

EMPLOYMENT AGREEMENTS

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When was the last time you reviewed your employment agreement? Can you recall what it says? Do you even have one?

For employers the importance of a properly drafted employment agreement, prepared with the individual business needs and requirements in mind, cannot be underestimated. For employees careful consideration of the terms of an intended employment agreement should be an obligatory and well considered part of any job application process.

The Employment Relations Act 2000 states that all employment agreements are required to be in writing and clearly define the parties, duties, location, times and hours of work, salary/wages, dispute resolution services available, employee protection provisions in the event of a restructuring; and entitlement to receive payment of time and a half for working on a public holiday

An employer is also required to:

- Advise the employee that he or she is entitled to seek independent advice about the intended agreement and give the employee a reasonable opportunity to seek that advice; and
- Consider any issues that the employee raises - employers are not entitled to present an employee with an employment agreement on a "take it or leave it" type approach.

Failure to provide employees with an employment agreement or to comply with minimum requirements can make the employer liable for a penalty up to a maximum of \$10,000. It appears the highest penalty imposed for failure to supply a copy of an employment agreement in writing so far is \$7,000.00. In reality the penalties imposed in the Employment Relations Authority are much more modest.

While legislation provides some guidance both parties should consider the benefits or disadvantages or other provisions such as:

- Whether a 90 day trial period clause should be included - is the clause properly drafted pursuant to the legislative requirements? As an employee is it reasonable to agree to a 90 day trial period?
- Who holds the power to amend and vary duties and hours and days of work? Does the employer have absolute discretion or do amendments require mutual agreement?
- Medical incapacity clauses - what is to happen in the event an employee injures him/herself and becomes incapable of performing work for a period of time?
- Restraints - is it appropriate in the circumstances for the employee to be restrained in any way following termination of employment? What particular restraints are reasonable and likely to be enforceable?
- Can the employee be placed on garden leave?
- Can the employee be suspended pending an investigation into misconduct? Is suspension to be on full pay or does the employer have the ability in particular circumstances to suspend an employee without pay?

There are a myriad of issues that can arise in an employment relationship. Unless the parties to an employment relationship have agreed in advance on how these are to be resolved uncertainty and disputes can often arise - often at a significant financial and emotional cost to both parties.

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