



Student Workplace Contracts: The Tie That Binds

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ABSTRACT

The establishment of a formal contract between student and employer is becoming a requirement for tertiary institutions that feature cooperative education courses. Such courses require students to complete a piece of work that would typically be completed by a recent graduate of the respective course. Employers get an opportunity to see what a potential employee can do, while the institution receives confirmation that, at least, their teachings can be related to productive tasks. In turn, students need protection from exploitation or physical accidents they might suffer while in the workplace. This paper reviews a selection of current and past student-employer contracts used for cooperative education (work placement) courses and by consulting employers, students and representatives of this and other tertiary institutions, explores the implications for their use. It concludes with recommendations for items to incorporate in an effective contract. A more quantitative treatment, including a more extensive survey, is planned for later in the year.

Keywords: Cooperative Education (Co-op), Workplace Contract, Student-Employer Contract.

1. INTRODUCTION

“Contracts ... are a vehicle by which persons voluntarily create obligations upon themselves.”
(Duhaime, 2002)

Formal contracts at CPIT have to date not been used for all courses as a matter of institution-enforced policy. In practice, the student has, when required, abided by a contract when generated by companies that have taken that particular initiative. Perhaps surprisingly, no student so far has demanded one; a few have asked whether or not one was provided by CPIT; one or two have been provided on a rather ad hoc basis in the last 4 years. Interviews conducted with employers over the last four years have revealed a reasonably consistent set of conditions that they tend to look for if they were to become party to a formal contract.

Typically, employers are in a position of strength at the time the contract is being drawn up, in as much as their demands must usually be agreed to if the student wishes to join them. Students for their part are generally glad to be able to do anything that doesn't involve sitting in a classroom for five days each week, so are rather less discriminating when faced with the prospect of signing up to conditions of service that might otherwise give them pause for thought.



2. WHY ADOPT A FORMAL CONTRACT?

Currently at CPIT, students starting work placements for their Cooperative Education (CE301) project as part of their Bachelor of Information and Communication Technologies (BICT) might enter into any one of a variety of contracts with employers - in the main these tend to be informal, word-of-mouth only. Some students obtain employment with companies outright and negotiate with them to carry out their projects for the first six months. In these cases the position is clear and in the main, these students and firms that host them are well provided for by a binding employment contract. The student has become an employee of the company and is thus bound by company policy in matters relating to intellectual property, confidentiality and so on. During this time they work alongside the "regular" employees and share the same rights and obligations as the other employees, even though they are at the same time completing a project that is required for their degree. Other students are not treated with the same professional attitude and are, in extreme cases, treated almost with disdain by co-workers and a measure of indifference by managers. Pay for students as a whole, if given at all, is usually much less than for other equally new employees. This is to allow for their alleged lower productivity and staff overhead while under supervision.

Other students are perhaps working unpaid, often for smaller companies, with no written contract that could be used to hold either party accountable in the case of a disagreement. Such disagreements could include anything relating to the work and study carried out either on the firm's premises or elsewhere, on behalf of the company. The students working under these circumstances are less well protected and more vulnerable to possible exploitation. They operate under an umbrella of trust that is established between the three parties - student, institution and employer. In practice, these students have fared no less well than students working for much larger companies.

3. WHAT DO EMPLOYERS WANT?

The companies surveyed indicated two main areas of concern for most of them. The first was confidentiality, covering a wide range of sensitive

areas, including selling the names of clients, revealing future strategies to competitors and in one case the concept behind a new type of computer game. A major concern for employers was the possibility of removal or corruption of sensitive company data or procedures. Where no written contract existed, at least one company revealed they were a little concerned about the risk of a breach in confidentiality. While a written contract would not necessarily have prevented this loss, it may have provided a means for redress and a better chance of compensation. The same company pointed to a number of minor, but potentially damaging security breaches that involved taking client lists off the premises in order that a populated database could be worked on at home. Non-disclosure agreements, dealing specifically with what can and cannot be taken from the premises, have been used as a special supplement to the contract proper. In one case this agreement was the only piece of written contract the company was concerned about.

The second main concern was intellectual property (IP). Some employers fear the student, being a transient employee, there only for as long as it takes to pass the course (about five months for CE301) will have no qualms about taking the ideas, working practices if not actually names and addresses with them when they leave. One company, operating successfully within Canterbury for twenty years, confessed that their IP was "all they had" and would miss it far more than the room full of computer hardware that was used to develop their business. This company wanted any contact to spell out emphatically that any IP remained the property of the company, whether or not the student was paid, taken on after the project had finished.

Another issue raised was the return or continued use of licensed software by students leaving the company. One company felt powerless to check-up on a student once they have left, yet still felt morally responsible for any illegal, continued use of the product.

Most employers wanted their obligations to the student captured in writing. There were usually overheads incurred by taking on a student such as desks, computers, office space and supervision from the assigned mentor; a period of orientation or induction to company lore was allowed for in a few cases.

Other requests for inclusion involved more mundane, though still thorny standard employee-

related matters such as the provision to demand a certain standard of dress when working in the building, abide by company hours, follow the common practices of coffee and lunch breaks. In general, the majority looked for qualities such as simplicity, brevity, ease of use and compliance without financial or work-related penalties.

For any student to sell a company's intellectual property would represent a clear breach of faith, it is anticipated that this is as unlikely as it would be ethically unsavoury. Nonetheless, the company wanted a contract that enabled them to take positive steps to effect its return; it also wondered how practical it would be to obtain compensation from the student due to losses it might incur?

4. WHAT DO STUDENTS WANT?

Students surveyed were much easier to please: they mostly want somewhere to work, plain and simple. Some are so relieved to be given a chance to prove what they can do after being incarcerated for so long they will do it for nothing. The risks to the student in many cases are of a different nature from the company for which s/he works. These include being misemployed, not receiving a promised payment for work carried out and not receiving appropriate supervision. As one student said: "He's bugged off to Hong Kong again." Sometimes the equipment and resources promised to the student in order to carry out their project are not provided.

If they were unfortunate to be involved in a physical accident the question of employer liability arises and ACC will have a say in any compensation claim. What of company health and dental plans, staff facilities, privileges and bonuses - do students have a right to expect such things in the way a "normal" employee would?

Students want their efforts recognised - this should be done while they are at the company. Once the project is finished and the firm has no further use for the student, they may be too busy to provide the references the student needs. In some circumstances the more permanent job that was implied when they first arrived may evaporate.

5. WHAT DOES THE INSTITUTION WANT?

The institution wants an agreement that makes explicit the expectations and obligations of the student, institution and the employer. It needs the contract to be:

- ◆ Freely entered into by all, easy to follow, free of jargon (especially legal jargon)
- ◆ Easy to comply with and re-usable for as many future projects as possible
- ◆ Clear concerning the nature of the work to be undertaken by the student during the course of the project
- ◆ Explicit with regards to the amount, timing and level of supervision the student can expect and from whom they can expect it
- ◆ If payment is discussed, it should be before the project starts; the contract should be explicit regarding the conditions under which payment will be made and conversely under which it will be withheld.

If the student is dissatisfied with the outcome of the placement, then by definition the institution will also have concerns. All providers of these courses work in a competitive environment and returning students are naturally a desirable aim. Having known the students for perhaps three years, it is natural to have high expectations for their placements; the critical time in the student's course when the theory is put into practice.

6. OTHER CONTRACTS

The few contracts that have been obtained from other institutions to date spoke of the mutual responsibility the parties to the contract had. According to the New Mexico State University (NMSU) Cooperative Education web page: "each party will assist the other in the accomplishment of its program objectives." It acknowledges that, while supporting the overall goals of student learning and curriculum enrichment, the company may take on a student: "to meet its short-term staffing needs."

The University of Waikato uses four pages but fewer words to lay out what the various responsibilities are for each party. "Timely and effective

communication” is mentioned for each party and a preparedness to raise issues as soon as they occur, which would seem prudent. They also refer to the requirement for companies to provide: “opportunities to develop interpersonal skills and communication skills, and provide appropriate feedback on the student’s progress in this area during the placement.”

7. SUMMARY

The adoption of a written contract is highly likely to become a requirement for the author’s institution in the near future, but the content of the contract deserves careful consideration in order to obviate some of the undesirable effects outlined above. While some contracts reviewed appeared to emphasise goodwill and mutual trust, others enumerated specific requests that spelled out responsibilities in sufficient detail to make misunderstanding highly unlikely. The contract to be adopted by CPIT would include an unambiguous list of responsibilities, preferably in note form and written in plain English. What is sought is a balance between the crude and simple on one hand, and the overly wordy, specific, yet difficult to enforce on the other.

8. RECOMMENDATIONS

When establishing a student-company contract, the following points should be addressed:

- ◆ Ensure both parties sign a written contract before the work placement starts; neither party should feel disadvantaged by the contract nor should they sign it under duress
- ◆ Ensure responsibilities are perceived by all parties as reasonable, simple to understand and feasible given the particular circumstances under which the student finds themselves
- ◆ If a job offer is part of the promises made on
- ◆ If there is to be some form of payment, state the conditions under which the payment will be made and if possible those under which payment will be withheld.

9. CONCLUSIONS

The adoption of a written contract that expressly protects the parties involved offers a number of advantages and should be adopted for all courses that offer work placements as part of the course.

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