

## A NEW EMPLOYMENT CONTRACT

If you are employing a new staff member or about to be employed in a new job, there are a number of things you might want to see in the new employment agreement.

[Note: If you are concerned as an employer that in some cases a contract containing this level of detail would be too intimidating to confront a new employee with, then many of the general matters can be put into an Employees Handbook so that the actual letter (contract) of employment will only set out the specific matters relating to the particular employee.]

### 1. Award

If the new employee is covered by an industrial award then the award will set out the minimum terms of employment that must apply.

What we have set out here is a number of items that can be negotiated with respect to non award employees and that can be a checklist or reminder for all employees to make sure their agreement covers all the important points.

### 2. Position

It is amazing how often employment agreements do not make completely clear exactly what it is that the employee will be doing in the job.

Neither the employer nor the new staff member should rely on the interview discussions. If there is any argument as to whether a particular role is part of the new job each person's recollection of those discussions will almost certainly differ. Ensure there is a detailed written job description agreed to by both parties attached to or referred to in the agreement.

### 3. Location

Where is the job situated? Can the employer require the employee to move? If so, who pays :

- > removal costs?
- > expenses of the sale by the employee of their residence?
- > expenses of the purchase by the employee of a residence in the new location?

Will employer pay family's travel costs for an annual trip back to their home town?

### 4. Remuneration

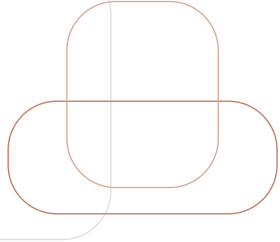
- > Detail the amount of the salary and the timing (week/fortnight/month) and manner (cash/cheque/bank transfer) of payment.
- > Detail superannuation contributions by the employer.
- > Detail any compulsory employee superannuation contributions.
- > Will the employer pay leave loading on annual leave entitlements.
- > Detail review dates for salary.
- > Detail other aspects of the package (ie other amounts paid on behalf of the employee by the employer).
- > State clearly that the employer is liable for any fringe benefits tax.
- > Detail bonus entitlements - be specific if possible about the methodology and timing of bonus payments.
- > Detail any staff share scheme or option scheme.

### 5. Commencement Date

- > What is the commencement date?
- > Stipulate whether the contract is for a fixed-term or not.

### 6. Probation Period

- > Is there a probation period? Is it reasonable or could it be challenged as unfairly long?
- > Detail the rights of the parties during the probation period; in particular in ending the employment during that period.



## **7. Reporting**

- > Who will the employee report to?.
- > Attach a current management chart, if appropriate.

## **8. Expenses**

What expenses will be payable by the employer? Is there a limit? What documents do staff need to make a claim for reimbursement of expenses?

## **9. Performance Criteria**

Detail precisely how the employee's performance will be measured. It can be vital when assessing performance (and hence whether or not they can keep the job) to be able to accurately measure an employee's performance.

## **10. Training**

- > Detail any training required of the employee.
- > State specifically who pays for that training.
- > Will training be during work hours or not?
- > Will the employee be paid salary during training?

## **11. Staff Appraisals and Competency Assessment**

- > Detail how regularly the employee will be assessed.
- > Detail the assessment procedure and how the employer will assist the employee if assessment is unsatisfactory.

## **12. Disciplinary Procedures**

Detail what (if any) disciplinary procedures the employer uses and what avenues for appeal may exist.

## **13. Termination**

- > Detail termination provisions for termination without cause.
- > Employees who earn fall within the unfair dismissal rules set up at both federal and state levels are entitled to 'procedural fairness' when their continuing employment is considered.
- > Standard termination clauses providing for a fixed notice period may have their fairness (and therefore their enforceability) scrutinised under Section 106 Industrial Relations Act (NSW) if the employer is not a corporation.
- > State specifically that the employer can pay salary in lieu of notice.
- > Redundancy (also often called 'retrenchment') usually entitles the employee to an amount over and above pay in lieu of notice. Employees may want to ensure that redundancy entitlements are specifically set out in the agreement. Many industrial awards contain them, usually being between two and four weeks pay for each year of service.
- > Senior executives may want a 'golden parachute' clause requiring the employer to pay a fixed amount if the employer is the subject of a takeover and there is no role for the employee in the new entity.

## **14. Summary Termination**

Detail specifically those misdemeanours by the employee which would lead to summary termination.

## **15. Delivery of Property and Refunding of Payments**

On termination, the employee is required to return to the employer all the employer's property including files and even any diary provided by the employer, as well as refunding any advance payments.

## **16. Restrictions After Termination**

- > It is usual for employers to try to restrict key employees from stealing customers after they leave the employer. Such clauses must pass fairly rigid tests of reasonableness before a Court will enforce them.
- > Clauses which try to restrict the former employee from working in the industry after termination are almost invariably unenforceable. Courts will generally "read down" any restriction on an employee using their personal skills to earn income.

## **17. Annual Leave**

Detail annual leave entitlements, including, not only the amount, but when such leave can be taken and whether it can be taken in one period or must be taken in several periods. Is there a restriction on an employee taking more than or accruing more than 4 weeks annual leave at any one time.

Does the employee have to get management approval first before taking their annual leave?



## 18. Sick Leave

Although they are covered by legislation, it is prudent to detail sick leave entitlements.

## 19. Long Service and Other Leave

- > Although they are covered by state legislation, it is prudent to detail long service leave entitlements.
- > Detail bereavement leave entitlements.
- > Detail jury service leave entitlements.
- > Detail paternity or maternity leave entitlements.
- > Detail sabbatical leave for senior managers or those in high stress positions.

## 20. Smoking

The employee should ensure that the employer's smoking policy and facilities are satisfactory not only with respect to the new staff member but also other staff, customers, suppliers and the like.

## 21. Grievance Procedures

- > If possible the employer should have in place suitable grievance procedures, along with a satisfactory sexual harassment policy, and should detail these in the employment contract.
- > The employer should also have in place satisfactory warning and counselling procedures.
- > The parties should agree to resolve disputes through the use of alternate dispute resolution procedures before resorting to litigation.

## 22. Occupational Health & Safety

The agreement should require the employee to comply with all Occupational Health & Safety laws, procedures, guidelines and requirements and to at all times ensure that the workplace is healthy and safe.