BizTweak

Making Entrepreneurship Easier

LEGAL

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INTRODUCTION TO THE MODULE

In this module, you will learn to what laws ranging from company law to finance law. Let's get started.

Topics to be covered in this module are:

- Company law
- Finance law
- Corporate law
- Summary
- Labour law
- Quiz

COMPANY LAW

INTELLECTUAL PROPERTY: IT IS MEANT TO PROTECT THE IDEAS/CONCEPTS OF THE CREATOR.

What is Intellectual Property(IP)?

Intellectual property (IP) is an intangible creation of the human mind, usually expressed or translated into a tangible form, that is assigned certain rights of property. Or in one words Intellectual property is anything that is developed through intellectual and creative processes.

<u>Examples:</u> Intellectual property includes such things as patents, copyrights, trade secrets, and trademarks.

Types of Intellectual Property (IP)?

there are four types of intellectual property rights and protections (although multiple types of intellectual property itself). Securing the correct protection for your property is important, which is why consulting with a lawyer is a must. The four categories of intellectual property protections include:

- Copyrights
- Patents
- Trademarks
- Trade Secrets

1.Copyrights

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

2. Patents

Copyrights and patents are not the same things, although they are often confused. A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document. As defined by the U.S. Patent and Trademark Office (USPTO), a patent is a type of limited-duration protection that can be used to protect inventions (or discoveries) that are new, non-obvious, and useful, such a new process, machine, article of manufacture, or composition of matter.

When a property owner holds a patent, others are prevented, under law, from offering for sale, making, or using the product.

3.Trademarks

The third type of intellectual property protection is a trademark protection. Remember, patents are used to protect inventions and discoveries and copyrights are used to protect expressions of ideas and creations, like art and writing.

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or “mark” on their products. For example, the Nike symbol–which nearly all could easily recognize and identify–is a type of trademark.

While patents and copyrights can expire, trademark rights come from the use of the trademark, and therefore can be held indefinitely. Like a copyright, registration of a trademark is not required, but registering can offer additional advantages.

4.Trade Secrets

Trade secrets refer to specific, private information that is important to a business because it gives the business a competitive advantage in its marketplace. If a trade secret is acquired by another company, it could harm the original holder.

Examples of trade secrets include recipes for certain foods and beverages (like Mrs. Fields’ cookies or Sprite), new inventions, software, processes, and even different marketing strategies.

When a person or business holds a trade secret protection, others cannot copy or steal the idea. In order to establish information as a “trade secret,” and to incur the legal protections associated with trade secrets, businesses must actively behave in a manner that demonstrates their desire to protect the information.

COR14.3: REGISTRATION CERTIFICATE, REGISTERED COMPANY DOCUMENTS

What is COR14.3: Registration certificate?

Otherwise known as the registration certificate, is used to confirm the company's current information such as:

1. The registration number.
2. The company's registered name.
3. The date the company was registered on, and when it started trading.
4. What type of entity the company is, for example; Private company.
5. The company's status - it will state if the company is active or dormant.
6. The company's financial year end.
7. The company's registered physical and postal address.
8. The company directors information.

You will receive this document after you registered your company. You usually have to submit this document if you want to apply for tenders or compliance registrations.

MEMO. OF INCORPORATION: IS A DOCUMENT THAT SETS OUT THE RIGHTS, DUTIES AND RESPONSIBILITIES OF SHAREHOLDERS, DIRECTORS AND OTHERS IN THE COMPANY.

Memorandum of Incorporation: The most important document governing a company is the Memorandum of Incorporation (MOI). The MOI sets out the rules governing the conduct of the company, as specified by its owners. The Memorandum of Incorporation is defined as a document that sets out the rights, duties and responsibilities of shareholders, directors and others within a company, and by which a company is incorporated in the Act or a pre-existing company was structured before the date that the Act comes into operation.

Shareholders: Essentially, shareholders are owners in a company to reap benefits of a business' success. A shareholder can be a person, company, or organization with at least a minimum of one share in a company's stock. Shareholders play an important role in the framing profits of the company. There are two main types of shareholders:

1. **Equity Shareholders:** As the name suggests, they are owners of a company's equity. These shareholders enjoy voting rights over matters concerning the company. Moreover, they can also exercise the aforementioned rights, including filing class-action lawsuits against any matter that can harm the company
2. **Preference shareholders**: Preferred shareholders are prioritised over Equity Shareholders when considering a company's profit distribution. On the other hand, they do not hold a right to vote in matters pertaining to a company's executive decisions. Also, preference shareholders are entitled to fixed dividend rates, even if said company's profitability is at stake.

What are the rights, duties and responsibilities of a shareholder?

Shareholders' Roles and Rights:

1. Appointment of directors

Shareholders play a direct role in the appointment of directors, with passing of an ordinary resolution. Apart from this, shareholders can also appoint various types of directors. They are:

- An additional director who will hold the office until the next general body meeting;
- An alternate director who will act as an alternate director for a period of 3 months;
- A nominee director; Director appointed in the case of a casual vacancy in the office of any director appointed in a general meeting in a public company.

Apart from this shareholder also can challenge any resolution passed for the appointment of a director in the general body meeting.

2. Legal action against directors

Shareholders also can bring legal action against the director by the rules laid down in the Companies Act 2013. They are:

- Any act done by the director in any manner which is prejudicial against the affairs of the company.
- Any act done which is beyond the law or against the constitution.
- Fraud
- When the assets of the company are being transferred at an undervalued rate.
- When there is a diversion of funds of the company.
- Any act done in a mala fide manner.
- Appointment of company auditors

3. Right to appoint the company auditors.

Under Companies Act 2013, the first auditor of the company is to be appointed by the board of directors. Furthermore, the shareholders at the annual general body meet at the recommendation of directors and audit committee. The appointment is usually done for a period of five years and further can be approved by passing a resolution in the annual general body meeting.

4. Voting rights

Shareholders also have the right to attend and vote at the annual general body meeting. Every company registered in India is required to comply with the provisions in the Companies Act 2013. It is mandatory for every company to hold at least one annual general meeting. At the meeting, various mandatory agendas are discussed such as, adoption of financial statements, appointment or ratification of directors and auditors etc.

When a resolution is brought by members of a company then according to companies act 2013 it can be passed only by the means of voting by the shareholders. Companies Act 2013 recognizes following types of voting:

- **Voting by the showing of hands**
- **Voting done by polling**
- **Voting done by electronic means**
- **Voting by means of postal ballot**

A shareholder also has a right to appoint a proxy on his behalf when he is unable to attend the meeting. Though the proxy is not allowed to be included in the quorum of the meeting in case of voting, it is allowed by following a procedure mentioned in the Companies Act 2013.

5. Right to call for general meetings

Shareholders have the right to call a general meeting. They also can approach the Company Law Board for the conduction of general body meetings, if it is not done according to the statutory requirements.

6. Right to inspect registers and books

As shareholders are the main stakeholders in a company, they have the right to inspect the accounts register and also the books of the firm and can ask questions about the same if they feel so.

7. Right to get copies of financial statements

Shareholders have the right to get copies of financial statements. It is the duty of the company to send the financial statements of the company to all its shareholders either in a quarterly or annual statement.

8. Winding up of the company

Before the company is wound up the company has to inform all the shareholders about the same and also all the credit has to be given to all the shareholders.

Liabilities of Shareholders:

There are very few risks with becoming a shareholder in a company. The underlying reason for this is that a company is a separate legal entity.

It is also worth noting that you may take on a much wider range of liabilities than a normal shareholder if you are also a director of the company. This may occur if you have powers that are ordinarily reserved for directors. Directors are responsible for the management of the company and its day-to-day affairs. Under the law, director's duties place a heavier burden on directors than on shareholders.

Duties of shareholders

The main duty of shareholders is to pass resolutions at general meetings by voting in their shareholder capacity. This duty is particularly important as it allows the shareholders to exercise their ultimate control over the company and how it is managed. Shareholders can vote in one of two ways: on a show of hands or through a poll vote where each vote will be proportionate to the number of shares held by each shareholder. A show of hands is usually the preferred method of voting that takes place at general meetings.

There are two resolutions that can be voted on at a shareholders meeting: an ordinary resolution, and a special resolution.

> ***1. Ordinary resolution***
>
> An ordinary resolution is passed by the shareholders if a simple majority of shareholders present at the meeting vote in favour of the proposal. Therefore, more than 50% of the votes cast must be in favour, usually displayed through a show of hands.
>
> ***2. Special resolution***
>
> A special resolution is sometimes required by the Companies Act in certain cases; for instance, to change the Articles of Association, or for other important or sensitive matters. The Articles can also require a special resolution. For a special resolution to be passed, a 75% majority must vote in favour. If there is no specific mention of what type of resolution is required, the presumption is that there will be a vote on an ordinary resolution.

DEFINITION OF DIRECTOR:

Section 2(13) of the Companies Act, 1956, defines a Director as any person, occupying the position of Director, by whatever name called. The Articles of association generally contains provisions as to their appointment, retirement rights duties and remuneration.

DIRECTORS POWERS, DUTIES, RIGHTS AND RESPONSIBILITIES:

Directors should have a vision to frame policies to achieve high level of performance. To achieve high level of performance, they must set the goals of the company. They must have powers to carry on objectives of the company. Then comes duties and responsibilities of directors. Directors also have certain rights which can be exercised to protect themselves and also the interest of the company. The provisions of Companies Act and the articles of association of the company spell out rights, duties powers and responsibilities of Directors. Section 291 of the Act provides that subject to the provisions of the Act, the board of directors shall be entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do.

RIGHTS OF DIRECTORS:

Rights can be categorized into individual rights and collective rights.

Individual rights are such as right to inspect books of accounts {Section 209(4)},Right to receive notices of board meetings (Section 285),right to participate in proceedings and cast vote in favour or against resolutions(Section 300),right to receive circular resolutions proposed to be passed.(Section 289),right to inspect minutes of board meetings.

Collective rights are as follows :-

- **Right to refuse to transfer shares:** According to Section 111 of the Act, directors of private companies and deemed public companies are entitled to refuse registration of transfer of shares to a person whom they do not approve.
- **Right to elect a Chairman:** Regulation 76(1) of Table-A provides that the directors are entitled to elect a chairman for the board meetings.
- **Right to appoint a Managing director:** The Board has the right to appoint the managing director/ manager (as defined in the Act) of the company.
- **Right to recommend dividend:** The Board is entitled to decide whether dividend is to be paid or not. Shareholders cannot compel the directors to pay dividend.However they can reduce the rate of recommended dividend. Payment of dividend is the prerogative of the board

DUTIES:

Directors act as agents of the shareholders and act as a trustees of shareholders. Thus they have a fiduciary duty to protect the property of the company. Simply stated the following are the duties of Directors.

Directors must exercise all care and due diligence as a man of ordinary prudence would exercise. It must be noted that Managing or whole time director expected to show greater degree of professional expertise and skill in discharge of their duties. If they fail or gross negligence is evident from their action or non action then they will be liable for punishment.

Directors as individuals have a duty to attend board meetings and contribute to the deliberations of the board and ultimately to the decision making leading to formulation of policies. Directors are under obligation to disclose their interest whether directly or indirectly in contracts or arrangements with the company(Section299). They are also duty bound to disclose their directorships in other companies within 20 days of appointment or relinquishment of his office in other companies (Section 305). As per Section 308, directors are also required to disclose their shareholding in the company.

Directors as a part of Board perform certain duties collectively. The following are some of those duties exercised collectively:-

- Approval of annual accounts and authentication of annual accounts ·
- Directors report to shareholders highlighting performance of the company, transfers to reserves, investment of surplus funds, borrowings ·
- Appointment of First Auditors ·
- Issuance of Notice and Holding of Board meetings and shareholders meetings ·
- Passing of resolutions at board meetings or by circulation.

SHAREHOLDERS AGREEMENT: AN AGREEMENT BETWEEN THE SHAREHOLDERS OF THE COMPANY.

What is a Shareholders' Agreement?

A Shareholders' Agreement (also called a "Stockholder" Agreement) is an agreement between all or some of the shareholders (or "stockholders") of a Corporation. This contract establishes the rights of shareholders and the duties and powers of the Board of Directors and management. A Shareholders' Agreement is very beneficial when the Corporation is closely-held or there are only a few shareholders. A typical shareholders' agreement might do some or all of the following:

- determine rights related to the sale, issuance or subsequent distribution of shares (e.g. rights of first refusal, "piggyback" rights and pre-emptive rights);
- set out the rights and duties of the Officers and other management;
- create options to buy or sell the shares (e.g. a "shotgun" clause);
- determine what will happen in case of death, retirement, etc., of a shareholder (with the value of the shares to be calculated according to a certain formula);
- establish the number of Directors on the Board and their duties;
- provide existing shareholders with the right to approve future shareholders.

The Basics of a Shareholders' Agreement:

The shareholders' agreement is intended to ensure that shareholders are treated fairly and their rights are protected. The agreement includes sections outlining the fair and legitimate pricing of shares (particularly when sold). It also allows shareholders to make decisions about what outside parties may become future shareholders and provides safeguards for minority positions.

A shareholders' agreement includes a date; often the number of shares issued; a capitalization table that outlines shareholders and their percentage ownership; any restrictions on transferring shares; pre-emptive rights for current shareholders to purchase shares to maintain ownership percentages (for example, in the event of a new issue); and details on payments in the event of a company sale.

Shareholder agreements differ from company bylaws. Bylaws work in conjunction with a company's articles of incorporation to form the legal backbone of the business and govern its operations. A shareholder agreement, on the other hand, is optional. This document is often by and for shareholders, outlining certain rights and obligations. It can be most helpful when a corporation has a small number of active shareholders.

Example of a Shareholders Agreement for an Entrepreneurial Venture:

Many entrepreneurs creating startup companies will want to draft a shareholders' agreement for initial parties. This is to ensure clarification of what parties originally intended. If disputes arise as the company matures and changes, a written agreement can help resolve issues by serving as a reference point.

Entrepreneurs may also want to include who can be a shareholder, what happens if a shareholder no longer has the capacity to actively own their shares (e.g. becomes disabled, passes away, resigns, or is fired), and who is eligible to be a board member.

As with all shareholder agreements, an agreement for a startup will often include the following sections:

- A preamble, identifying the parties (e.g. a company and its shareholders)
- A list of recitals (rationale and goals for the agreement)
- Details of optional versus mandatory buying-back of shares by the company in the event that a shareholder gives theirs up
- A right of first refusal clause, detailing how the company has the right to purchase a selling shareholder's securities prior to them selling to an outside party
- Notation of a fair price for shares, either re-calculated annually or via a formula
- A potential description of an insurance policy

What is Included in a Shareholder Agreement?

The contents of a shareholder agreement may vary across companies. Some of the contents of a shareholder agreement include:

1. Parties:

The first section of a shareholder agreement identifies the corporation as one party that is different from the shareholders (another party).

2. Board of Directors and Board meetings

The shareholder agreement describes the role of the board of directors in the company and the requirement that decisions of the board should be approved by the majority. It also states how frequently the board of directors should hold meetings and how directors are selected and replaced.

3. Reserved Matters:

The shareholder agreement should set out issues that cannot be passed without getting the approval of all signatories, not just majority support. By creating a list of reserved matters, all shareholders are given the chance to vet certain transactions to determine if they are prejudicial to their investment. Some of the commonly reserved matters include changing share capital, acquiring or disposing of certain assets, taking on new debt, paying dividends, and changing the articles of association and memorandum.

4. Shareholder Information and Meetings:

The shareholder agreement should include a requirement that shareholders are entitled to regular updates on the company's performance through quarterly reports and an annual report. It should state the specific period when the reports should be sent out to shareholders. The agreement should also state when shareholder meetings will be held and the time, date, and venue of the meetings.

5. Share Capital and Share Transfers:

The shareholder agreement should record the corporation's share capital at the date when it is signed. Since changing share capital is one of the reserved matters, the directors are prohibited from issuing new shares or changing existing shares into a new share class without the signatories approving the changes .The shareholder agreement also contains provisions relating to share transfer, such as preventing share transfer to unwanted parties, transferring shares to a new party, what happens if a director or shareholder dies, as well as drag and tag provisions.

6. Amendment and Termination:

The process of amending or terminating the shareholder agreement should be provided in the agreement. For example, the shareholder agreement may be terminated upon the dissolution of the company, based on a written agreement, or after the lapse of a specific number of years from the date of the agreement.

So what happens if you don't have a shareholders' agreement?

Since a shareholders' agreement establishes the relationship between the shareholders, without one, you are exposing both shareholders and the company to potential future conflict.

This is particularly true in situations where the voting shares in a company are held equally (50% each) by just two people or companies. This is quite often the case with smaller private limited companies. Without the clarity of an agreement, if a dispute occurs and the shareholders can't reach an agreement, then a deadlock situation may occur since neither shareholder has control of the company. This will obviously prove problematic, particularly if one of the shareholders is acting unreasonably or has caused the conflict due to misconduct.

SHARE CERTIFICATES: DOCUMENTS GIVEN TO SHAREHOLDERS WITHIN THE COMPANY

SHARE CERTIFICATE (STOCK CERTIFICATE)

Owning shares means owning equity in a company. Typically, a shareholder purchases a certain number of shares from a company at a fixed rate on the grant date. The idea is that the business will grow over the years increasing the overall share price. The shareholder will then profit from the difference in price by selling these shares at the prevalent market price at a later date. Since shareholding is subject to time, documentation is important. This is where the concept of a share certificate comes into play.

WHAT ARE SHARE CERTIFICATES?

A share certificate, also known as a stock certificate, is a documented proof of shareholding in a company. It can be a physical document or an electronic one, issued to a shareholder and signed on behalf of the corporation. This certificate is legal proof of ownership of a certain number of company shares. It certifies registered share ownership of a certain number of shares from the grant date and also acts as a receipt of share purchase. However, a share certificate merely contains details of the shareholder and the number of shares they own, it is not the stock itself.

Share certificates are issued based on asset classes. Usually, one certificate is issued to each shareholder containing details of the total number of shares of a particular asset class. Multiple certificates are issued only in case of shareholdings across both asset classes A & B. A company must issue a share certificate within two months from the date of the issue or transfer of shares. Similar to currency notes, companies use intricate designs in their paper stock certificates to restrict fraudulent replications.

HOW ARE STOCKS HELD?

The ownership of company stocks can be of different types, and share certificates are released based on the **mode of ownership in the company**. Since these are also proof of investments, it is important that a corporation clarifies the mode of shareholding with its respective shareholders before issuing share certificates. The three types of shareholding are:

Physical certificate – As the name suggests, a physical copy of the share certificate is provided. The shares are directly registered in the name of the investor and all **documents** and **dividends** are sent directly to this shareholder.

"Street name" registration – Stocks are registered in the name of a brokerage firm. All documents and dividends are sent to this firm who then distributes it to their individual shareholders. This is the most **common type of shareholding**. Brokerage firms and their shares are listed in the company books and no physical copy of the share certificate is provided.

Direct Registration System – The individual's name is registered in the **stock issuer's records**. They deal directly with the company's transfer agent. There is no necessity to involve brokerage firms and share certificates are not provided.

HOW IS A SHARE CERTIFICATE ISSUED?

A share certificate is typically prepared and issued by the company secretary based on details provided by the company and shareholders. It is the primary duty of the company secretary to check all information for accuracy before publishing the certificate. The three most important details to be checked are:

- Serial number of the share certificate

Number of shares being issued or transferred

Details of the shareholder

However, an important point to be noted at this juncture is that a share certificate can be issued only:

- As per company bylaws, company directors are vested with the authority to issue new shares with the approval of shareholders.
- Articles of Association and the company Memorandum outline the processes to issue new shares or transfer their ownership.

WHY IS A SHARE CERTIFICATE IMPORTANT?

The primary role of a share certificate is documentation. All shareholder details must be updated periodically to track any changes in stock ownership. Suppose an investor buys 100 shares of a company today. A week later she might choose to sell 20 shares to another investor. A month later she might want to buy 100 more shares of the same company. All details of this shift in ownership must be tracked for auditing purposes.

A share certificate is also a legal proof of stock purchase and the shareholder's entitlement to dividends. To protect the interests of shareholders, all companies must maintain good record keeping practices of share certificates issued by them over the years. A share certificate is typically issued in the following three scenarios:

- Issuing new shares – New shares are issued to new shareholders. Company directors are vested with the power to create new shares without affecting the existing number of shares.
- Transferring shares – Suppose a shareholder sells a part or all of their shares. The sale could be to an individual, an investor, or another company. Either way, a new share certificate has to be issued to both parties with revised shareholding details.
- Loss or damage of certificate – Loss or damage to an existing share certificate has to be reported immediately. Except in case of loss of certificate, the damaged document must be returned to the issuing company before collecting a new one.

WHAT INFORMATION IS ADDED TO A SHARE CERTIFICATE?

Though the **design**, **layout**, and **mode of issuing share certificates** (paper or digital) have evolved over time, the basic details included in it have mostly remained the same. The need for the accuracy of these details cannot be stressed enough. Broadly, share certificate templates across different businesses include the following information:

- **Full name** of the company
- **Registered address** of the company head office
- **Registration number** of the company
- **Number of shares issued**, in numerical and full word form
- **Name** of the **shareholders**
- **Contact details** of the certificate owner. In case of joint ownership, contact details of the first-named shareholder are only included
- For limited companies, include the **company seal**, (if any)

SHARE REGISTER: A DOCUMENT THAT LISTS THE ACTIVE OWNERS OF THE SHARES IN A COMPANY

What is a Shareholder Register?

A shareholder register is a list of all active and former owners of a company's shares. The register includes details of shareholders, such as their name, address, the number of shares they own, class of shares held, date when they became a shareholder, and when they ceased being a shareholder.

A company's directors are required to update the shareholder register on an ongoing basis and ensure that every current shareholder is recorded in the register. The shareholder register serves as proof of ownership in the company, and it shows the number of shareholders in each class of shares.

Companies use the shareholder register to keep track of shares held by shareholders and contact them directly instead of going through a custodian bank.

Summary

- A shareholder register is a register of all the registered shareholders of a company.
- The information recorded in a shareholder register includes the shareholder's name, address, class of shares, number of shares held, the price paid, etc.
- The shareholder register makes it easy for the company or other interested parties to contact shareholders directly.

How a Shareholder Register Works?

Holders of registered shares of a company must be recorded in the shareholder register. The register is organized into share classes, where shareholders in each class of shares are listed alphabetically by their last name.

Apart from including the personal details of each shareholder, the register may retain a record of all shares issued to individual shareholders over past years, as well as transfers of shares and the name of the shareholder who acquired the shares. The register may be maintained either by the company itself or a third-party registry service provider.

A third-party registry service provider is tasked with maintaining and updating the register at an agreed fee. Since the shareholder register is a public document, third parties and other interested parties can access an updated list of a company's shareholders at any time.

Requirements for a Shareholder Register:

The shareholder register records the beneficial owners of shares. The beneficial owners of shares refer to the shareholders with voting rights attached to the shares. If a shareholder is entitled to the direct benefit of shares, the shares are classified as beneficiary held. Shares held in trust are classified as non-beneficiary since they are held for a third party.

Companies are required to provide the shareholder register for free to current shareholders, while non-shareholders may be required to pay a small fee. According to the U.S. Securities and Exchange Commission (SEC), companies must provide current shareholders with the contact information of other shareholders when the need arises – i.e., proxy solicitation and tender offer.

- Proxy solicitation is a request that authorizes another shareholder to cast a vote at a shareholder's meeting. A proxy solicitation must be accompanied by a proxy statement, which includes the necessary information to help the shareholder make an informed vote when a specific agenda comes up during the shareholder meeting.
- A tender offer is an offer to purchase a part or all shares held by shareholders. When making a tender offer, a shareholder may require the contact information of another shareholder and send them a bid to buy part or all of the shares they hold at a specific price.

When providing access to the shareholder register, a company must follow its internal charter and bylaws and the state laws on the provision of shareholder information to third parties.

Contents of a Shareholder Register

A shareholder register should include information about the current and past shareholders of the company. Some of the information provided includes the name of the shareholder, physical address, date of inclusion in the register, number of shares held, class of shares, etc.

If there are any changes to the shareholder's details, the register must be updated to reflect the new changes. The shareholder register also includes details about the issued shares of a company. The information added in the section includes the class of shares, the number of issued shares, the date when shares were issued, the share certificate number for each share, and the payment status of shares held by each shareholder.

When a shareholder transfers part or all of the shares, the shareholder register must be updated to reflect the number of paid and unpaid shares.

Gaining Access to the Shareholder Register

A shareholder register is accessible to shareholders and non-shareholders at any time. Shareholders may ask to gain access to the shareholder register and freely inspect any information needed. Non-shareholders may also request access to the shareholder register by providing details on the purpose of accessing the register and how the information shall be used.

The company may grant such a request if the register is intended to be used for a proper purpose and may require a small fee to provide a copy of the register. However, a company may decline to grant access to the shareholder register if the third party intends to use the shareholder register for an illegitimate purpose.

CORPORATE LAW

NON-DISCLOSURE AGREEMENT (NDA): A LEGAL CONTRACT BETWEEN TWO PARTIES THAT OUTLINES CONFIDENTIAL, MATERIAL, KNOWLEDGE OR INFORMATION THAT THE PARTIES WISH TO SHARE WITH ONE ANOTHER FOR CERTAIN PURPOSES, BUT WISH TO RESTRICT ACCESS TO OR BY THIRD PARTIES.

What does mean by the term "Non-disclosure agreement" is?

A non-disclosure agreement (NDA), also known as a confidentiality agreement (CA), confidential disclosure agreement (CDA), proprietary information agreement (PIA) or secrecy agreement (SA) or 'non-disparagement agreement' is a legal contract or part of a contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to.

It is a contract through which the parties agree not to disclose any information covered by the agreement.

What to Include in an NDA?

NDAs may be customized to any degree but there are six major elements that are considered essential:

- The names of the parties to the agreement
- A definition of what constitutes confidential information in this case
- Any exclusions from confidentiality

- A statement of the appropriate uses of the information to be revealed
- The time periods involved
- Miscellaneous provisions

Is a non-disclosure agreement legally binding?

NDAs are legally enforceable contracts, but they're now coming under increased scrutiny from lawmakers, attorneys and legal experts. ... Companies often use them as part of an employment contract or settlement agreement to protect sensitive information — like trade secrets.

Non-Disclosure Agreements by Type

There are many types of Non-Disclosure agreement. They are follows:

- **Basic/Standard Non-Disclosure Agreement:** Use a standard NDA to protect confidential information in the course of business (e.g., partnerships or sales), creative endeavors (e.g., film production or web design), product development (e.g., software development or inventions), or even personal affairs.

Mutual Non-Disclosure Agreement: Use a mutual NDA if you and another party both need to exchange confidential information that needs to remain private. For instance, to form a partnership, both companies may need to reveal sensitive financial information that would be damaging if it were leaked.

Employee Non-Disclosure Agreement: Have employees, interns, consultants, or partners sign an employee NDA to agree to keep business information secret. This document can apply to general employment, agency partnerships, or third-party services.

Interview Non-Disclosure Agreement: Use an interview NDA to ensure that your recruiting efforts don't accidentally result in proprietary information being leaked. When it's necessary to reveal to interviewees sensitive business information, have them sign an interview NDA first.

To Write an NDA: Common Clauses

You may want to fill in or write your own non-disclosure agreement. Here are the standard clauses you should include, and what they mean:

1. Disclosing and Receiving Parties:

Start your NDA by establishing the "**Parties**" to the agreement. The "**Disclosing Party**" is the individual or entity sharing information, while the "**Receiving Party**" is the individual or entity receiving information.
In a mutual NDA (also known as a bilateral NDA), confidential information is shared both ways. In this agreement, both parties serve as the Disclosing and Receiving Parties.

2. Confidential Information:

After the Parties have been established, specify what confidential information is protected by the non-disclosure agreement.
Common examples of NDA-protected confidential information include:

Trade secrets

- Special formulas
- Practices
- Instruments
- Software development
- Technical designs
- Blueprints
- Customer lists

Patent details

Business Ventures

- Affiliate deals
- Partnerships

Mergers
Real Estate
Consultations

Audits
Advertising and marketing
Pricing structures
Business and financial records

Creative Endeavors

- Documentary, TV, film, and news production
- Illustrations, graphic design, and drawings

- Web design
- Inventions, prototypes, or product samples
- Recipes

Other

- Visitor or factory tours
- Bachelor or bachelorette parties
- Volunteering
- Celebrity meet-and-greets
- House tours
- Original artwork

These are only a few examples of the types of information you wish to keep confidential under the protection of your NDA. Your agreement can list as many or few items of confidential information as needed, but you need to be specific about what information the Receiving Party is not permitted to disclose.
Being specific about what information is protected by your NDA will help it stand up in court in the event of a legal dispute.

3. Exclusions from Confidential Information

An "**Exclusions**" clause defines what kind of information is not protected by the NDA.

Information that can't be protected by a non-disclosure agreement includes:

- information already in the public domain
- information the other party already has access to prior to the NDA
- information that is independently developed or discovered by the recipient
- information that the Disclosing Party has authorized the Receiving Party to share with prior written consent

Oral information can be deemed confidential information, as long as it's confirmed in writing within a specific time frame after being disclosed.

4. Non-Disclosure Obligations

The bulk of your NDA will be made up of **Non-Disclosure Obligations**, which outlines what obligations the Receiving Party has to the Disclosing Party's information.

Rather than being a single clause, this section will likely be comprised of multiple clauses that detail various obligations.

You can add additional clauses to the section of your NDA, depending on your needs. Here are some other clauses you may choose to include in your Non-Disclosure Obligations section:

Non-Disclosure of Transaction: The Receiving Party promises to not let others know that:

- the Disclosing Party has shared or used Confidential Information.
- a Transaction is being discussed or negotiated.
- a Transaction has taken place, including the details of the relationship.

Non-Solicitation: either party may prevent the other from soliciting or offering employment to the other party's employees, or from diverting business away from the other party.

Non-compete: Parties agree not to engage in business activities that directly compete with the other Party. Many companies choose to have partners and employees sign NDAs and non-compete agreements separately.

Non-Circumvention: if the Disclosing Party is sharing business contacts, a non-circumvention clause prevents the Receiving Party from bypassing the agreement and directly doing business or engaging with those contacts.

5. Time Frame / Termination

The NDA should explicitly state how long it remains in effect. The Time Frame includes when the promise to keep confidential information secret begins (the "Effective Date"), and the duration in which the protected information must not be shared with others (the "Disclosure Period").

Usually, the Parties agree to when the term of the agreement will end (known as the "Termination" provision). For example, the non-disclosure agreement could terminate when:

- the Agreement expires
- the Transaction is completed; or
- a specific time period has passed.

6. Jurisdiction

The Jurisdiction clause establishes which state's laws govern the non-disclosure agreement. If confidential information is leaked or inappropriately used by one party and a lawsuit ensues, the laws of the agreed-upon state will apply, and any trials or hearings will take place in that state.

Be aware that different states treat NDAs differently.

7. Signatures

Finally, your NDA needs to include the signatures of all Parties and their Representatives.

Representatives are other people (i.e., directors, officers, employees, agents, or advisors) who may share, receive, or protect information in pursuit of the Transaction specified in the NDA.

8. Additional Clauses

Depending on the nature of the transaction, relationship, and information being specified, every NDA will end up looking different. There are additional clauses you may choose to include in your own non-disclosure agreement:

- **Remedies**: specifies the consequences of breaking the NDA
- **No License:** provides that the NDA doesn't give either party any patent, copyright, or ownership of the information provided.
- **Severability**: states that if one part of the NDA is ruled invalid in court, that part will be removed, and the rest of the agreement remains valid.
- **Amendments**: notes that the NDA may be amended at any time.

SERVICES AGREEMENT: A CONTRACT ENTERED INTO BY TWO PARTIES WHERE ONE AGREES TO PROVIDE A SPECIFIED SERVICE TO THE OTHER

About Service Agreement:

A Service Agreement, also sometimes called a General Services Agreement, is a document between a service provider and a client. In a Service Agreement, the service provider agrees to provide certain services - these can be any type of services, from small, individual-oriented services like dog walking to larger, more professional services like freelance accounting - to a client.

Within these agreements, the service provider and client outline their expectations for behavior and agree to the bounds of the relationship between them.

In a Service Agreement, the most important details of the parties' relationship will be entered: things such as a description of the services, as well as pricing information, and how the client is expected to pay. A good Service Agreement will also have both parties covered in case anything goes wrong: clauses such as dispute resolution and governing law should be included.

What is addressed in a Service Agreement?

Service Agreements typically address the following:

- the parties to the agreement;
- the service being offered;
- the term of agreement; and
- the compensation that will be provided to the Service Provider.

In addition, Service Agreements may also provide specifics on:

- how confidential information is to be treated upon the Service Provider's termination;
- whether there are limitations on the Service Provider's ability to compete with the Customer's business upon the Service Provider's termination; and
- how disputes between the Customer and Service Provider will be handled.

Who Needs a Service Agreement?

When you buy a car, a computer, or an appliance, you usually get your purchase on the spot. Even if you order it and wait for delivery, you know exactly what to expect and what you are getting. But you can't look at a service beforehand the way you would an appliance. Many services are performed over a long period of time, and customers often pay the fee, or at least a portion of it, well before they see what their money bought.

For example, a developer who creates customized software for a company will likely go through several steps—from determining the company's needs to designing, installing, and testing the software—before delivering any work.

A written service agreement is a way to manage expectations while the work is underway. It also assures both parties that they will get the work and fees they bargained for in the time frame they expect.

Not all services require agreements. For example, when you take your car to a quickie oil change shop, chances are that you and the owner agree orally about the price, what will be done, and when. But when work is performed over time, both parties need the protection of written standards, goals and pricing.

Some of the businesses and professionals who rely on service agreements include:

- management consultants
- graphic designers and illustrators
- photographers and videographers
- website developers and IT service providers
- real estate brokers
- general contractors and construction companies
- accountants and lawyers
- advertising and marketing professionals, and
- caterers

How to Write a Service Agreement?

The title of the agreement should include your company name and "service agreement," "client agreement," "customer agreement," or another title that best describes your situation. Real estate brokers use the term "listing agreement," for instance, for contracts to represent properties for sale. An accountant might use a "tax preparation agreement," and so on.

Many aspects of a service agreement can be standardized, and you can create what's called a template that provides the basics you'll need for your business most of the time. You might have to adjust your template to accommodate specific arrangements you make with an individual client. But you'll usually be able to fill in the blanks without reinventing the wheel each time you get a new client.

Some industries and professions might require additional specialized sections, but in general, a service agreement should include these sections and topics:

- A description of the parties involved in the agreement.
- A description of the services to be performed.
- A description of fees and payment schedules.
- The effective date of the contract, when work will begin, and the terms under which it can be terminated.
- Include a place for signatures.

Other Provisions Your Contract Might Need

- A hold harmless clause.
- An indemnification clause.
- Warranty clauses.
- Confidentiality clauses.
- Provisions for intellectual property.
- Provisions requiring client cooperation.
- Boilerplate provisions.

What is the difference between an Employment Contract and a Service Agreement?

Service Agreements are used to hire Service Providers or independent contractors, not employees. A Service Agreement is limited to a specific project or time period. Employment Contracts are used to hire employees.

SUB-CONTRACTOR AGREEMENT: AN AGREEMENT BETWEEN A CONTRACTOR AND ANOTHER PARTY THAT IS GOING TO PROVIDE SERVICES/PRODUCTS TO THE CONTRACTOR.

What do you know about Contractor Agreement?

An **Independent Contractor Agreement i**s an agreement between two parties, the independent contractor (often called just the "contractor") and the recipient of services (often called just the "recipient"). In this document, the parties are generally forming a relationship so that the **contractor can perform one specific task.**

These relationships are **very different than employment relationships -** and in fact, there are several legal requirements for ensuring a contracting relationship is not mistaken for an employment one. These include things such as the **recipient's level of control over the contractor, location restrictions,** and other items which may determine whether the contracting relationship looks more like employment.

This agreement can be used for **any type of contracting services,** whether big or small. Within these agreements, the contractor and recipient outline the **bounds of their contractual relationship.**

Subcontractor Agreement:

A Subcontractor Agreement is a document used to put into writing the terms of an agreement between a General Contractor and a Subcontractor who will perform work and services for the General Contractor. A subcontractor agreement is a legal document that explains the responsibilities of a subcontractor or freelance consultant. The subcontractor is legally required to perform the duties outlined in the agreement as well as follow any rules explained in the master agreement.

In some cases, a primary contractor will have a master agreement or contract with their client. If stated in the master agreement, then the independent contractor is able to hire out work to a subcontractor in order to complete the project. Since the General Contractor is the only one in direct contract with the Client, they are responsible to the Client for all of the work done, including the work done by the Subcontractor. If there is a problem with the Subcontractor's work, the Client would go to the General Contractor to rectify that error.

15 Clauses of a Subcontractor Agreement:

Subcontractor agreements can take many forms and are customized for each job and business. Depending on the nature of your work, your subcontractor agreement may include some or all of the following clauses.
Each one of the clauses below may be covered in detail in their own section of the agreement, or they may be combined and summarized together.

1. Scope of Work

The scope of work section of an agreement lays out all of the project details and what's expected from the subcontractor. This will cover things like the name of the project, who the project owner is, and what tasks the subcontractor is responsible for.

This section is absolutely crucial since it explains pertinent project information that all parties agree on and understand.

2. Duration of Work

If there are deadlines attached to the project, it should be explained in the duration of work section. Any due dates, the effective date of the contract, and the structure of the project can be listed here.

This will also include the date by which the project must be completed. If you're the project owner, then you should set your due date a few days before your own deadline in case you run into any issues.

3. Payment and Billing

There are several aspects of the payment and billing section that you should account for.
First, the rate that you will pay to the subcontractor and how you will make the payment is required. This will detail if it's an hourly rate or a flat fee for the entire project. You can also choose to set a performance-based wage that will pay based on deliverables.

Second, you should explain how you will make payment and the exact pay schedule. Lastly, there should also be a buyout clause to protect yourself if things go badly.

4. Clarify Status

The status of the subcontractor should be set in stone. This means clearly identifying that they're an independent subcontractor.

This will clarify that the worker isn't a full-time employee and that they're responsible for reporting and paying their own taxes.

5. Non-Disclosure

If the project at hand has sensitive information that can't be revealed and shared with others, you need a non-disclosure agreement (NDA).

This should take into account the master agreement that you made with your client to make sure the subcontractor abides these privacy requests.

The NDA should also lay out what is considered confidential information.

6. Non-Competition

The non-competition clause will ensure that the subcontractor doesn't cut you out of the deal and work directly with your client.

This clause will protect you from any competition now or in the future. You should also explain the time frame during which competition isn't permitted.

7. Work-for-Hire

When you hire a subcontractor, you have the right to ownership of any work they produce. Since you're hiring them, the subcontractor must waive all rights to work ownership and anything they create is now your intellectual property.

8. Insurance

Similar to clarifying a worker's independent contractor status, the insurance coverage clause states that the subcontractor is responsible for paying all of his or her insurance and other related coverage.
This will include commercial general liability insurance, errors and omissions, and worker's compensation insurance.

9. Prohibition of Assignment

This clause prevents subcontractors from hiring subcontractors of their own. Since you're already hiring a subcontractor for your client's project, you want to avoid going one layer deeper as it can blur the lines of the project. By including this, you can ensure that nobody else will be working on your project.

10. Indemnity

The indemnity clause will ensure that the subcontractor is responsible for the quality of work they produce. This will make sure you're not liable for what they produce in case any legal situations arise.
For example, if a subcontracted graphic designer completes work for a business and commits copyright infringement, the original hired graphic designer may be responsible for costs incurred defending against a lawsuit unless they're protected by an indemnity clause.

11. Promises and Warranties

The promises and warranties section is very much like the scope of work section. This highlights that the subcontractor will deliver professional work that they're qualified to do. It also states that this work is all original and if they need to make any edits or corrections, they're responsible for doing so.

12. Arbitration

The arbitration clause explains how legal disagreements will be resolved. Ideally, you'd prefer to have third-party binding arbitration to settle any issues that arise before taking the matter to court.

13. Termination or Modification

In some cases, you may be required to cancel the contract with your subcontractor. This section will explain when termination can occur and on which grounds. It will also explain what the subcontractor's reduced earnings will be if they don't successfully fulfill their promises.
Lastly, there should be a written termination notice that's agreed upon in order to officially end the contract.

14. Jurisdiction

The jurisdiction section will list which state's local laws the project and contract will follow. The state where your company is located should be the governing body for the contract.
Therefore, if your business is based in California, the contract should follow the laws of the state of California.

15. Entirety of Agreement

The final section that you should include in a subcontractor agreement is the entirety of agreement clause. This states that only the details listed in the contract are covered by the entire agreement. This means that anything that's not included cannot be implied or assumed.

How to Write a Subcontractor Contract

Contracts help you to protect yourself when hiring a subcontract worker. A subcontractor is usually hired to do part of another person's work, such as, a graphic designer hiring a writer to write the content for a brochure that they are designing. Almost any profession can hire a subcontractor. When doing so, the contract allows you to detail and define all of the terms and conditions of the agreement, such as the scope of the work, due dates and payment arrangements.

- Define the needs of the project.
- Finalize the provisions of the agreement
- Clarify the terms for payment.
- Write a draft of the contract and send it to the subcontractor for her review.
- Decide on a method to handle disputes.
- Review the contract one last time to confirm.

JOINT VENTURE/ TEAMING AGREEMENT: THIS IS AN AGREEMENT THAT INVOLVES TWO OR MORE PARTIES COMBINING RESOURCES TO BID FOR A CORPORATE OR GOVERNMENT CONTRACT.

What Is a Joint Venture?

A joint venture is a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity.
In a joint venture, each of the participants is responsible for profits, losses, and costs associated with it. However, the venture is its own entity, separate from the participants' other business interests.

What is the teaming agreement?

A teaming agreement is a contract. between a potential prime contractor and another company to act. as a subcontractor under a specified federal government contract or acquisition program.

Is a teaming agreement a joint venture?

Whereas a teaming agreement is a prime and subcontract relationship between the parties, a joint venture is a separate legal entity that is comprised of two or more companies that form one entity for the purpose of performing an identified government contract.

What is the Difference Between Teaming and Forming a Joint Venture?

Many people confuse teaming (sometimes referred to as a "Contractor Teaming Agreement" or "CTA") and joint venturing. In truth, these two types of partnerships have some major differences and raise different types of compliance concerns.

- "Teaming" is really just a special kind of subcontracting, where (in the small business set-aside context) a small-business that fulfills a certain procurement's set-aside requirements serves as the prime contractor and subcontracts a substantial portion of the work to another (often larger) business. The "team" is set up before the bidding/proposal process, the contractors work together on the bid/proposal, and the procuring agency is made aware of the "team" prior to the source selection process. The teaming agreement is customarily submitted as part of the bid/proposal itself.
- In comparison, joint venturing is when two companies (in the small business set-aside context, usually one large and one small) form a third, joint venture or "JV" entity. If the JV is formed and structured appropriately, the JV itself will be eligible to compete as a "small" business.

Everything You Need to Know to make a Joint Venture Contracts:

Joint venture contracts are when two parties come together in an agreement for a specific business project. The contract outlines the expectations, obligations, terms, and responsibilities that are expected of both parties during the project. In a joint venture, the two companies no longer act as two separate entities, but rather function as a partnership for the purpose of the contract.

Many elements go into a joint venture contract, but some of the most important items to include are:

- The objectives that the joint agreement was created for.
- A layout of the contributions provided by both companies whether in cash or assets, as well as the value of those contributions.
- Each of the parties' individual functions in the project, such as technical contributions or commercial commitments.
- Instructions on how the parties will meet to stay updated on the progress of the project.
- The length that the partnership will be in effect.
- Instructions for how the agreement can be terminated if it no longer works out.
- Terms laid out for who will manage the day-to-day options of the project.
- Whether profits will be based on the level of contribution of each party or by a specific formulation.

A section that includes specific terms for details of the project such as confidentiality agreements.

Teaming Agreements

A teaming agreement is a bindin g agreement between a prospective prime contractor and subcontractor to pursue a federal contract opportunity together. Sometimes, procuring agencies require prime contractors to submit copies of their teaming agreements with prospective subcontractors. Even when a teaming agreement is not required by the procuring agency, a strong teaming agreement can provide many important benefits, including:

- Delineating each company's role in proposal preparation
- Allocating a specific scope of work to the subcontractor in the event that the proposal is successful
- Providing each party with reasonable assurances regarding the exclusivity of the relationship
- Documenting that the teaming relationship complies with applicable laws, such as the limitations on subcontracting and ostensible subcontractor rule.
- Protecting both parties' confidential and proprietary information (or incorporating the terms of a separate no-disclosure agreement)

Reasons for Termination of a Joint Venture Contract

While there can be a number of reasons that the two companies may decide to terminate the partnership and dissolve the joint venture agreement, some of the most common reasons are:

- One company may be interested in buying the other business.
- The market may have changed, making the partnership no longer necessary.
- One or both of the companies may have newly established goals.
- The purpose of the contract was not fulfilled.
- The shared goals of the joint venture may no longer be applicable.
- The time period set in the contract has lapsed.

LABOUR LAW

OCCUPATIONAL HEALTH & SAFETY: IS THE LAW THAT SEEKS TO PROTECT THE WELL-BEING OF WORKERS.

What Does Occupational Health and Safety (OHS) Mean?

Occupational health and safety (OHS) relates to health, safety, and welfare issues in the workplace.

OHS includes the laws, standards, and programs that are aimed at making the workplace better for workers, along with co-workers, family members, customers, and other stakeholders.

Improving a company's occupational health and safety standards ensures good business, a better brand image, and higher employee morale.

Explains Occupational Health and Safety (OHS)

Occupational health and safety is concerned with addressing many types of workplace hazards, such as:

- Chemicals
- Physical hazards

- Biological agents
- Psychological fallout
- Ergonomic issues
- Accidents

Occupational health and safety standards are in place to mandate the removal, reduction, or replacement of job site hazards. OHS programs should also include material that helps minimize the effects of the hazards.

Employers and company management are obliged to provide a safe working environment for all of their employees.

Workers' Rights under the OHS Act

The OHS Act gives workers the right to safe and healthful working conditions. It is the duty of employers to provide workplaces that are free of known dangers that could harm their employees. This law also gives workers important rights to participate in activities to ensure their protection from job hazards. This explains workers' rights to:

- File a confidential complaint with OSHA to have their workplace inspected.
- Receive information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace. The training must be done in a language and vocabulary workers can understand.
- Review records of work-related injuries and illnesses that occur in their workplace.
- Receive copies of the results from tests and monitoring done to find and measure hazards in the workplace.
- Get copies of their workplace medical records.
- Participate in an OSHA inspection and speak in private with the inspector.
- File a complaint with OSHA if they have been retaliated against by their employer as the result of requesting an inspection or using any of their other rights under the OSH Act.

What are other basic safety rules that need to be followed here at our worksite?

There are Seven Basic General Industry Safety Rules. They are follows

1. Keep work areas clean. Proper housekeeping alone can go a long way in preventing injuries. Injuries such as slips, trips, falls, lacerations, sprains, strains, etc. can be reduced by keeping work areas organized and clean.

2. Use the proper tool for the job. Avoid the first impulse to use whatever tool (or object) is around you to get a work task done. Using the wrong tool for the job can result in an injury or damage to the tool which can lead to an injury in the future.

3. Always wear the proper PPE for the work task. The lack of PPE, or the use of improper PPE, leads to many injuries

in the workplace. PPE is the last line of defense when protecting yourself from the hazards of your work. If you come into contact with a hazard when not wearing the correct PPE the injury will be more severe than if you were wearing it.
4. Never work on live equipment. Working on energized equipment is an unsafe act that can result in serious injuries or fatalities. Always follow proper lock out/tag out procedures prior to performing any maintenance or repair work on equipment.

5. Make sure chemicals are properly labeled and stored. OSHA issues many citations regarding hazard communication every year. Improper labeling and storage can lead to injuries or property loss due to fires, corrosion, etc.

6. Communicate hazards to other personnel. Never assume that a coworker understands the hazards of a task, especially if they are new or new to the task. When work plans or conditions change take the necessary time to inform others of the impacts the changes have on safety.

7. Stop work when needed to address hazards. Always stop work to take the time to get hazards addressed to make it safe to continue the task. Whether you need to involve other personnel such as a supervisor or you need to take time to get the right tool for the job, always take the time to do so.

Right to a Safe and Healthful Workplace

Employers' "General Duty": Employers have the responsibility to provide a safe and healthful workplace that is free from serious recognized hazards. This is commonly known as the General Duty Clause of the OSH Act.

OSHA Standards: Protection on the Job

OSHA standards are rules that describe the methods that employers must use to protect their employees from hazards. There are four groups of OSHA standards: General Industry, Construction, Maritime, and Agriculture. (General Industry is the set that applies to the largest number of workers and worksites). These standards are designed to protect workers from a wide range of hazards. These standards also limit the amount of hazardous chemicals, substances, or noise that workers can be exposed to; require the use of certain safe work practices and equipment; and require employers to monitor certain hazards and keep records of workplace injuries and illnesses.
Examples of OSHA standards include requirements to:

- Provide fall protection, such as a safety harness and lifeline;
- Prevent trenching cave-ins;
- Ensure the safety of workers who enter confined spaces such as manholes or grain bins;
- Prevent exposure to high levels of noise that can damage hearing;
- Put guards on machines;
- Prevent exposure to harmful levels of substances like asbestos and lead;
- Provide workers with respirators and other needed safety equipment (in almost all cases, free of charge); OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION 8
- Provide healthcare workers with needles and sharp instruments that have built-in safety features to prevent skin punctures or cuts that could cause exposure to infectious diseases; and

- Train workers using a language and vocabulary they understand about hazards and how to protect themselves. Employers must also comply with the General Duty Clause of the OSH Act.

This clause requires employers to keep their workplaces free of serious recognized hazards and is generally cited when no specific OSHA standard applies to the hazard.

BASIC CONDITIONS OF EMPLOY: PRESCRIBES THE MINIMUM CONDITIONS OF EMPLOYMENT WHICH MUST BE APPLIED TO BY AN EMPLOYER.

What do you mean by basic conditions of employment?

The BCEA dictates the most basic work rights for employees and these rights apply to all places of work. In the title of the BCEA, the goal of the Act is set out as wanting to have fair labour practices as per the Constitution for all employees and employers.

Basic Conditions of Employment Act

The Basic Conditions of Employment Act (BCEA) provides a basic guideline on BCEA regulations relating to:

- **Working times:** including shift work, weekend work, public holidays, overtime
- **Payment:** including payment in kind, deductions
- **Leave:** annual leave, sick leave, maternity leave, family responsibility leave, unpaid leave and absence without leave
- **Deductions:** including those required by law and those you are allowed to make
- **Notice periods**
- **Administration:** documents needed by employees and record-keeping
- **Prohibition of victimization and exploitation**

Working times and pay

- **The maximum hours of work** are 45 hours per week for ordinary pay.
- **The maximum length of a working day** is 9 hours if the worker works a 5-day week, but 8 hours a day if the worker works a 6-day week. Where the working week is compressed (squashed) into fewer days, shifts of longer hours may be introduced with the employee's consent. For example, an employee can agree to work shifts of 12 hours over 4 working days.

- **Overtime is voluntary.** No worker may work more than 10 hours of overtime per week. Overtime must be paid per hour of overtime worked, at a rate of one and a half times the worker's ordinary hourly wage. In addition, no employee may work more than 12 hours in any day (including overtime on that day).

Flexibility in working hours

The BCEA allows for some flexibility in the arrangement of working hours, by agreement between the employer and workers (collective agreement) or one worker (individual agreement):

- **Compressed working week by collective or individual agreement:**
  Employees can work up to 12 hours of normal work on any day without receiving overtime pay. But the employees may still not work more than 45 normal hours per week and may not work on more than 5 days in a week. Any time worked beyond 45 hours in the week should be paid at overtime rates.
- **Averaging of working hours by collective agreement only:**
  Averaging means workers can agree to work longer hours than the BCEA usually allows, if they get the same number of extra hours off at a later time. This would for example mean that workers could agree to work longer hours in one week for normal pay, if they work reduced hours for normal pay the following week.

Payment in kind

Wages can be paid partly in kind. This means that if the worker and the employer agree that wages will be paid partly in kind, then the employer can pay the worker his or her wage through giving him or her housing or use of land, or rations (food), as well as cash. This has been common with farm-workers and domestic workers.

The law says how much the payment in kind is worth. It's often difficult to work out the value of payment in kind, so the law says that the value must be worked out as follows:

- Either R100 per month, or
- 1/3 of the cash wage, or
- Whichever is higher

The employer and worker can also agree on what the real value of the payment in kind is. They can only do this if the value they agree on is more than what the law says. This agreement must be in writing. When you want to calculate any of the following, you must use the full wage (the cash wage plus the payment in kind):

- Overtime pay
- Payment for work on Sundays and public holidays
- Payment for annual leave and sick leave
- Contributions to and benefits from UIF

Deductions

Deductions from wages (other than those required by law) are not permitted without the written consent of the worker.

The **deductions required by law** which an employer makes from the wages of a worker are as follows:

- Unemployment Insurance Fund (UIF)
- SITE (tax)
- Any deduction ordered by a court

The **lawful deductions** which an employer can make from the wages of a worker, if the worker instructs the employer in writing to make the deduction, are as follows:

- Trade union subscriptions
- Medical aid contributions
- Pension or provident fund
- Money to pay back a housing loan or other loan from the employer
- Money for food and accommodation
- For loss or damages suffered at work provided the employee has been given a hearing to explain the facts.

Often employers also make **unlawful deductions** from workers' wages, such as:

- When there are shortages in a till, the worker has to pay back the shortages
- The worker breaks something at work
- The worker owes the employer money, but did not agree that the amount owing should be deducted

- The worker is off sick and the employer deducts money for the days not worked
- The worker is absent from work without leave (permission to take annual, family responsibility or maternity leave, or being sick)

If an employer wants to deduct a fine from a worker's wage, to compensate the employer for loss or damage, the employer can only deduct the fine if:

- The loss/damage happened during the 'course and scope of employment'
- The worker was at fault
- A fair hearing was held to give the worker a chance to state her or his case
- The employer does not deduct more than the actual value of the loss or damage
- The total amount deducted is no more than 25% of the employee's wages
- The worker gives consent in writing

Daily and weekly rest periods

- No employee' hours of work may be spread over more than 12 hours per day. 'Spread over' means from the start of work to the end of work, including any breaks for meals or rest and any overtime
- No worker's hours of work may be spread over more than 12 hours per day ('Spread over' means from the start of work to the end of work, including any breaks for meals or rest and any overtime.)
- A rest period of 1 hour is required after every 5 hours worked. This can be reduced to 30 minutes, if the worker and employer agree in writing
- Every worker is entitled to a daily rest period of 12 hours from the end of work on one day to the start of work on the following day. This rest period can be reduced to 10 hours if a worker lives on the premises and gets a meal break of at least 3 hours (this may be relevant to domestic workers, caretakers, farmworkers, and so on)
- Every worker is entitled to a weekly rest period of 36 continuous hours. For many workers, this is over the weekend
- An agreement in writing between the employer and employee may reduce the meal interval to not less than 30 minutes or do away with a meal interval if the employee works less than 6 hours on a day

Leave

Leave can be annual (yearly) leave, sick leave, maternity leave, family responsibility or unpaid leave.

Annual leave

- Every worker is entitled to 21 consecutive days paid leave per year. This is the equivalent of three weeks time off
- The worker is entitled to take 21 days all in one go, but can choose to use the annual leave to take occasional days off work. The employer then deducts these days of occasional leave that a worker took during the year from the annual leave
- Annual leave must be taken within 6 months of the end of an annual leave cycle (a year's work)
- If the worker is off work on any other kind of leave, these days do not count as part of annual leave. In other words, annual leave cannot be deducted at the same time as sick leave, family responsibility leave or maternity leave
- If the leave period covers a public holiday, then the public holiday does not count as part of the worker's leave
- Annual leave cannot be taken at the same time as the notice period
- Leave pay is not a bonus on top of normal pay. It simply means that a worker gets a holiday every year, and gets normal pay for those days. If a worker doesn't take leave, or all the leave, the employer will not pay out leave pay instead of leave
- If a worker leaves a job without having taken all the leave that is due to them, the worker must be paid for the days of leave that they have not taken. This is called pro rata leave pay

Sick leave

- A permanent worker is entitled to paid sick leave of 30 days over any 3-year cycle (36 days if the worker works a 6-day week). During the first 6 months that a worker works for an employer, she or he gets 1 day paid sick leave for every 26 days worked. Once all these paid sick leave days are used up, the employer does not have to pay the worker when he or she is off sick. An employee who works more than 24 hours during any month earns one day's leave for every 26 days worked
- Seasonal or temporary workers are entitled to 1 day's sick leave for every 26 days worked over the first 6-month cycle
- Workers who are sick for more than 2 days may be required to produce a doctor's certificate. If a worker lives on the premises and it is difficult for them to get to a doctor (for example,

in rural areas), the worker does not have to produce a certificate unless the employer gives the worker reasonable assistance to get the certificate

- Sick leave pay is not a bonus on top of normal pay. It simply means that if a worker is genuinely sick and has to take time off work, the employer must pay the worker up to a certain number of days. For example, if a waitress in a restaurant only took 3 days sick leave this year, the employer does not owe her the money for the remaining sick leave days at the end of the year.

Family responsibility leave

- Every worker with more than 4 months service with an employer, and who works on more than 4 days a week, is entitled to 3 days paid family responsibility leave per year. This can be taken if a direct family member dies, or when a child is born or ill. A total of three days is allocated for this kind of leave and not three days for each event.

Maternity leave

Women workers are entitled to 4 months unpaid maternity leave. During this time, the worker may draw maternity benefits from the Unemployment Insurance Fund.

A **Code of Good Practice on the Protection of Employees During Pregnancy and After the Birth of a Child** has been published.

Unpaid leave

An employer may agree to let a worker take extra days of annual leave, or the worker may be sick for longer than the paid sick leave. Then the employer does not have to pay the worker for these days.

Absent without leave

If a worker takes leave without the employer's permission and is not sick, the employer does not have to pay the worker for the time taken off. If the worker takes off many days in a row without permission (normally more than 4 consecutive days), or often takes time off without permission, the employer may presume that the worker has deserted (left without giving notice) his or her employment.

The employer may employ someone else to do the job. In this case the employer does not give the worker notice. But if the worker returns, fair dismissal rules must be followed.

Notice periods

- During the first six months of employment, workers will be entitled to at least 1 week notice of the termination of their services
- After the first six months, but during the first year of employment, workers will be entitled to 2 weeks notice
- If they have worked for more than one year, workers are entitled to 4 weeks notice
- If an employment contract has a longer period of notice than the BCEA, the longer notice must be given
- Notice works both ways! If a worker resigns without giving the employer the correct amount of notice, for example one week, the employer can claim one week's pay from the worker
- Notice must be in writing
- Neither the employer nor the worker can give notice while the worker is on leave

All workers are entitled to a written **certificate of service** when the worker stops working for that employer. The certificate of service sets out the full name of the employer and the worker, the job/s that the worker was doing, the date the worker began working and the date the worker ended work; the wage at the time that the job ended, including payment in kind.

COMPANY'S ACT: A BODY OF RULES WHICH REGULATES CORPORATIONS FORMED UNDER THE COMPANIES ACT.

USA Model Business Corporation Act – Company Law

The USA Model Business Corporation Act is the official legislation of the rules and regulations of a limited liability company incorporated in the USA.

Company Name

A corporate name:

Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.", or words or abbreviations of like import in another language; and

- May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 3.01 and its articles of incorporation.
- A corporate name must be distinguishable upon the records of the secretary of state from:

Registered Office and Registered Agent

Each corporation must continuously maintain in this state:

A registered office that may be the same as any of its places of business; and a registered agent, who may be:

- An individual who resides in this state and whose business office is identical with the registered office;
- A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
- A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

Articles of Incorporation

The articles of incorporation must set forth:

- A corporate name for the corporation that satisfies the requirements of section 4.01
- The number of shares the corporation is authorized to issue
- The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and
- The name and address of each incorporator.

Directors

A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

- A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.
- Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 8.06.

Shareholders

For purposes of this Act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

- Three or fewer co-owners
- A corporation, partnership, trust, estate, or other entity
- The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.
- For purposes of this Act, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person

Corporation Dissolution

Dissolution by Board of Directors and Shareholders

A corporation's board of directors may propose dissolution for submission to the shareholders.

For a proposal to dissolve to be adopted:

- The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
- the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).
- The board of directors may condition its submission of the proposal for dissolution on any basis.
- The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.
- Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

Grounds for Administrative Dissolution

The secretary of state may commence a proceeding under section 14.21 to administratively dissolve a corporation if:

- The corporation does not pay within 60 days after they are due any franchise taxes or penalties imposed by this Act or other law
- The corporation does not deliver its annual report to the secretary of state within 60 days after it is due
- The corporation is without a registered agent or registered office in this state for 60 days or more
- The corporation does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

Procedure for and Effect of Administrative Dissolution

If the secretary of state determines that one or more grounds exist under section 14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination under section 5.04.

If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is perfected under section 5.04, the

secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under
section 5.04.

A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 14.05 and notify claimants under sections 14.06 and 14.07.

The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Company Restoration

Reinstatement Following Administrative Dissolution

A corporation administratively dissolved under section 14.21 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

- Recite the name of the corporation and the effective date of its administrative dissolution
- State that the ground or grounds for dissolution either did not exist or have been eliminated
- State that the corporation's name satisfies the requirements of section 4.01; and
- Contain a certificate from the [taxing authority] reciting that all taxes owed by the corporation have been paid
- If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 5.04
- When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred

EMPLOYMENT CONTRACTS

What Is an Employment Contract?

An employment contract is a signed agreement between an individual employee and an employer or a labor union. It establishes both the rights and responsibilities of the two parties: the worker and the company. It allows both parties to clearly understand their obligations and the terms of employment.

More specifically, an employment contract can include:

- **Salary or wages**: Contracts will itemize the salary, wage, or commission that has been agreed upon.
- **Schedule:** In some cases, an employment contract will include the days and hours an employee is expected to work.
- **Duration of employment:** An employment contract will specify the length of time the employee agrees to work for the company. In some cases, this might be an ongoing period of time. In other cases, it might be an agreement set for a specific duration. At other times a minimum duration is laid out, with the possibility of extending that period.
- **General responsibilities:** Contracts can list the various duties and tasks a worker will be expected to fulfill while employed.

Confidentiality: Although you may have to sign a separate non-disclosure agreement, some contracts include a statement about confidentiality.

Communications: If an employee's role involves handling social media, websites, or email, a contract might state that the company retains ownership and control of all communications.

Benefits: A contract should lay out all promised benefits, including (but not limited to): health insurance, 401k, vacation time, and any other perks that are part of the employment.

Future competition: Sometimes, a contract will include a noncompete agreement or noncompete clause (NCC). This is an agreement stating that, upon leaving the company, the employee will not enter into jobs that will put them in competition with the company. Often, an employee will have to sign a separate NCC, but it might also be included in the employment contract.

Other possible terms of the agreement could include an ownership agreement (which states that the employer owns any work-related materials produced by the employee) as well as information on settling disputes at work. The contract may even qualify where the employee can work after leaving the company, as a way to limit competition between related companies.

- **Alternate names**: Contract of employment, employment agreement

Different types of employment contract?

Employment contracts are not only a legal requirement, but they're also extremely beneficial to both the employer and employee.

There are four main types of contract businesses use, these are:

1) permanent,
2) fixed-term
3) casual and
4) zero hour.

The contract you receive is based on your employment status and is to be agreed with the employer to ensure both parties are happy with its terms.

What is a permanent employment contract?

Perhaps the most widely understood document, permanent employment contracts are given to those who will be working regular hours for their employer, including both full-time and part-time roles. These cover those who are salaried or work for an hourly rate, and they are ongoing until the employee leaves the business. This type of contract entitles the employee to the full range of benefits and employment rights, outlining their working hours, responsibilities and terms of payment.

What is a fixed-term contract?

A fixed-term contract is more popular amongst freelancers and contractors as they set an end date for the employment. For example, a contract could last three months, six month or a year. The contract can be extended but is put in place to ensure that temporary or contract staff are given the same rights as those in permanent employment.

The contract will outline the dates of employment as well as the salary and rights that we've already mentioned above. Those who overstay their contract without extending it are considered to then become permanent employees and must hand in a notice if they want to leave the company, otherwise they're free to leave on the agreed end date.

What is a casual employment contract?

Casual employment contracts are for those who want security. This includes the employer wanting the individual to commit to the business and the employee wanting to guarantee working hours. That said, these are not fixed hours like in a permanent contract. The two parties agree on the minimum number of hours they'll be guaranteed each week or month.

For example, the contract could outline that the worker will be given 16 hours a week, but it doesn't have to state when these hours will be, so shift patterns can differ. The document entitles the employee to statutory sick pay and other benefits, and means they'll accrue holiday depending on how many hours they work.

What is a zero hour contract?

Finally, there's the zero hours contract for those who aren't able to commit – and this applies to both sides. This means there is no obligation for the employer to offer a set amount of hours and the employee can take or leave the hours they want. These contracts entitle workers to some statutory rights, though these are often less than those of the previous three documents we've discussed. It's also worth noting that this type of contract means the worker is not exclusive to one company, they can also work for other people.

How Does an Employment Contract Work?

You may encounter different kinds of agreements depending on the job and the company.

A written contract is a great way to clearly define the role, the responsibilities, and the benefits and to prevent any confusion.

- Carefully read all elements of an employment contract before signing it. Make sure that you are comfortable with every part of the agreement. If you break the contract, there might be legal consequences.
- If you're uncertain about any of the contract details, get advice from an attorney before you sign it so you don't bind yourself to an unfavorable agreement.
- It's important to make sure you are able to uphold every part of the written agreement. For example, if the contract requires you to stay at the job for a minimum period of time, make sure you will be able to comply with the requirement.

Also, if the contract places limits on where you can work upon leaving the company, consider whether or not you are comfortable with this limitation.

LEAVE FORMS

What is the purpose of leave request form?

A leave request is the specific opportunity and formal process within a workplace for an employee to inquire about set PTO (paid time off) with management approval.

Types of Leave Forms

There are many types of leaves form available in the workplace. Some of them describe below :-

- **Sick leave**
- **Casual leave**
- **Public holiday**
- **Religious holidays**
- **Maternity leave**

- **Paternity leave**
- **Bereavement leave**
- **Compensatory leave**
- **Sabbatical leave**
- **Unpaid Leave (or leave without pay)**

COIDA CERTIFICATION

What is COIDA?

The Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993) replaced the "Workmen's Compensation Act" (Act No. 30 of 1941), and was amended in 1997.
The Compensation Fund provides compensation for occupational injuries or diseases sustained or contracted by employees in the course and scope of their employment, or their dependents for death resulting from such injuries or disease, and to pay reasonable medical expenses incurred.

Who must register with COIDA?

According to prescription, anyone who employs one or more part- or full time workers must register with the Compensation Fund and pay annual assessment fees. The Compensation Fund is a trust fund that is controlled by the Compensation Commissioner and employer contributes to the Compensation Fund. The Commissioner is appointed to administer the Fund and approve claims lodge by employees or their dependents.

An employer must register with COIDA within seven days after the day on which he employs his first employee. An employer must register with the Commissioner by submitting Form W.As.2 with the particulars required therein to the Commissioner.

During COID registration copies of the following documentation should be included:

- The registration certificate from the Register of Companies if they are a company or closed corporation;
- Or their ID document, if they are sole owners of the business.

What are assessment fees?

The annual assessment fee is of an employer is based on their employee's earnings and the risks associated with the type of work or profession. Before 31 March each year, all employers (including contractors) must submit a statement (return) of earnings reflecting amount paid to all their workers from the beginning of March to the end of February.

Assessment tariffs, reviewed annually, are based on the risks related to a particular type of work.

Payment of assessments

- Employers must pay within 30 days of receiving the notice of assessment;
- Employers must apply in writing to settle assessments in installments (not exceeding 12 months);
- 20% of the outstanding balance due is required upfront before instalment arrangements can be applied for;
- Should the instalment fall overdue, the full amount becomes due and payable immediately.

Contractors and sub-contractors:

Contractors and sub-contractors must register with the Compensation Fund and pay assessments; Failure to comply with the COID Act by the sub-contractor will make the mandatory or main contractor to be responsible for any claims from the sub-contractor's employees (thus the need for a letter of good standing);

The contractor may recover any such payments directly from the sub-contractor.

DISCIPLINARY POLICY

Definition

A disciplinary action policy helps prevent issues from affecting your employees and company, and can protect you from legal ramifications.

On other words Disciplinary Action is a procedure of responding to an employee's misconduct. This action is considered when an employee does not follow company policies, regulations and causes problems to the employer. It is an employer's reaction to an employee's negative or unprofessional behavior.

Types of Disciplinary policy

The three main types of disciplinary action policies. They are

- Progressive discipline
- Retraining and performance improvement plans (PIP) and
- Reassignment or suspension

What should be in a disciplinary policy?

It should say what performance and behavior might lead to disciplinary action and what action your employer might take. It should also include the name of someone you can speak to if you do not agree with your employer's disciplinary decision.

Disciplinary Procedures

Disciplinary procedures should not be seen mainly as a means of punishing employees but rather as a way of encouraging improvement. Some organizations prefer to have separate procedures for dealing with issues of conduct and those of capability.

Current legislation requires an employer to provide their employee with a written statement of particulars of employment within two months of commencing employment. This statement should include a note outlining any disciplinary rules and who employees should address any appeals to if they are dissatisfied with a disciplinary/dismissal decision.

When dealing with disciplinary cases, employers need to be aware of both the law on unfair dismissal and the Statutory Dispute Resolution Procedures contained in the Employment (Northern Ireland) Order 2003 for dismissing or taking disciplinary action against an employee. The LRA Code of Practice on Disciplinary and Grievance Procedures sets out the steps that should be followed by the employee and the employer.

Good disciplinary procedures should:

- be put in writing;
- say to whom they apply;
- be non-discriminatory;
- allow for matters to be dealt without undue delay;
- require employees to be informed of the complaints against them and supporting evidence, before a meeting;
- allow for information to be kept confidential;
- tell employees what disciplinary action might be taken;
- say what levels of management have the authority to take various forms of disciplinary action;
- give employees a chance to have their say before management reaches a decision;
- provide employees with the right to be accompanied;

- provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct;
- require management to investigate fully before any disciplinary action is taken;
- ensure that employees are given an explanation for any sanction; and
- allow employees to appeal against a decision.

Conducting a disciplinary investigation

When a disciplinary matter is being investigated, care should be taken to deal with the employee in a fair and reasonable manner. The more serious the matter the more thorough the investigations should be.

Managers need to be firm and fair when dealing with disciplinary issues. They should be unbiased, keep an open mind, and should not judge issues before they have all the facts.

The manager should make arrangements for carrying out enquiries, investigations and proceedings carefully and avoid making snap decisions, without thinking about all the facts.

The attitude and conduct of employees may be seriously affected if management fails to apply the same rules to cases with the same or similar facts.

The manager should try to make sure that all employees are aware of the organisation's normal practice for dealing with misconduct or unsatisfactory performance.

While consistency is important, it is also essential to take account of the circumstances and people involved. Personal details such as length of service and any current warnings will be relevant.

The employer must not discriminate on the grounds of sex, pregnancy and maternity leave, marital status, gender reassignment, religious belief (or, similar philosophical belief), political opinion, age, race (including colour, nationality, ethnic or national origins), disability and sexual orientation.

Where the manager concludes that unsatisfactory performance is due to a lack of ability which in turn is due to a disability, they should take account of the provisions of the Disability Discrimination Act 1995 and, in particular, the statutory provisions regarding making reasonable adjustments under that Act.

Suspension with pay

Someone facing possible disciplinary action may be suspended for a period of time so that the employer can investigate the alleged misconduct, for example in cases involving alleged gross misconduct, where relationships have broken down or where there are risks to an employer's property or responsibilities to other people. Usually an employee who is suspended is entitled to their normal pay during their suspension.

Employers should be very careful about deciding to suspend someone in this situation. They should consider first if it would be possible to allow the employee to take a period of annual leave or other absence. It may also be better to transfer the individual temporarily to another work station or part of the organization.

The employer should make it clear that any suspension action taken is not a disciplinary action or sanction, nor is an indication of blame or guilt. Suspension on full pay should be reviewed frequently to ensure it is not for an unnecessarily long period and the investigation should be conducted in a prompt and reasonable manner.

Disciplinary action may not always be necessary

Having collected all the facts, the manager should decide whether to:

- drop the matter – there may be no case to answer or not enough evidence, or the matter may be regarded as trivial;
- arrange counselling or immediate retraining to try to correct a situation and prevent it from getting worse, without using the disciplinary procedure; or
- write to the employee telling him or her that they are considering disciplinary action for specific reasons and invite the employee to a formal disciplinary meeting – this will be
- necessary when the matter is considered serious enough to warrant disciplinary action.

The right to be accompanied at a disciplinary hearing

Employees have a statutory right to be accompanied at a disciplinary hearing by a companion. A companion may be a work colleague or a Trade Union official. The Trade Union Official may be either a full-time official employed by a Union or a lay Union official who has been reasonably certified in writing by his/her Union as having experience of, or as having received training in, acting as a worker's companion at disciplinary hearings.

For the purposes of this right, disciplinary hearings are defined as meetings that could result in:

- a formal warning being issued - a warning that will be placed on the employee's record and/or;
- the taking of some other action, e.g. suspension without pay, demotion or dismissal; or
- the confirmation of a warning issued or some other action taken such as an appeal hearing.

Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions. Meetings to investigate an issue are not disciplinary hearings. If it becomes clear during the course of such a meeting that disciplinary action is called for, the meeting should be ended and a formal hearing arranged at which the employee will have the right to be accompanied.

The employee's companion should be allowed to address the hearing in order to:

- put the employee's case;
- sum up the employee's case; and
- respond on the employee's behalf to any view expressed at the hearing.

An employee's companion can also confer with the employee during the hearing. The companion has no right to answer questions on the employee's behalf or to address the hearing if the employee does not wish it. Employees whose employers fail to allow a reasonable request to be accompanied may complain to a tribunal.

Disciplinary suspension without pay - alternative to dismissal

Employers may decide to suspend someone temporarily without pay instead of dismissing them. Employers need to make sure they have a contractual right to suspend without pay. If they don't have that right written in the contract of employment, they could face a Breach of Contract claim. The employer should not use suspension as a disciplinary penalty before following the statutory procedure.

Statutory three stage dismissal and disciplinary process

In summary the statutory procedure involves three steps:

> 1. A statement in writing of what the employee is meant to have done wrong (the allegation) and what the employer is considering doing;
> 2. A meeting to discuss the situation and a decision; and
> 3. Offering the right of appeal.

LEAVE POLICY

About Policy

Many organizations provide leave benefits, which allow employees to take time off work without the risk of job loss. Leave benefits can be paid, unpaid or partially paid, and include everything from bereavement leave and maternity leave to FMLA leave.

Generally, these policies are best clearly defined to employees to avoid confusion and administrative hassle. Some types of leave are required by law, while others are voluntarily provided at the employer's discretion. Below, we'll outline both kinds of leave, and what HR pros and business leaders need to know.

Why You Need a Leave Policy in Your Company?

A leave policy helps you define the number of leaves your employees have, the types of leaves that they are eligible for, and how to apply for leaves. With a leave policy, you can give them assurance that you will provide them with the essential time off to take care of any issues they have or take time off to vacation, recover from an illness, celebrate their festivals, deal with life events, or simply relax.

Types of leave

There are many types of leave; some are legally mandated to be available, and others are voluntarily offered by employers. Let's take a look at some of the various leave options out there.

- **Sick leave:** Sick leave is time off given by the company to allow employees to recover from an illness and take care of their health. Sick leaves are crucial to allow employees to get the rest they need without worrying about losing pay. Sick leave is a mandatory requirement in many countries to ensure the well-being of the employee.
- **Casual leave:** Casual leave is taken by an employee for travel, vacation, rest, and family events. Such leaves are given to allow the employee to take time off for any life events they have like traveling to another country or weddings they have to attend. Giving the employee paid casual leave will allow them to prioritize their private life when required, making them feel appreciated in the company.
- **Public holiday:** Public holidays are days that are given as leave by the government. Such holidays must be observed by every institution— schools, banks, government offices, and even private companies. Public holidays include Independence Day, Memorial Day, Labor Day, bank holidays and any nationally-recognized day like the death of a prominent leader of the country.
- **Religious holidays:** Christmas, Eid, Easter, Holi, Yom Kippur— your employee is sure to place importance on religious holidays that they celebrate and would want the day off to spend time with their family and observe the festival. It's important that you accommodate these holidays they have by providing them with the option to take leave on the day of the festival.
- **Maternity leave:** From taking care of the newborn to recovering from the delivery, maternity leave is an important time for new mothers. Ensure you have accommodated this type of leave in your policy to help employees to not worry about their work while they are busy with their newborn.
- **Paternity leave:** Paternity leave is granted to new fathers— husbands or partners of a pregnant woman, surrogate parent, or someone who adopted a child— to take care of their newborns without any worry.

Unlike maternity leaves, new fathers usually get 2 weeks of leave to take care of their child post-delivery. Some countries mandate 1 to 2 weeks of paternity leave for new fathers.

Companies rarely provide paternity leave for the birth of their child since such leaves are not mandatory by law. However, it is important that HRs recognize the stresses of adjusting to the newborn and taking care of the child in their first few days.

- **Bereavement leave:** Losing a loved one is an unavoidable situation and in such events, employees take sudden leave. As HR, you need to have a bereavement leave policy that provides the employee with the time to grieve their loss, manage any responsibilities they may have due to the death, and allow them to ask for a bereavement leave without any hassle.
- **Compensatory leave:** Employees who have clocked in more hours than they were required to can be eligible for compensatory days off. Ensure that any employee who has put more time in or come to work on days they were off (like Saturday) are given a compensatory day off or "comp off".

Compensatory time-off must be automatically recorded within your backend and employees must be informed that they have an extra day of leave for the time they put in.

- **Sabbatical leave:** Simply put, sabbatical leaves are "a break from work" where employees can pursue interests they have or take time off for physical and mental health reasons. Unlike other leaves, sabbaticals are long leave periods, from six months to a year. Sabbaticals are commonly taken by employees at educational institutions where professors may want to take a break from their teaching role to do research on their project.
- **Unpaid Leave (or leave without pay):** Now, if your employee has exceeded the number of leaves they were eligible for and are taking a leave that doesn't fall under special leaves like maternity or bereavement leave, they can still take a leave with a pay cut. Any leaves taken in the year outside of the paid leaves will result in a pay cut for the employee. Ensure that you've made clear the number of leaves the employee has and let them know how much pay is cut per leave day they take outside their eligible leaves.

SEXUAL HARASSMENT POLICY

What are Sexual harassment policies?

A sexual harassment policy is a document that prohibits sexual harassment in the workplace. It defines and describes prohibited sexual behavior in the workplace, and contains information on how to report a complaint.

Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature, which has the purpose, or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Such conduct may take place on a single occasion or on several occasions.

Sexual harassment may take the form of unwelcome physical, verbal or non-verbal conduct, which may include - but is not limited to - the following:

> (a) Unwanted physical contact, ranging from touching to sexual assault and rape.
>
> (b) Verbal forms of sexual harassment including unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed toward them, unwelcome and inappropriate enquiries about a person's sex life, and sexual orientation, directed at a person or group of persons.
>
> (c) Non-verbal forms of sexual harassment including unwelcome gestures, whistling, indecent exposure, or the unwelcome display of sexually explicit pictures or objects.
>
> (d) Unwelcome messages of a sexual nature that are sent via email, SMS, skype, voice messages and other electronic means, whether using SCI IT/devices or personal mobiles/ equipment. (d) Sexual harassment that is linked to recruitment/employment opportunities, promotion, training or development opportunities, and the offer of salary increments or other employee benefits in exchange for sexual favors.

Sexual harassment can be physical and psychological in nature. An aggregation of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing.

Responding to Conduct in Violation of Policy

Employees

If an employee feels that he or she is being subjected to sexual harassment, he or she may immediately inform the harasser that the conduct is unwelcome and needs to stop. If the inappropriate conduct does not cease, or if the employee is unable to or uncomfortable with addressing the alleged harasser directly, he or she should report the incident to his or her own supervisor or to the human resource (HR) director. It is helpful, but not required, to provide a written record of the date, time and nature of the incident(s) and the names of any witnesses.

It is important to report all concerns of sexual harassment or inappropriate sexual conduct to the HR director or a supervisor/manager as soon as possible. Management must be made aware of the situation so that it can conduct an immediate and impartial investigation and take appropriate action to remediate or prevent the prohibited conduct from continuing.

Managers and supervisors

Managers and supervisors must deal expeditiously and fairly when they have any knowledge of sexual harassment within their departments, whether or not there has been a written or formal complaint. They must:

- Take all complaints or concerns of alleged or possible harassment seriously no matter how minor or who is involved.
- Report all incidents to HR immediately so that a prompt investigation can occur.
- Take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.

Managers and supervisors who knowingly allow or tolerate sexual harassment or retaliation, including the failure to immediately report such misconduct to HR, are in violation of this policy and subject to discipline.

Human resources

The HR director is responsible for:

1. Ensuring that both the individual filing the complaint (complainant) and the accused individual (respondent) are aware of the seriousness of a sexual harassment complaint.
2. Explaining [Company Name]’s sexual harassment policy and investigation procedures to all parties involved.
3. Exploring informal means of resolving sexual harassment complaints.
4. Notifying the police if criminal activities are alleged.
5. Arranging for an investigation of the alleged harassment and the preparation of a written report.
6. Submitting a written report summarizing the results of the investigation and making recommendations to designated company officials.
7. Notifying the complainant and the respondent of the corrective actions to be taken, if any, and administering those actions.

The HR director will determine if an in-house investigation will be conducted or if a third party will be contracted to complete the investigation. All complaints involving senior management at the vice-president level or above will be handled by an external third party.

Complaint Resolution Procedures

Complaints should be submitted as soon as possible after an incident has occurred, preferably in writing. The HR director may assist the complainant in completing a written statement or, in the event an employee refuses to provide information in writing, the HR director will dictate the verbal complaint.

To ensure the prompt and thorough investigation of a sexual harassment complaint, the complainant should provide as much of the following information as is possible:

1. The name, department and position of the person or persons allegedly committing harassment.
2. A description of the incident(s), including the date(s), location(s) and the presence of any witnesses.
3. The effect of the incident(s) on the complainant's ability to perform his or her job, or on other terms or conditions of his or her employment.
4. The names of other individuals who might have been subject to the same or similar harassment.
5. What, if any, steps the complainant has taken to try to stop the harassment.
6. Any other information the complainant believes to be relevant to the harassment complaint.

Discipline

Employees who violate this policy are subject to appropriate discipline. If an investigation results in a finding that this policy has been violated, the mandatory minimum discipline is a written reprimand. The discipline for very serious or repeat violations is termination of employment. Persons who violate this policy may also be subject to civil damages or criminal penalties.

Confidentiality

All complaints and investigations are treated confidentially to the extent possible and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation and the HR director takes adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a sexual harassment complaint or investigation is maintained in secure files within the HR department.

Penalties for Sexual Harassment:

Employees who are found guilty of sexual harassment (excluding sexual assault, for which they will be dismissed) the first time may:

- Be demoted.
- Receive a written warning.
- Be suspended.
- Get a negative performance review.
- Be denied promotions and/or salary increases for [period].
- Be transferred to another department or branch if necessary.

FINANCE LAW

INCOME TAX & VAT: THESE ARE LAWS RELATED TO THE PAYMENT OF TAX BY THE EMPLOYEE AND EMPLOYER.

What Is a Value-Added Tax (VAT)?

A value-added tax (VAT) is collected on a product at every stage of its production during which value is added to it, from its initial production to the point of sale. The amount of VAT that the user pays is based on the cost of the product, less any costs of materials used in the product that have already been taxed at a previous stage.

What is income tax in simple words?

Income tax is a direct tax that a government levies on the income of its citizens. ... Income does not only mean money earned in the form of salary. It also includes income from house property, profits from business, gains from profession (such as bonus), capital gains income, and 'income from other sources'.

Taxes on What You Earn

Individual Income Taxes

An individual income tax (or personal income tax) is levied on the wages, salaries, investments, or other forms of income an individual or household earns.

Many individual income taxes are "progressive," meaning tax rates increase as a taxpayer's income increases, resulting in higher-earners paying a larger share of income taxes than lower-earners.

Corporate Income Taxes

A corporate income tax (CIT) is levied by federal and state governments on business profits, which are revenues (what a business makes in sales) minus costs (the cost of doing business).

Businesses in U.S. broadly fall into two categories: C corporations, which pay the corporate income tax, and pass-through—such as partnerships, S corporations, LLCs, and sole proprietorships—which “pass” their income “through” to their owner’s income tax returns and pay the individual income tax.

While C corporations are required to pay the corporate income tax, the burden of the tax falls not only on the business but also on its consumers and employees through higher prices and lower wages.

Payroll Taxes

Payroll taxes are taxes paid on the wages and salaries of employees to finance social insurance programs. Most taxpayers will be familiar with payroll taxes from looking at their paystub at the end of each pay period, where the amount of payroll tax withheld by their employer from their income is clearly listed.

Taxes on What You Buy

- **Sales Taxes:** Sales taxes are a form of consumption tax levied on retail sales of goods and services.
- **Gross Receipts Taxes:** Gross receipts taxes (GRTs) are applied to a company’s gross sales, regardless of profitability and without deductions for business expenses. This is a key difference from other taxes businesses pay, such as those based on profits or net income, like a corporate income tax, or final consumption, like a well-constructed sales tax.
- **Value-Added Taxes:** A Value-Added Tax (VAT) is a consumption tax assessed on the value added in each production stage of a good or service.

Each business along the production chain is required to pay a VAT on the value of the produced good/service at that stage, with the VAT previously paid for that good/service being deductible at each step.

The final consumer, however, pays the VAT without being able to deduct the previously paid VAT, making it a tax on final consumption. This system ensures that only *final* consumption can be taxed under a VAT, avoiding tax pyramiding.