

HR Essentials How-To Guide

Business Templates – Apprenticeships

Employing an apprentice

It's essential to be aware of your apprentice's legal status and employment rights; hiring an apprentice can be an affordable way of obtaining new staff while providing a good learning opportunity for young (and not-so-young) people.

However, some employers require clarification about the employment status of apprentices and what type of contracts they should have. Many training providers supply apprentices and suggest that organisations should employ apprentices on the same terms and conditions as other employees, which is mostly correct. However, the contract that employs the apprentice should consider potential legal implications carefully.

The legal status of employing an apprentice

Traditional apprenticeships

Traditionally, apprenticeships were a two-party arrangement between a master craftsman and an apprentice; this was usually for a fixed period under a contract of apprenticeship, the primary purpose being training and not work.

These arrangements still exist, and they give apprentices enhanced protection against dismissal. For example, it is easier to make an apprentice redundant if the business closes or its fundamental nature changes. Dismissal for misconduct is complex, with one case going so far as to say that the apprentice must be "virtually unteachable"; this isn't an attractive option for employers, along with enhanced claims for damages and compensation for wrongful dismissal.

The statutory apprentice

In 1994 the Government introduced "modern apprenticeships", later rebranded as "apprenticeships" in 2004; they were often supported by government funding and generally involved an external third-party training provider.

While different from the traditional apprenticeships, this could still amount to a contract of apprenticeship, bringing an apprentice enhanced protection from dismissal. Still not a good 'sell' to employers.

Today's apprenticeship agreement is different

The current statutory system was introduced under the Apprenticeship, Skills, Children and Learning Act 2009 (ASCLA). It came into effect in April 2012, when the introduction of regulations to set out the agreement's prescribed form. This means that apprentices employed under this apprenticeship agreement are 'normal' employees and should be treated with standard (not enhanced) employment rights.

So, what's the catch when employing an apprentice?

To implement an apprenticeship agreement, you must fulfil certain conditions. Otherwise, the arrangement could be viewed as a contract of apprenticeship with enhanced protections.

HR Essentials How-To Guide

Business Templates – Apprenticeships

Therefore, our advice is to ensure that you amend your standard contract to include clauses specific to the required conditions, namely:

- The apprentice will undertake to work for the employer under the agreement
- The written essential particulars of employment required by s.1 of the Employment Rights Act 1996
- A statement of the skill, trade or occupation for which the apprentice is training under the relevant apprenticeship framework
- That the law of England and Wales governs it
- That it is connected with a qualifying apprenticeship framework

Don't just insert 'apprentice' into your standard contract, or you may find that it gives the individual the legal status of a traditional apprentice.

Managing the end of an apprenticeship

When an apprenticeship ends the initial contract term, you may have a permanent position that you can and want to offer; alternatively, you might need to terminate their employment position.

If you make them a job offer, the apprentice may wish to stay with the company, or they might pursue career opportunities elsewhere.

An excellent place to begin the process is to arrange a meeting to discuss both parties' intentions around a month before the apprenticeship is due to complete; this is also the perfect time to satisfy any remaining training and arrange the end-point assessment.

If the apprentice plans to leave your employment, request written notice of resignation under their approved English apprenticeship agreement.

If you choose to let the apprentice go

The expiry of a fixed-term apprenticeship contract constitutes a dismissal. The apprentice has the right not to be unfairly dismissed as an ordinary, permanent employee, providing they have two years of continuous employment. The apprenticeship agreement doesn't need to be renewed once completed; apprentices engaged under apprenticeship agreements can be dismissed in the same way as standard employees.

The standard principles for breach of contract and unfair dismissal claims apply if the apprentice is employed under an approved English or an apprenticeship agreement. As a result, employers can effectively manage underperforming apprentices like any other employee.

If you choose to offer a permanent role

If you decide to offer the apprentice a permanent position, you must confirm in writing the offer for a permanent role to the apprentice. Provided the new employment contract follows immediately from their apprenticeship end date, the apprentice will have continuity of employment.

HR Essentials How-To Guide

Business Templates – Apprenticeships

Letter Example: Invite an Employee to Discuss End of Apprenticeship

Dear [name of employee],

Letter to discuss end of an apprenticeship

As you know, your apprenticeship with [company], under the terms of your [Approved English Apprenticeship Agreement/Apprenticeship Agreement] dated [date], is due to come to an end on [date].

We would now like to invite you to a meeting on [date] at [time] at [location] to discuss various practicalities relating to the forthcoming conclusion of your apprenticeship.

The meeting will be chaired by [insert name], and [insert name] will also be present to take notes of the meeting. If you cannot attend this meeting, you are asked to contact [name & contact] as soon as possible so that an alternative date and time can be scheduled.

The meeting will cover the following areas:

- The progress of your apprenticeship towards attaining [the approved apprenticeship standard necessary for completion/the standard necessary for qualification and completion]
- Any training requirements to be completed during the remaining period of your apprenticeship
- The end-point assessment of your apprenticeship
- Any feedback you would like to provide about your experience with [company]
- Future career progression at the end of your apprenticeship, including whether there is the possibility of a permanent role with [company]
- If you are voluntarily choosing to leave [company] employment at the end of your apprenticeship

Finally, we will discuss any other questions or concerns that you may have about the end of your apprenticeship. If there are any aspects of your apprenticeship you wish to discuss in the meantime, please speak to [name].

Please do not hesitate to contact me if you have any questions regarding the probationary process or the meeting itself.

Yours sincerely
[Name]

For and on behalf of the organisation.

HR Essentials How-To Guide

Business Templates – Apprenticeships

Letter Example: Offer of Permanent Position at the End of an Apprenticeship

Dear [name of employee],

Letter to offer a permanent position at the end of an apprenticeship

As you know, your apprenticeship with [Company], under the terms of your [Approved English Apprenticeship Agreement/Apprenticeship Agreement] dated [date], is due to come to an end on [date].

Following our meeting with you on [date], at which we discussed your apprenticeship experience and whether there was the possibility of a permanent role with [company], we are now pleased to be able to offer you employment with [Company] as [job title] commencing on [start date].

The terms and conditions of employment for this new role are set out in the attached offer of employment letter and attached contract of employment.

Please note that this offer constitutes an entirely new employment contract to your [Approved English Apprenticeship Agreement/Apprenticeship Agreement].

If you accept this offer, it will run consecutively with your [Approved English Apprenticeship Agreement/Apprenticeship Agreement], meaning that your employment with [Company] would be continuous for statutory purposes from the start date of your apprenticeship, which was [apprenticeship start date].

OR

If you accept this offer, as there will be a period of [number] weeks between the completion of your apprenticeship and the start of your permanent employment, your continuous employment with [company] would start from [start date].

If you wish to accept this job offer, please sign the duplicate copy of the offer of appointment letter and contract of employment then return them to [name] no later than [date].

We look forward to hearing from you.

Yours sincerely
[Name]

For and on behalf of the organisation