

Offer letters and employment agreements: is there a difference?

A common question that arises when startups begin hiring new employees is whether to use an offer letter or an employment agreement. Both the offer letter and employment agreement serve the same basic purpose – to memorialize in writing the terms and conditions of employment. But each also serves additional purposes, and understanding the differences will ensure that you use the right document in the appropriate situation.

What is the difference between an offer letter and an employment agreement?

Offer letters are typically short documents containing very basic terms and conditions of employment. A hallmark of an offer letter is the "at-will" employment provision, which provides that an employee can be terminated for any reason or for no reason at all (except an illegal one). For more about at-will employment, [please see our article](#). Employment extended through offer letters can also be made contingent on successful completion of background checks and employment eligibility verification.

Employment agreements on the other hand are lengthier documents that include more complex and sophisticated terms covering such things as non-solicitation, confidentiality, compensation, benefits, job duties and the circumstances under which the employee can be terminated. Employment agreements are also more common outside of the US than offer letters.

Which one should startups use?

It depends on the type of hire. The more formal employment agreement is most commonly used with high-level employees. In the case of startups, founders and CEOs generally have employment agreements due to the complexity of their relationship with the employer. Employment agreements are also used to help protect the employer's assets, such as preventing a departing employee from taking IP, clients, customers and other confidential information.

By contrast, the more informal offer letter should suffice for mid to low-level employees whose relationship with the employer is not as complex and where a standard employee proprietary information and inventions assignment agreement will be signed (for more about such employee inventions agreements, [see our article](#)).

What should I include in employment agreements?

Employment agreements come in different shapes and sizes, but will almost universally contain these same basic provisions:

- Term of employment
- Title and duties
- Exclusivity
- Compensation and benefits
- Confidentiality
- Termination

- Severance pay
- Arbitration

What should I include in employee offer letters?

At a minimum, an offer letter should contain the following provisions:

- Position
- Start date
- Compensation
- At-will employment statement

In addition to the offer letter, some jurisdictions require that employers provide nonexempt employees with certain notices in writing at the time of hire. In California, for example, employers must provide the following notices and statements:

- The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable
- Any allowances taken as part of the minimum wage (eg, tips, meal and lodging deductions)
- The regular payday designated by the employer
- The name of the employer, including any DBA names used by the employer
- The physical address of the employer's main office or principal place of business, and a mailing address, if different
- The telephone number of the employer
- The name, address and telephone number of the employer's workers' compensation insurance carrier

The standard notice used in California can be found [here](#). In addition, New York, Alaska, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Maryland, New Hampshire, North Carolina, Pennsylvania, South Carolina, Utah, and West Virginia have similar notice requirements. Employers in those states should review their offer letter and employment agreements to ensure compliance with all applicable requirements.

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