

QUICK GUIDE TO EMPLOYMENT AGREEMENTS

When you employ a person there is a legal requirement to provide them with a written employment agreement. This employment agreement legally must include the following:

1. Statement about who the agreement is between
2. The position/job title
3. Details of the expected duties – i.e. a Job Description
4. Place of work
5. Hours of work
6. Type of pay – e.g. Salary or hourly rate
7. Payment for working on a public holiday
8. Redundancy clause – NB for the purposes of legislation this clause only extends as far as redundancy in the event of sale of all or part of the business. **There are different requirements in Cleaning services and food catering services. Please refer to www.ers.govt.nz for more information.**
9. Details of how Employment Relations Issues will be resolved
10. Signature and date of both parties to the agreement

Other Notes on Employment agreements:

1. Remember to include a **Kiwisaver information booklet or direct employees to the Kiwisaver website (www.kiwisaver.govt.nz)** with the employment agreement. Employees will automatically be enrolled in the scheme if they do not opt-out between weeks 2 and 8 of employment. If they are already a member of Kiwisaver before they start employment, then they do not have the option of opting out.
2. The **working hours clause** needs to give a fair and reasonable estimate to the hours of work in order that the employee can make an informed decision about how much time they will require to be available to complete the needs of the job.
3. With effect from 1 April 2011 you were able to include **Trial period** in your employment agreements. The legislation allows you to include a trial period of up to 90 days, which needs to be in writing and signed before starting employment. If you dismiss an employee under the terms of a trial period they cannot bring a Personal grievance for unfair dismissal. However, beware; **THEY CAN** bring a claim for other reasons

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If you have any questions, please call Shelley Noyce, Business Adviser, on 09 374 2266 or 021 363 200. Email: snoyce@chamber.co.nz. Call 0800 CHAMBER (0800 242 623).

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such as discrimination, harassment or unjustified action by the employer. It is therefore strongly recommend that you exercise caution in relation to trial periods. You should ensure that, if there are issues with a new employee's performance, they you give them clear feedback so that there are no surprises if you subsequently terminate them. It is also prudent to keep a record of any such feedback in case you later have to prove that you have given the feedback.

4. It is a legal requirement to **include a job description** with sufficient detail to assess an employee's performance against, or to use for assessment if employment relations issues arise
5. **Redundancy Provisions** - Please note, that in the following industry sectors there are additional Redundancy Provisions. Refer to www.ers.govt.nz for more information:
 - Cleaning services and food catering services in any place of work
 - Laundry services for the education, health, or age related residential care sector
 - Orderly services for the health, or age related residential care sector
 - Caretaking services for the education sector.

Why Use Fixed-term employment agreements?

Fixed term employment agreements are for use when you know at the start of the agreement that the need for that employee will end at a certain date or event.

Traditionally they are used for things such as parental leave cover, but they can also be used for things such as seasonal workers.

An example of wording you may use in the 'Nature of Agreement section' for a fixed-term summer worker may be:

This is a fixed term employment agreement. This agreement will commence **at the start of the summer season which will be on X Date**, and will end **at the end of the summer season which is anticipated to be approximately X Date**. The reason for the fixed-term nature of the agreement is to **provide cover during the busy summer period**.

Why use Fixed-term as opposed to casual agreements?

Legislation in New Zealand means that a casual employee is one who is used on an as-and-when-required basis only. The difference between casual employees and any other employee is that they get paid an 8% uplift in their salary to compensate for not accruing holidays. The danger is that casual employees can easily fall into a regular working pattern which can create two potential issues:

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1. You decide to convert them to permanent, but they don't want to 'lose' the 8% uplift in their take home pay as they perceive this as a pay cut
2. You don't convert them from a casual agreement, but their pattern of work means that they can claim rights as a permanent employee including the right to time off with pay (i.e. annual leave/sick leave/public holidays etc). The risk is that they end up having a legal right to the time off with pay in addition to the 8% uplift which has already been paid.

Because of these risks it is recommended that you avoid entering a agreement that pays the 8% uplift wherever possible (e.g. a casual agreement), but give employees annual leave accrual instead.

Casual Employees Sick leave and Bereavement leave entitlement

All employees including casual employees will be entitled to sick leave and bereavement leave in accordance with the Holidays Act if they have worked for six months at an average of at least 10 hours per week, and at least one hour per week or 40 hours per month.

A Casual Employee shall be entitled to five days' sick leave per annum if they meet the above criteria. They will also be entitled to an additional five days' sick leave for each 12 month period after this date as long as the criteria above continue to apply. And can continue to accrue up to 20 days sick leave.

Please note that the 5 days entitlement is NOT pro-rated. Therefore even if they only work on average 2 days per week the entitlement is still to 5 days sick leave.

Associated Documentation

1. All employment agreements
2. Job description template
3. Sample Job description phrases
4. Offer cover letter

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