

**Warren's
FORMS
of
AGREEMENTS**

**O. L. WARREN
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1A

**BUSINESS
FORMS**

WARREN'S
FORMS OF AGREEMENTS

BUSINESS FORMS

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CHAPTER IV

Employment

§ 18. Employment Contracts Generally.

Comment

Most employment contracts are not in writing. In fact, they are hardly regarded by the general public as contracts at all, even though they have that character. They are merely hirings of employees of various kinds on a weekly or monthly basis for a stated salary, with no term of employment provided. On the other hand, the statute of frauds may require a writing where the contract is for a definite duration and not to be performed within one year. Employers of large workforces often issue policy statements or handbooks outlining company employment and compensation policies. State labor departments frequently treat these statements as enforceable contracts in adjusting disputes and claims of employees.

Written individual employment contracts are usually entered into with only certain types of personnel such as key managerial and professional employees, outside sales personnel whose operations are confined to certain territories, research and development personnel engaged on patentable or copyrightable projects, and personnel hired to perform a specific assignment only.

The chief essentials of an employment contract are:

- (1) The mutual agreement to employ and to perform the services.
- (2) The duties to be performed by the employee.
- (3) The employee's compensation.
- (4) The period of employment.
- (5) The length and termination of the agreement.

It is customary to add provisions for vacations, holidays and other fringe benefits.

With respect to compensation, a number of federal and state laws set minimum wages and maximum hour provisions

to which all employment contracts must conform. The federal Fair Labor Standards Act (United States Code, tit. 29 §§ 201–219) is applicable to all employees in interstate commerce or producing goods for interstate commerce. Generally speaking, all businesses except for small local ones are covered by this law. In addition, firms producing goods under contract for the federal government are covered by the stricter wage and hour standards of the Public Contracts Act (United States Code, tit. 41 §§ 35–46). Most states have wage-hour laws, some of which are more restrictive than federal laws with respect to certain classes of personnel or particular industries. These laws too must be consulted in drafting clauses affecting compensation. Contract clauses which are contrary to labor relations, wagehour or safety statutes are not merely unenforceable, they may be prime facie evidence of intent to violate the statute. Highly paid personnel are often more interested in deferred compensation in the form of pension, profit-sharing, or stock option plans than in greater current compensation. A properly qualified deferred compensation plan has important tax advantages for both the employer and the employee. Non-qualified and qualified deferred compensation plans are covered in §§ 19 and 20, *infra*. For a fuller discussion of the tax consequences of these forms of compensation see Rabkin & Johnson, Current Legal Forms, Vols. 5 and 5A, published by Matthew Bender.

There may be times when the relationship sought to be established or preserved is that of independent contractor rather than employee. The employer-employee relationship results in many tax obligations such as withholding, social security, unemployment insurance contributions, and payroll taxes. Also, the legal responsibility of the employer for acts of the employee performed within the scope of employment is generally greater than the liability for acts of an independent agent. The agreement alone does not determine the relationship of the parties for purposes of these statutes, but in borderline situations, the intention of the parties as expressed therein may have some weight. In drafting an independent contractor agreement, the attorney should consult the statutory definitions of the term in the statutes set forth above.

This section comprises provisions useful in general employment policy statements and individual employment contracts.

Additional forms and provisions pertaining to employment policy and contracts are included in § 19, Agreements with Special Employees; § 20, Outside Salesmen Agreements; § 20A, Deferred Compensation Plans; and § 20B, Child Care Plans. Agreements with unions are discussed and set forth in § 18A, Collective Bargaining Agreements. This section and sections 19 and 20, below, contain provisions for the protection of employer trade secrets, including in-term and post-term covenants not to compete. This subject is covered in more depth in §§ 75 and 76, *infra*.

CHECK LIST OF PROVISIONS

1. Personnel policy statement (Form 18.01)
2. General form of employment agreement (Forms 18.02, 18.03)
3. Individual employee stock purchase agreement (Form No. 18.49)
4. Date of agreement (Forms 18.02, 18.03, 18.49)
5. Names, addresses and character of parties (Forms 18.02, 18.03, 18.49)
6. Duties of employee:
 - (a) Nature generally (Forms 18.02, 18.03, 18.04, 18.05, 18.06, 18.07, 18.08)
 - (b) Hiring authority (Forms 18.02, 18.03, 18.09, 18.141)
 - (c) Limitation on employee's authority to contract in employer's name (Form 18.10)
 - (d) Additional duties required from time to time (Form 18.11)
 - (e) Adherence to employer's rules required (Form 18.12)
 - (f) Adherence to employer's formulas required (Form 18.13)
 - (g) Change of duties permitted (Form 18.14)
7. Place of employment:
 - (a) Main office and other places as designated (Forms 18.15, 18.16)
 - (b) Branch office (Forms 18.03, 18.17)
8. Hours of work:
 - (a) Specified number of hours (Forms 18.01, 18.18)
 - (b) Overtime requirements (Form 18.19)
9. Compensation of employee:
 - (a) Salary payable at specified intervals (Forms 18.01, 18.20, 18.21, 18.22)
 - (b) Piece work as basis (Form 18.23)
 - (c) Hourly basis (Form 18.24)

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- (d) Commissions with or without salary or drawing account (Forms 18.03, 18.25, 18.26, 18.27, 18.28, 18.29, 18.30, 18.31, 18.32, 18.33, 18.34, 18.35, 18.36)
 - (e) Overtime compensation (Forms 18.01, 18.37, 18.38, 18.39)
 - (f) Compensation during instruction period (Form 18.40)
 - (g) Division of tips between employer and employee (Form 18.41)
 - (h) Royalties (Form 18.42, 18.43)
 - (i) Minimum compensation (Form 18.43)
 - (j) Profit sharing with or without salary (Forms 18.44, 18.45, 18.46)
 - (k) Formula for determining net profits (Form 18.47)
 - (l) Bonus in addition to salary (Form 18.48)
 - (m) Increases in compensation (Forms 18.01, 18.02, 18.53)
10. Fringe benefits:
- (a) Meal allowances (Form 18.01)
 - (b) Vacation (Forms 18.01, 18.02, 18.63)
 - (c) Holidays (Form 18.01)
 - (d) Leaves of absence:
 - (i) Sick leave (Forms 18.01, 18.02)
 - (ii) Maternity leave (Forms 18.01, 18.02)
 - (iii) Military leave (Forms 18.01, 18.50, 18.51, 18.52)
 - (iv) Jury duty (Form 18.01)
 - (v) Funeral leave (Form 18.01)
 - (e) Stock purchase agreement (Forms 18.02, 18.49)
 - (f) Severance pay (Forms 18.01, 18.02, 18.68)
 - (g) Pension (Form 18.64)
 - (h) Medical attention (Form 18.65)
 - (i) Payments upon death of employee (Forms 18.02, 18.66, 18.67)
11. Reimbursement of employee expenses:
- (a) Included in salary (Form 18.20)
 - (b) Flat amount provided (Forms 18.54, 18.55)
 - (c) Budget and other limitations (Forms 18.03, 18.57, 18.62)
 - (d) Itemization required (Forms 18.02, 18.59)
 - (e) Automobile provided by employer (Form 18.61)
 - (f) Expenses to be shared by employer and employee (Form 18.56)
 - (g) Expenses not to be incurred without permission (Form 18.144)
12. Restrictive covenants:
- (a) Employee to devote entire time to business (Forms 18.03, 18.69)
 - (b) Employee specifically permitted to accept other employment (Form 18.70)

- (c) Employee not to divulge information, customer names, or other confidential information (Forms 18.71, 18.72, 18.73, 18.74, 18.75, 18.76, 18.77)
 - (d) Employee to make deposit for breakage (Form 18.78)
 - (e) Employee to return books and records on termination (Form 18.79)
13. Rights of either party in property of the other:
- (a) Employer's rights in employee inventions and patents (Forms 18.80, 18.81, 18.82, 18.83, 18.84, 18.143)
 - (b) Employer's rights in employee's formulas and secret processes (Form 18.85)
 - (c) Right to remain employer property (Form 18.86)
 - (d) Employer's right to use employee's name (Forms 18.87, 18.89, 18.90)
 - (e) Employee's right to use employer's name (Form 18.88)
14. Term of agreement:
- (a) Specified term (Forms 18.92, 18.93, 18.96)
 - (b) Definite period and until thereafter terminated (Forms 18.02, 18.93, 18.94, 18.98)
 - (c) Definite period with election to continue (Form 18.95)
 - (d) Seasonal employment for specified term of years (Form 18.96)
 - (e) Lifetime employment (Form 18.97)
15. Termination of employment:
- (a) For violation of contract (Forms 18.99, 18.100, 18.101)
 - (b) For insolvency of employee (Form 18.102)
 - (c) For excessive number of garnishments (Form 18.103)
 - (d) Because of long-term illness (Forms 18.02, 18.104)
 - (e) By notice of either party (Forms 18.02, 18.03, 18.105, 18.106, 18.107, 18.108)
 - (f) Upon death of employee (Forms 18.02, 18.109)
 - (g) Upon sale of business (Form 18.110)
 - (h) Upon dissolution of corporation (Form 18.111)
 - (i) Upon destruction of business by fire (Forms 18.112, 18.117)
 - (j) Upon failure to earn minimum profit (Form 18.114)
 - (k) Upon bankruptcy or insolvency of business (Forms 18.115, 18.117)
 - (l) Upon outbreak of war (Form 18.116)
 - (m) Upon dissolution of partnership (Form 18.118)
 - (n) Employee to obtain a successor (Form 18.91)
16. Renewal or extension of agreement:
- (a) Automatic in absence of notice (Forms 18.02, 18.119)

- (b) By employer or employee on notice (Forms 18.120, 18.121)
- 17. Modification of agreement:
 - (a) By employer by notice (Forms 18.01, 18.03, 18.122)
 - (b) By employee on notice (Form 18.123)
- 18. Assignment of contract:
 - (a) By employer to successor business (Form 18.124)
 - (b) By employee forbidden (Form 18.125)
 - (c) Wage assignments forbidden (Form 18.126)
- 19. Employer protection provisions:
 - (a) Employee to furnish surety bond or security (Forms 18.78, 18.127, 18.128)
 - (b) Employee to indemnify employer (Form 18.129)
 - (c) Employee to carry liability insurance (Form 18.130)
 - (d) Employee to permit employer to insure his life (Form 18.145)
- 20. Breach of agreement:
 - (a) Acts constituting (Form 18.131)
 - (b) Partial breach as total breach (Form 18.132)
 - (c) Injunction to prevent breach (Form 18.133)
 - (d) Damages for breach (Form 18.134)
- 21. Arbitration of disputes (Forms 18.02, 18.135)
- 22. Accounting by employer to employee (Forms 18.136, 18.137, 18.138, 18.139, 18.140)
- 23. General provisions affecting relationship
 - (a) Employer to furnish office (Forms 18.02, 18.03, 18.142)
 - (b) Manner of giving notices (Forms 18.02, 18.146)
 - (c) Employee's right to join union (Form 18.147)
 - (d) Cancellation of previous agreement (Form 18.148)
 - (e) Integration of agreement (Form 18.149)
 - (f) Binding effect of agreement (Forms 18.150, 18.151)
 - (g) Employer to be represented by officer (Form 18.152)

Form No. 18.01

STATEMENT OF PERSONNEL POLICIES¹

¹ This policy statement discusses all elements of an employment contract except individual job duties. Note that the workweek provided for is 35 hours and overtime pay is in line with requirements of the Federal Fair Labor Standards Act. Maternity leave is provided for in accordance with federal and state Pregnancy Disability Acts. State labor departments and other agencies enforcing employee rights frequently treat these

The attached is an employee handbook describing Personnel Policies, Practices and Benefits pertaining to you as an employee of Company. Certain personnel matters are governed by specific documents (for example, insurance contracts). The attached will highlight these plans, but please read and become familiar with the individual booklets you have received.

The following pages are general guides which will need reassessment and updating from time to time.

Hours of Work

The basic work week is 35 hours, Monday through Friday. The normal working hours are 9:00 AM to 5:00 PM or 9:30 to 5:30 (in special cases only with Department Head approval). One hour is scheduled for lunch. Employees required to work from noon until after 7:00 PM are entitled to a reasonable supper break between 5:00 PM and 7:00 PM.

Overtime

Employees who are defined by law as exempt (Administrative, Executive or Professional) are not eligible for overtime pay. All other employees are entitled to overtime pay on the basis of straight time between hours 35 to 40 and time and one-half for hours worked over 40, Monday through Friday. Saturday work is paid at the rate of time and one-half and Sunday work at the rate of double-time. Any employee who is entitled to overtime pay and is required to work on a day not in his/her normal work week will be assured a minimum of four hours on that day.

All overtime must be authorized in advance by Department Heads and they are responsible for keeping overtime to a minimum. All overtime must be shown on the weekly

statements as contracts. They may, however, be changed unilaterally by notice to the employees.

time sheets that are sent to the Personnel Department and must be signed by the Department Head.

A lunch and supper allowance of \$10.00 will be paid to all employees who work 10 or more hours in one day. This allowance should be requested on a Business Expense Report. An allowance will not be paid to those employees whose expenses are otherwise assumed or paid for by the company, for example, if you are attending a dinner conference paid for by the company, you will not receive supper money.

Lunch money will be paid to employees required to work 4 hours or more on Saturday, Sunday or a regular holiday except if you are attending a company paid function.

Employees who complete time sheets must do so on a weekly basis whether they work overtime or not.

Raises and Pay Day

Before you began working at Company, you and your Department Head agreed upon a starting salary based on many factors: your working experience, education, salary levels within the department and the Department Head's evaluation of the worth of the job. Your compensation while employed here depends on your performance . . . the functions you are asked to do and the quality with which you perform them. Your Department Head is responsible for evaluating your performance.

The raises you earn will be based on merit. Salaries are reviewed annually during the month of June. Any increase granted becomes effective July 1 and is reflected in the July 15 paycheck.

Employees are paid twice a month. Checks are distributed on the 15th and the last working day of the month. If the 15th of the month falls on a weekend, checks will be distributed on the preceding Friday.

Every salary check is subject to certain deductions which are listed separately on your paycheck stub. Deductions re-

quired by law are withholding for Federal, State and City Income Taxes plus Social Security (FICA). If you have questions concerning these taxes, or if you wish to change the withholding amounts, contact the Personnel Department.

Vacation

Vacation time will be granted to all employees who have completed six months of service. Part-time employees are entitled to vacation time based on the Company policy but figured on the employee's actual weekly work schedule.

Employees hired between January 1st and June 30th are eligible for one week's vacation with pay after completing six months of service. In the year following their date of hire, employees will become eligible for one additional week of vacation on their anniversary date.

Employees hired after June 30th will not be eligible for any vacation in that calendar year, but will be eligible for one week's vacation in the following calendar year after completing six months of service. An additional one week of vacation will become available on the actual service anniversary date.

Beginning with the second calendar year, vacation entitlement will be effective as of January 1st each year and vacation time is as follows:

<u>Years of Service</u>	<u>Vacation Time</u>
1 year but less than 3	2 weeks
3 years but less than 6	3 weeks
6 years but less than 11	4 weeks
11 years or more	5 weeks

When employees become eligible for additional vacation allowance due to length of service, additional time will become effective on the actual service anniversary date although vacation time is to be taken within the calendar year.

Vacations are not cumulative and may not be taken in the

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