual the main purpose of which is for that individual to be trained by the employer, there will automatically be an apprenticeship contract in place. This need not be in writing although this is strongly recommended so everyone understands the terms. The contract does not even have to state that it is an apprenticeship contract

Agreements

Apprenticeship agreements are a newer concept – their requirements are set out in the Apprenticeships, Skills, Children and Learning Act 2009. An arrangement, agreement or contract cannot be an apprenticeship agreement unless it meets specific requirements. For example, it must be in writing and must state it is entered into in connection with a qualifying apprenticeship framework (a requirement often overlooked).

Employers should be careful. Often they will try to use their standard contracts and change the job title or heading to “apprentice”. This meets the requirement for the agreement to be in writing, but fails to include all the required clauses – unintentionally creating an apprenticeship contract instead.

Rights

Apprentices who are employed under an apprenticeship agreement can be treated like ordinary employees and the normal unfair dismissal rules apply. Apprentices who have apprenticeship contracts have additional rights. If the apprentice commits misconduct or breaches the apprenticeship contract, this does not necessarily mean the employer can stop the training. The misconduct has to be so extreme that it means the apprentice can no longer be taught the trade. They can only be dismissed fairly for misconduct if they are effectively unteachable.

Case law

For example, in one case an apprentice being taught pawnbroking repeatedly stole from his employer. The court decided the purpose of the contract was for the employer to teach the apprentice how to carry on a pawnbroker’s trade honestly. Because he stole, it was no longer possible to teach him to be an honest pawnbroker, so it was fair to dismiss him.

Misconduct

If apprenticeship contracts specifically state that apprentices will be trained subject to them obeying the reasonable instructions of the employer, dismissal can be slightly easier. But the level of misconduct would still need to be much higher than an ordinary employee for any dismissal to be considered fair in the eyes of the law. It is likely that the apprentice would have to continually disobey instructions rather than commit a one-off offence, for example.

It is also important to note that an apprenticeship contract cannot be terminated because of redundancy unless the employer’s business closes or fundamentally changes its character. It cannot simply be that the need for apprentices in the business has reduced, as with ordinary employees.

Compensation

If employers do dismiss apprentices on apprenticeship contracts unfairly, it is likely the apprentice will be awarded more compensation than other dismissed employees. The additional

compensation reflects the loss of earnings under the apprenticeship contract plus the loss of potential future earnings. So if problems arise, knowing how to tackle disciplinary proceedings according to whether a contract or agreement is in place is crucial.

In summary from Add HR, Apprentices do have additional rights which relate to training agreements. The onus is therefore on the employer to show that they are not breaking training agreements and also to be more specific to an apprentice about what may constitute a dismissal.



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