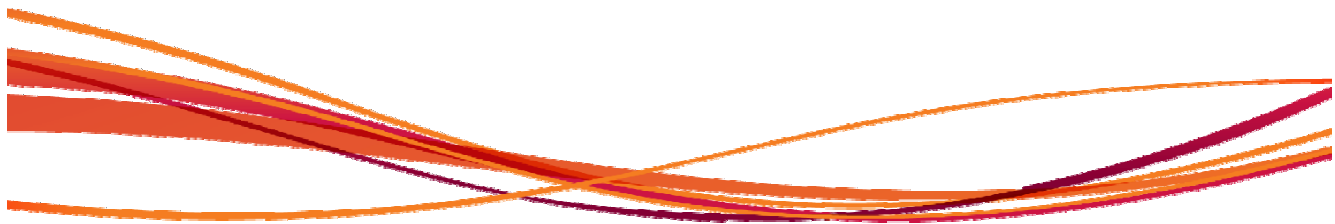


HR Rely Guidance

Guidance on Apprenticeships

December 2016





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Guidance of Apprenticeships

Introduction

Apprenticeships have been around for centuries. Many industries rely on apprenticeship arrangements to encourage individuals into their industry to gain the appropriate skills and experience to qualify them for their trade.

Contract of apprenticeship or contract of service?

For reasons explained later, it is important to distinguish between the role of trainee, which indicates that someone is learning the job but not fully competent, and the position of an apprentice.

The traditional contract of apprenticeship has three elements that distinguish it from a contract of service of a trainee.: It is for a fixed term during which the employer is bound to employ the apprentice; the apprentice is bound to provide work; and finally but more crucially, the employer is obliged to educate and train the apprentice in order that he/she can achieve the relevant qualification. It is important to note, particularly because of the consequences of terminating early, that a traditional contract of apprenticeship can exist without anything being set out in writing.

Some organisations have in place an arrangement that is sometimes known as a modern apprenticeship scheme. This arrangement involves some of the training being carried out by a third party, often a college, rather the organisation itself. The fact that the organisation will not be carrying out all of the training does not prevent a traditional contract of apprenticeship existing.

Termination of the apprenticeship

Apprentices employed under a traditional contract of apprenticeship have one particular special protection and that is that their contract cannot be terminated prior to the expiry of the fixed term except in very exceptional circumstances. This is even though the contract might provide for earlier termination. If the contract is terminated early, then the apprentice can claim damages not just for the difference between what his/her wages from the date of termination until the date when the fixed term would have ended but also in terms of lost opportunity. Damages would include compensation for loss of training and for the difference in what he/she might have earned in wages over a career had the apprenticeship been completed and what his/her actual earnings are. Early termination can therefore be a very expensive business.

The Apprenticeships, Skills, Children and Learning Act 2009 provides that apprenticeship agreements entered into under its provisions are contracts of service. They do not benefit from the special protection of a traditional apprenticeship. Traditional apprentices and those under the 2009 Act have the right to bring a claim for unfair dismissal if their employment is terminated. They must have the requisite service to bring such a claim.

Pay

Apprentices are entitled to a minimum level of wage under the National Minimum Wage provisions. Apprentices have their own pay rate category. Apprentices, either engaged under traditional contracts of apprenticeship or engaged under the Government's apprentice arrangements, who are either under the age of 19 or over 19 and in the first 12 months of their apprenticeship are entitled to the Apprentice Rate under the National Minimum Wage legislation. [Link to Key Data Sheet](#). Apprentices outside of this category are entitled to the National Minimum Wage that applies to their age.

Apprenticeship terms

The statutory employment rights that apply to employees also apply to apprentices. The terms of the apprenticeship should be put in writing. Apprenticeships entered into under the Apprenticeships, Skills, Children and Learning Act 2009 must be in the "prescribed form". This will vary depending on whether the apprenticeship was entered into before 26 May 2015, as an "apprenticeship agreement" or an apprenticeship entered into on or after 26 May 2015 as "approved English apprenticeships" A template approved English apprenticeship agreement can be found [here](#).

(For details of the statutory framework for apprenticeships in Wales, please contact your HR rely adviser).



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