

The difference between a contract of employment and a contract for employment

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What is the difference between a contract of employment and a contract for employment? If I am a business owner, which contract should I use when hiring: a) employees, b) part-timers and c) independent contractors?

I. INTRODUCTION

In practice, there are different ways in which a company can employ its workers; these can range from employees hired by a company on a full-time or part-time basis, to independent contractors temporarily engaged by a company to deliver one-off projects. Regardless, the law primarily looks at these various employment relationships through the legal concepts of a contract *of* employment and a contract *for* employment.

As this article will show, the duties, responsibilities and liabilities owed by a company to its workers sets these two legal concepts apart. Business owners should use a contract of employment for hiring employees and part-timers, and a contract for employment when engaging independent contractors. This article will first discuss the differences between these two legal concepts before concluding with some practical pointers for business owners.

II. DISCUSSION

Differences Between a Contract of Employment and a Contract for Employment

A contract *of* employment is an agreement whereby an *employee* is obligated to work for an *employer* in exchange for salary and other benefits, and the employer in turn is obligated to provide work for the employee. In entering a contract *of* employment, an *employer-employee* relationship is created.¹ The employee can work for the employer either on a full-time or part-time basis.²

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¹ *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497 at [18] and [23].

² *Market Investigations Ltd v Minister of Social Security* [1968] 2 QB 173 at p 186.

On the other hand, a contract *for* employment is the agreement whereby a self-employed *independent contractor* provides a one-off service or completes some specific tasks for an employer in exchange for payment. In entering a contract *for* employment, a *client-contractor* relationship is created.³ Unlike the employee-employer relationship, the client-contractor relationship exists only for the duration of service provision or task performance.

For businesses, the practical difference between a contract of employment and a contract for employment is that workers employed under the former gain additional rights and protection from the law *by default*. Two sources of law are at work here – Acts passed by Parliament and the common law (i.e., laws made by the courts through judgments).

Acts like the Employment Act⁴ (“EA”), the Central Provident Fund Act⁵ (“CPFA”), the Child Development Co-Savings Act⁶ (“CDCSA”) and the Retirement and Re-employment Act⁷ (“RRA”) confer these additional rights. Non-compliance with these Acts by an employer are offences that attract punitive sanctions like fines and even prison sentences.⁸

Additionally, the law imposes further liability for employers if their employees under a contract of employment causes harm to a third party. Figure 1 below details the differences between the two legal concepts.

Figure 1: Main Differences between a Contract of Employment and a Contract for Employment

Differentiating Factor	Contract of Employment	Contract for Employment
Contractual relationship	Between an employer and an employee.	Between a client and a contractor.
Duration of working relationship	Exists continuously until termination by parties.	Exists only for the duration of one-off job or multiple one-off jobs.
Notice period for terminating contractual relationship	Mandated by the EA and ranges from a minimum of a day to a month (based on employee’s length of service). ⁹	As per the contractual term (if any) between client and independent contractor.

³ *Id.*, at pp 184–185.

⁴ Employment Act (Cap 91, 2009 Rev Ed) (“EA”).

⁵ Central Provident Fund Act (Cap 36, 2013 Rev Ed) (“CPFA”).

⁶ Child Development Co-Savings Act (Cap 38A, 2002 Rev Ed) (“CDCSA”).

⁷ Retirement and Re-employment Act (Cap 274A, 2002 Rev Ed) (“RRA”).

⁸ See generally ss 19, 34, 61, 90 EA *supra* n 4; Part VII CPFA *supra* n 5; ss 17, 18A, 19 CDCSA *supra* n 6; ss 9C, 10 RRA *supra* n 7.

⁹ s 10 EA, *supra* n 4.

Key employment contract terms (such as working arrangements, salary period, leave, medical benefits, probation and notice periods, etc.)	Must be included in the contract. ¹⁰	Only encouraged to be included in the contract.
Statutory benefits	Apply. The EA mandates maximum working hours, ¹¹ minimum annual ¹² and sick leave, ¹³ mandatory overtime pay, ¹⁴ and the method and timeliness of salary payment. ¹⁵ The CDCSA provides for mandatory parental leave. ¹⁶ The RRA provides protection for employees under 62-years old against dismissal based solely on their age. ¹⁷	Do not apply. Any benefits must be contained in the contract for employment between the client and independent contractor.
Employee/ contractor causes harm to a third-party during the course of employment	Employer will be vicariously liable to compensate the injured third party. ¹⁸	Client will not be vicariously liable to compensate the injured third-party. Client may nonetheless be separately liable if negligent in preventing accidents from occurring on its premises. ¹⁹
Dispute resolution	Employee has recourse to statutory dispute resolution mechanisms under the Employment Claims Act. ²⁰	Independent contractor needs to rely on the agreed dispute resolution mechanism in the contract (if any) or litigate.
Monthly Central Provident Fund (“CPF”) contributions ²¹	Mandatory for employers to pay. Failure on the employer’s part to make the requisite monthly CPF payments is an offence and upon conviction, the employer is liable to compounded fines. ²²	Not mandatory for clients to pay.

¹⁰ *Id*, s 95A EA.

¹¹ *Id*, ss 35 to 41 EA.

¹² *Id*, s 88A EA.

¹³ *Id*, s 89 EA.

¹⁴ *Id*, s 37(2)(c)(ii) EA.

¹⁵ *Id*, ss 20-21 EA.

¹⁶ Part III CDCSA, *supra* n 6.

¹⁷ s 4 RRA, *supra* n 7.

¹⁸ *Skandinaviska Enskilda Banken AB (Public), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540.

¹⁹ *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] 3 SLR 284.

²⁰ Employment Claims Act 2016 (No. 21 of 2016).

²¹ s 7 read with ss 69 and 77 CPFA, *supra* n 5.

²² *Id*, s 58(1)(b) read with s 61 CPFA, *supra* n 5.

Both full-time and part-time employees can be hired on contracts of employment: the EA differentiates between full-time and part-time employees *solely* based on an employee's total number of working hours per week. Part-time employees work less than 35-hours per week, while full-time employees work for 35-hours or more per week.²³ Similar to full-time employees under the EA, the Employment (Part-Time Employees) Regulations²⁴ confers statutory benefits of overtime pay, rest days, as well as annual and sick leave on part-timers.

The Law Determines Whether There is a Contract of Employment

Given the additional legal duties imposed on employers in an employer-employee relationship, it is important to understand how the law determines whether a contract of employment exists in a working relationship. This is even more so because it is the law (not the employer!) that does the job of determining whether a contract of employment exists. For instance, an employer in an employer-employee relationship trying to save costs will not be able to escape liability of paying monthly CPF contributions to its employees simply by using words like “appointment” instead of “employment” in the employment contract.²⁵

Instead, the High Court in *Public Prosecutor v Jurong Country Club* stated that the court will examine all circumstances surrounding the employment relationship to ascertain the nature of a working relationship.²⁶ *Non-exhaustive* factors considered include the employer's level of control over the worker's work, how integral the worker's work is for the employer's business, and whether the employer and worker are mutually obligated in terms of work (i.e., providing work to, and working for, each other respectively).

For example, if the employer has greater control over how the worker does his/her work, is obligated to continuously provide work to the worker, and the worker's work is central to the employer's business, then the law will likely find the presence of a contract of employment even if the contract states otherwise.²⁷ Conversely, if the worker has greater control over how his/her work is done, is not obligated to work solely for the particular employer, and does work

²³ s 66A(1) EA, *supra* n 4.

²⁴ Employment (Part-Time Employees) Regulations (Cap. 91, RG 8).

²⁵ *Kureoka Enterprise Pte Ltd v Central Provident Fund Board* [1992] SGHC 113.

²⁶ *Public Prosecutor v Jurong Country Club and another appeal* [2019] 5 SLR 554 at [50].

²⁷ *Autoclenz Ltd v Belcher and others* [2011] UKSC 41 at [37].

that is peripheral to the employer's business, then the court will more likely find a contract for employment instead.²⁸

III. CONCLUSION

The appropriate contract must be used to regulate the actual working relationship between parties. Practically, this means that businesses looking to hire employees – whether on a full-time or part-time basis, should use a contract of employment. On the other hand, businesses outsourcing a particular piece of work to an independent contractor should use a contract for employment instead.

Doing so clarifies the respective responsibilities of both the employer and hired worker. With clearer expectations about employment conditions – whether freely contracted in a contract for employment or imposed by law in a contract of employment, there would be fairer treatment for workers who are typically in a weaker bargaining position. In turn, this would contribute towards a more engaged workforce.

Another practical point to note is that employers should pay greater attention to how they deal with their employees or independent contractors; the treatment should be consistent with the respective legal concepts. For instance, if the intention is to hire employees and/or part-timers, a company must comply with the additional legal duties and liabilities imposed by default or risk penalties.

On the other hand, if the intention is to engage independent contractors, the way the company or employer deals with them should be sufficiently differentiated from that of a contract of employment. For example, care should be taken to ensure that the business does not unwittingly exert too much control over how the independent contractor does his/her work; or make monthly payments regularly (akin to salary payments) to the independent contractor when not required. The accompanying legal documentation should also be consistent with that of a contract for employment should the Ministry of Manpower scrutinise the company's practices.

²⁸ *BNM (administratrix of the estate of B), deceased on her own behalf and on behalf of others v National University of Singapore and others and another appeal* [2014] SGCA 49 at [32].

Ultimately, employers must know the differences between a contract of employment and a contract for employment, and its accompanying implications. After all, ignorance of the law is not a defence recognised by the courts.²⁹

²⁹ *Chee Soon Juan and others v Public Prosecutor* [2012] 3 SLR 648 at [19], [48], and [51]–[52].