

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 agrees to it.

Any terms and conditions of employment, in a contract of service, that is less favourable than the relevant provision under the Employment Act is illegal, null and void. The provision in the Act will take precedence over a particular contractual term that is less favourable.

Difference between a Contract of Service and a Contract for Service

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 employee and the other agrees to serve his employer as an employee. Under a contract of service, the employer must contribute CPF, and provide relevant statutory benefits such as annual leave, sick leave etc. for its employees engaged.

A contract for services, however, is an agreement whereby a person is engaged as an independent contractor, such as a self-employed person or vendor engaged for a fee to carry out an assignment or a project for the company. Under such a work arrangement, there is no employer-employee relationship, and the employee is not covered by the Employment Act.

There is no single conclusive test to distinguish a contract of employment from a contract for services. Some of the factors to be considered in identifying a contract of employment include:

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?
- 2. Ownership of factors of production
 - Who provides the tools and equipment?
 - Who provides the working place and materials?
- 3. Economic considerations
 - Does he carry on business on his own account or carry on the business for the employer?
 - 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).
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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 he does not intend to start work with the company and failed to turn up on his first day of work, the 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 Employment Act.

If the employer wishes to claim compensation from the recruit, he should pursue a civil claim through his own lawyer.

Confirmation of employees

There is no provision in the Employment Act on the conditions for the confirmation of an employee in his job. An employee's confirmation will depend on the terms spelt out in the employment contract. The length of an employee's service is calculated from the date on which the employee starts work and not the date of confirmation.

Terminating a Contract of Service

Both an employer and an employee can terminate a contract of service. A termination may arise from the expiry of contractual terms (e.g. completion of specific project, completion of specific 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](#)
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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 written contract, the notice period to be given depends on what the parties have agreed upon verbally.

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

Length of Service	Notice Period
Less than 26 weeks	1 day
26 weeks to less than 2 years	1 week
2 years to less than 5 years	2 weeks
5 years and above	4 weeks

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 termination of employment) are the same.

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 during the period of notice, unless the employee consents to it. Any unconsumed annual 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 employee uses his annual leave to offset his notice period and to bring forward his last day of work, **he would only be paid till his last day of work** and the annual leave used to offset his leave will not be paid. By bringing forward his last day of employment with the company, he is no longer considered an employee of the company and hence he may start work immediately with his new company.

If an employee chooses to offset his leave during the notice period, it is different from situation where he applies to go on approved leave during the notice period.

If an employee applies for annual leave to cover all or part of his notice period and approval has been granted by the employer, **he will be paid his salary for the full notice period**. In this case, he is considered as an employee of the company until the last day of his notice period. If he wants to join a new company, he can do so only after the last day of his notice period.

Taking sick leave during notice period

If the employee was on sick leave (whether paid or unpaid) during the notice period, the sick leave taken should be treated as part of the notice period. The employer cannot claim for any short 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 employer. Unless his current contract of employment allows him to work with another employer before 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 notice period. However, both parties may mutually agree to waive the required notice.

Salary-in-lieu of notice (Notice Pay)

Salary-in-lieu of notice does not attract CPF contribution. However if an employee has fully served the required notice period, his salary for the notice period will be subjected to CPF. CPF contributions must be made by both the

employer and employee for the salary earned if the employee was working during the notice period, or considered as an employee of the company and 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 notice period to expire, by paying the other party a sum equal to the salary that would have been 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 approval or good excuse;
- The employee is absent from work continuously for more than two working days without informing or attempting to inform the employer of the reason for absence. The party that breaks the 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 it. If the employee does not agree to the changes, he should bring up the matter to his employer and try to negotiate for an acceptable agreement to both parties. If there is no agreement to the dispute, either party may choose to end the employment relationship by serving the appropriate 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 time by serving the required notice or by compensating the employer salary in-lieu of notice. Failure of the employer to allow an employee to leave his service is an offence. The employer shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not 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 the employer for terminating the contract before the completion of a specified period are not covered by the Employment Act. An employee can resign at any time by serving the required notice in accordance with the provisions in the employment contract.

The terms pertaining to monetary compensation (in addition to the notice pay) for terminating the contract prematurely is a contractual term and not governed by the Employment Act. Where there 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 employee is found guilty of misconduct by failing to fulfil the expressed or implied conditions of 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 conditions of an employee's contract of service. Examples of misconduct are theft or dishonesty, disorderly or immoral conduct at work, willful insubordination etc.

If the employee has committed an act of misconduct, the employer should conduct an inquiry before deciding whether to dismiss the employee or to take other forms of disciplinary action.

Procedures of an inquiry

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

- 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 week.

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

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 case.

Under the Employment Act, the employer may suspend the employee from work during an inquiry, for a period not exceeding one week. The employee should be paid not less than half his salary for the suspended period.

If the inquiry does not disclose any misconduct on the part of the employee, the employer must restore to the employee the full amount of salary that was withheld.

Appeals

Employees who feel that they have been unfairly dismissed* by their employers may appeal to the Minister for Manpower to be reinstated to their former employment. [Managers and executives](#) earning basic monthly salaries of not more than \$4,500 who are dismissed with the necessary notice or salary-in-lieu of notice must have at least 12 months of service with the same 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 onus would be on the employees to show proof that the dismissal is unfair. The Ministry of 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 reinstating the employee in his former employment or ordering a sum of money as compensation, as the Minister deems fit.

* Dismissal means termination of the contract of service of an employee by his employer, with or without notice and whether on grounds of misconduct or otherwise.

Transfer of employees

An employer has the right to transfer his employees to another employer. He may do so if there is a restructuring of the organisation. This may involve another company and can be a merger, take-over, sale of parts of the employer's operation or setting up a subsidiary company. The employees can therefore be transferred to a related company such as a subsidiary or associated 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 transfer;
- b. inform the affected employees about the terms of transfer so as to enable the employees or their unions to enter into consultations with the company; and

- c. ensure that there is continuity of the period of employment of the affected employees when they are transferred to a new employer and that their terms of employment are not less 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 employer as continuing and preserved under his employment with the new employer.

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 had entered into the employment contract with him.

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

The transferee must inform the transferor (previous employer) of matters relating to the transfer which will affect the employee and the transferor must convey such information to the employee within a reasonable period.

On the completion of a transfer, the transferee shall take over from the previous employer all rights, powers, duties and liability which had been entered into in any contract of service or agreement with the employee's union before the transfer.

The transferee is not allowed to change any terms and conditions of employment of the transferred employee unless the transferred employee agrees.

Dispute or disagreement between transferred employee or transferee

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

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 environment, miscommunication and misunderstanding are likely. If not managed properly, such misunderstandings will affect employees' morale and productivity.

Employees who feel that they are victimised (e.g. arising from management style or lack of sensitivity on the part of the supervisor) should raise their grievances and seek recourse through grievance handling channels within the company. They could also report the supervisor's behaviour to the top management. For workers who are union members, they can approach their union for assistance. Cases which involve threat of or actual physical harm should be reported to the police immediately.

In situations where workplace grievances have resulted in employees feeling emotionally distressed, they may also seek counselling support from [Counselling Centres](#).

It is in the interest of employers to address such situations by treating their employees with respect, and creating a favourable working environment through the adoption of fair and responsible employment practices. They should ensure that lines of communication are kept open, and that there are proper grievance handling procedures in place for employees to raise their grievances and address the grievance appropriately. This includes informing all employees of the channels and procedures available in approaching the company's top management if they wish to lodge a 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](#)

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- [Within MOM Website](#)
- [Within All Singapore Gov Websites](#)