

'But that's not in my contract!' - The hidden duties of employees

By Craig Rothwell

In accordance with the Employment Act 2000, all employees should receive written statements of employment from their employer no later than a week after they start work. No doubt these have been provided in a variety of forms. Those from the busy small employer with a business to run perhaps just containing the bare minimum of details required. Those from the large company's human resources department with time and budget available may in contrast be impressive wordy legal documents running to dozens of pages with no end of schedules.

In addition to the written terms, however, some extra terms may be implied into a contract by the law if they are not dealt with in the written contract. These are terms that are thought so obvious that they go without saying. Some terms imply duties on employers, others on employees. Duties implied upon employers include paying wages (should this somehow be missed out in the written contract!) or ensuring the safety of their employees amongst others. It is some of the terms implying requirements upon employees which will be briefly considered here.

1. Duty to obey the employer's orders. This is obviously not in all circumstances. Employers who ask employees to break the law, to place themselves in personal danger or oblige them to falsify records do not need to be obeyed. For example, in one extreme case from 1930, an employee who worked for a bank in Turkey had just escaped execution by the Turkish forces and asked his employer for a transfer outside Turkey so as to avoid re-capture. Somewhat lacking in compassion, the bank ordered him to remain and presumably 'take his chances'. Unsurprisingly, the employee then left Turkey only to be dismissed by the bank. He claimed wrongful dismissal. The Court unsurprisingly held that the employee was not obliged to obey the order.

2. Duty to account for secret profits. If employees use their employment as the means to generate a handsome personal profit then they should inform their employer and, in most circumstances, the profit will belong to the employer. Technically, secret profits can range from enormous bribes offered to executive officers to the Christmas gift of a box of chocolate "Turtles" by a client. Most CEO's do not insist though that all chocolate and wine received be handed in to them.

3. Duty to take care of the employer's property. Employees should not let their company's material be stolen or damaged through carelessness. Again, it is a question of degree. A dropped paperclip down the drain should not necessitate a call to W&E to help an employee recover this and save their job. Similarly, in an actual case, losing the company cat was also not viewed as sufficiently serious to warrant dismissal. However, carelessly driving the company vehicle into the harbour may be a different matter. In contrast, there is no implied duty for an employer to take care of their employees' property. So beware of lending your car to your boss for a quick errand!

4. Duty to adapt to new methods of doing the job. Employees are expected to adapt themselves to new methods and techniques introduced during their employment. Many employees in the office environment have adapted in this way over the past years with the introduction of computers and email into everyday use.

5. Duty to provide personal service and to be ready and willing to work. Taking part in a strike or other industrial action will generally amount to a breach of this implied term. This may allow an employer to withhold some of the wages due to the employees who decide to take such a stand.

Other implied duties include the duty for an employee to act honestly, not disclose confidential information and exercise reasonable care and skill at work. As implied duties are not precisely defined, if an employer has specific concerns or areas of its work it wishes to protect, it is always preferable to deal with these expressly in the written contract of employment. Advice from an attorney should be sought in order to assist in drafting such terms.

This article contains information of a general nature and should not be relied upon as a substitute for professional legal advice given with respect to a particular factual situation.

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