

Title A: The Advantages of Employment Agreements

Title B: What You Need to Know about Your Employment Agreement

Title C: Creating an Employment Agreement with Teeth



Why have an employment agreement?

Having a written contract between you and your employees isn't required, but there are definitely situations where it [makes sense to clearly define](#) (and bind) the parameters and expectations governing the relationship. These can include when:

- a company wants to keep an employee for a specified length of time
- employee job entitlements or contract terms need to be nailed down
- it's necessary to protect sensitive company information or maintain a competitive advantage

Or, in the event that the employee does leave, it can guarantee that a suitable amount of notice is given before their departure to allow for a smooth transition.

The other benefit of having an employment agreement is that even before their first day on the job, employees know exactly what is expected from them as representatives of your company.

A well-defined, written employment agreement can save you loads of time and money, as well as avoid potential legal challenges down the road if the relationship doesn't work out.

Know the laws in your jurisdiction before drafting your employment agreement template(s) since legalities can vary from state to state, especially if a clause is considered to limit the employee's right to earn a living.

[insert CTA]

The Makings of a Good Employment Agreement

The best employment agreements are those written in plain language without a lot of legalese. This helps to avoid any ambiguity, which can result in [courts finding in favor of employees](#). Be sure to have an employment lawyer review any templates or any revisions that have been added to an already-approved template. Furthermore, be sure to ask employees to seek legal counsel before signing so that they know what they're agreeing to. Clarity can save money!

The agreement should summarize what may have been verbally agreed to during the interview process, and also include a few 'must-haves' which we've listed below. You may want to attach the employee's job description to the agreement. Also, avoid inserting workplace policies (examples below) into the agreement, and just stick to the terms of employment.

Policies and contracts

- policies are written rules, guidelines and aspirational goals for the workplace – common policies include:
 - redundancy
 - performance management
 - work health safety
 - social media/IT
 - bonus schemes
 - workplace behavior
- may be referred to generally in the contract, but large amounts of information are better placed in policies
- policies may evolve and change from time to time without changes to the contract

[SOURCE](#)

The most basic employment agreement should include:

- the employee's title
- employment term
- length of probation
- working hours, breaks, time off
- reporting structure
- basic responsibilities
- how performance will be evaluated
- compensation and pay schedule, including your company's policies on raises, bonuses, reimbursables, travel allowances, etc.

[insert CTA]

Other important clauses address:

Benefits, Leave and Vacation: Clearly outline the employee's entitlement and eligibility for insurance, pension or retirement, and your company's share of any contributions. Be sure to include policies around illness, vacation or unpaid and paid-time-off, and how much time the employee is entitled to.

Confidentiality: This clause is aimed at protecting your company's trade secrets and proprietary information such as client details, financials, and other sensitive data. A separate non-disclosure agreement may be used in place of a single confidentiality clause within the employment agreement.

Use of Technology: Most companies provide employees with electronics (computers, smartphones, tablets, wearables, etc.) to help them perform their job, so it's important to include a clause that outlines whether the device can only be used for job-related tasks. The clause should also address the return of company-owned electronics upon termination, and rules around employees using their own devices.

If there is a policy around workplace privacy, the introduction of outside data or applications into a networked system, and accessing the company's Internet, should also be included here.

Non-Solicitation and Non-Compete: This complex clause should address your company's policies around whether the employee can directly solicit your customers for business, either during or after the relationship ends. It also outlines expectations around working for competitors, and moonlighting or freelancing outside of regular work hours.

Note, [in many jurisdictions](#), non-compete clauses may be unenforceable if they are considered to limit an employee's right to earn a living, either by being too geographically broad or applicable for an unusually long time. Again, your lawyer will know what's generally acceptable in your state so be sure to have them develop a clause that will be viewed as fair and enforceable.

Intellectual Property: This is a critical clause around who owns the rights to works and processes created by the employee during their employment. Getting it wrong can mean a loss of past revenue and future income, so employers shouldn't assume that they own such rights.

[It's important to also include](#), "language detailing what happens if the employee misappropriates and/or infringes upon the company's ownership of intellectual property," including a, "remedies and relief provision."

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Termination: A termination clause will clearly define the circumstances that could lead to ending the employment relationship—either with or without cause, and by either party. It will also identify any applicable payouts/severances and time frames.

Note that "at will" employees may be terminated at any time without cause or warning (except when deemed discriminatory), but they are also free to end the relationship on their own terms.

Notice Period: Should your employee decide to leave your company, the notice period is the length of time they must give between when they hand in their resignation letter and their last day at work.

Dispute Resolution: Include a clause that addresses how employment-related disputes between your company and an employee will be handled. Using a mediator or arbitrator rather than going through the court system can help contain unexpected legal fees, manage risk, and promote confidentiality.

Change in Control (CIC or "golden parachute"): This applies when company ownership is transferred to another entity, entitling senior employees to compensation if their job is negatively impacted by the change. In the case of a publicly-traded company that is undergoing a change of ownership, the [Securities and Exchange Commission](#) dictates methods, payouts, and other forms of compensation to executives in the interest of protecting shareholder security.

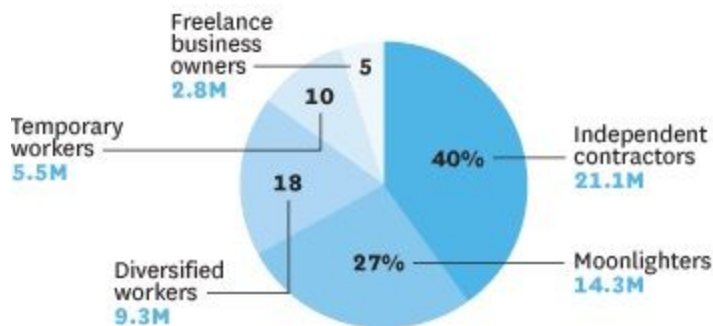
If your company makes any broad changes that would significantly alter the terms of an employment agreement, [it's in your best interest](#) to inform affected employees and get their acknowledgment of the change, either as a new agreement or addendum to the existing one.

Agreements with Freelance and Contract Employees

Roughly 25 to 34% of the [US workforce are "contingent" workers](#)—self-employed freelancers with flexible work schedules—and the trend is [growing exponentially each year](#). These skilled individuals can step in to temporarily service clients at whatever level of required expertise, from front desk to CEO. Chances are your company has or will hire a temporary or "gig" worker at some point, so it's a good idea to have a contract available for such an occasion. Be prepared for the regular, experienced freelancer to want to use their own contract, and insist on a new contract once the old one ends, if they're still working with you.

53 MILLION FREELANCERS

How non-traditional jobs add up in a survey of U.S. workers.



SOURCE EDELMAN BERLAND, AS COMMISSIONED BY THE FREELANCERS UNION AND ELANCE-ODESK

HBR.ORG

[SOURCE](#)

Because they are not employees, freelance workers need a service contract rather than an employment agreement. Include or look for the following clauses in the contract you're using:

Services Rendered: A clear description of the role and responsibilities they are being hired to fulfill and the length of the contract term.

Payment: This addresses how much, how often, methods of accepted payment, when payment is expected, and penalties for late payment.

Deliverables: A contract for a freelancer that is hired for a specific project (such as developing a website, or transitioning a company through an acquisition) should outline specific deliverables, milestones, project timetable, and target dates. It should also identify successful task completion and any need for ongoing upkeep once the project is complete.

Termination: There should be a clause that outlines the rules around an unexpected end to the contract by either party, and the required notice period, payment, deliverables-to-date, and return of property related to that termination.

Intellectual Property: Using a freelancer for something that will become proprietary property for your company will require a contract that gives a clear definition of ownership of the resulting intellectual property. The clause can be similar to the one used for permanent employees.

Confidentiality: A freelancer is likely to move on from your company to work for another company that may very well be a competitor. As such, it's difficult (and not advisable) to insist on getting a non-compete agreement signed. However, a trustworthy freelancer will have no trouble signing a confidentiality agreement vowing not to use or disclose your company's confidential information except in connection with the services they are providing to you.

Independent Contractor: For tax and benefits purposes, it is necessary to include a statement that reinforces the worker's status as an independent contractor and not as an employee of the company.

Representations and Warranties: This can be a tricky but important clause. The freelancer must be able to guarantee that they are able to (and not prevented from) working with your company due to:

- an existing commitment with another client
- that any services and expertise they provide do not infringe on the rights of another company
- that they will not subcontract out any portion of the deliverables unless first approved by you.

Dispute Resolution: As with permanent employees, the contract should have a clause that insists on mediation or arbitration for the settlement of any work-related disputes.

Having a formal employment agreement doesn't always put the employer at an advantage. When considering whether your company needs a formal agreement with employees, determine if it's actually

necessary for the relationship or if existing labor regulations are sufficient. Then, if using an agreement, ensure that any clauses included are thorough and enforceable for the benefit of all parties involved.