

## **Employment Agreements**

### Why should we have employment agreements in place?

There are two main reasons for putting employment agreements in place:

1. It is a legal requirement
2. Agreements clearly define the nature of the employment arrangement, and ensure that everyone understands what is expected of them

### Who needs an employment agreement?

Every employee employed after 2 October 2000 is legally required to have a written employment agreement. This may be either an individual or a collective agreement.

### What should be in an employment agreement?

In order for an individual employment agreement to meet the minimum requirements by law, it must contain at least the clauses listed below, or a variation thereof:

1. The Parties - a clause which makes it clear who is involved. It is important for the clause to have the correct legal name for the employer, and the full name of the employee.
2. Position - a clause stating the intended position of the employee. If drafting an agreement yourself, you should include sufficient information to make the nature and level of the job clear. It must be accompanied by a Duties clause and a detailed job description.
3. Duties - a clause detailing the duties it is expected that the employee will carry out. The agreement must also be accompanied by a job description, either within the clause itself or as an attached document. The description should include enough information to enable the employer and employee to discuss the quality of the employee's work during performance reviews, or if employment relations problems emerge.
4. Place of Work - a clause to identify the place of work. When offering or accepting an agreement it is important to be clear about where the employee can be required to work, as issues such as travel time or availability of public transport can affect the employees ability to undertake the work. Once a place of work has been established any change should be made after consultation and discussion.
5. Working Hours - a clause to describe the working hours. Correctly identifying the nature of the work is essential as a number of minimum employment conditions apply only in some working arrangements.
6. Types of Pay - including information of this nature in an employment agreement is compulsory. In establishing levels of payment all employees must be paid at least the minimum wage - regardless of the manner of establishing payment.
7. Public Holidays - agreements must provide for the employee to receive at least **time and a half** for any work they are required to undertake on a public holiday. You must develop a clause which complies with section 50 of the Holidays Act 2003. The other public holiday provisions of the Holidays Act do not need to be included in the

employment agreement, but the employee maintains an entitlement to them that cannot be waived.

8. Restructuring and Redundancy

- a. Rights in contracting out situations - if an agreement is for an employee performing the following services in the following industries, certain rights apply:
  1. cleaning services, food catering services, caretaking, or laundry services for the education sector (being the public and private pre-school, primary, secondary, and tertiary educational institutions):
  2. cleaning services, food catering services, orderly services, or laundry services for the health sector (being any hospital, as defined by the Hospitals Act 1957 and any hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992):
  3. cleaning services, food catering services, orderly services, or laundry services in the age-related residential care sector:
  4. cleaning services or food catering services in the public service (as defined in Schedule 1 of the State Sector Act 1988) or local government sector:
  5. cleaning services or food catering services in relation to any airport facility or for the aviation sector:
  6. cleaning services or food catering services in relation to any other place of work (within the meaning of the Health and Safety in Employment Act 1992).

It would be advisable to contact an HR Consultant or Employment Lawyer for assistance in these cases!

- b. Restructuring Due to Transfer – a clause detailing what happens in the event that all or part of the work undertaken by the employee will be affected by the employer entering into an arrangement whereby a new employer will undertake the work currently undertaken by the employee
  - c. Negotiations with New Employer – a clause detailing that the employer will negotiate with the new employer, including whether the affected employees will transfer to the new employer on the same terms and conditions etc
  - d. No transfer or Employment – a clause detailing what happens in cases where the employee either chooses not to transfer to the new employer, or is not offered employment by the new employer
9. Employment Relationship Problems –an explanation of the steps that should be taken to deal with employment relations problems that arise. It is important that both the employer and the employee recognise that once a clause is included they should follow the processes laid down.

## Things to Consider

The preceding list covers only the compulsory clauses for employment agreements, there may be many other clauses that should be considered depending on the nature of your business and/or industry.

The Wages Protection Act still allows employees to insist that they be paid in cash – it is advisable under your payments clause to indicate that payment will be direct credit into a nominated bank account only.

Always reflect entitlements to annual leave in weeks not days.

When reflecting entitlements to sick leave for part time employees they are still entitled to 5 days just like full time employees.

Try to keep clauses as open ended as possible.

## Where can I get more information

For further information, assistance on employment agreements, contact:

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