

EMPLOYMENT AGREEMENTS

EMPLOYERS AND EMPLOYEES HAVE RIGHTS AND RESPONSIBILITIES IN THE EMPLOYMENT RELATIONSHIP

WHAT IS AN EMPLOYMENT AGREEMENT?

If you are employing anybody then an employment agreement exists. This may be written or unwritten. Every employer and employee is covered by The Employment Agreements Act, which sets out rights and obligations

TYPES OF AGREEMENTS

There are two types of agreements individual and collective:

Individual - are binding on only one individual and one employer. Individual agreements can be verbal or written. An employee can request a written copy of the agreement at any time. Individual workers may be bound by more than 1 agreement

Collective - involves one or more employers and two or more workers. These must be in writing.

When a collective agreement applies to 20 or more people, a copy must be lodged with the secretary of Labour PO Box 3705 Wellington.

GOOD FAITH

At the most basic level, good faith means you are not allowed to mislead or deceive your employees or their unions, and they are not allowed to mislead or deceive you. You have to respect the authority of your employees' union and you can't discriminate for or against anyone based on their union membership. Beyond these minimum requirements, common sense will usually be enough to determine what is "good faith" and what is not.

BASICS OF AN AGREEMENT

There are statutory requirements covered in following legislation

- Employment Relations Act 2000
- Holidays Act 2003
- Minimum Wages Act 1983
- Wages Protection Act 1983
- Equal Pay Act 1972 & Human Rights Act 1993
- Parental Leave and Employment Protection Act 1987
- Accident Rehabilitation Compensation Insurance Act 1992

Employment Agreement **must** include:

- Personal Grievance and Dispute Procedures, an expiry date and must comply with the minimum conditions of the act which includes;
- Minimum wages for those over 20
- Equal Pay
- Protection against unlawful deductions from pay
- Paid statutory holidays and annual leave
- Paid special leave for domestic and bereavement reasons
- Parental leave

Employment Agreements **should** cover

- Rates of pay, wages and allowances
- Hours of work
- Type of work
- Holidays and other entitlements

NEGOTIATING AN INDIVIDUAL AGREEMENT

An employment agreement is an agreement between the employer and the employee; therefore discussion must take place before the worker accepts the position. A worker should therefore be interviewed, agreement negotiated, position offered and accepted and agreement signed.

The employer and employee may negotiate their agreement together or they may choose to each nominate a bargaining agent who can be a union representative, a friend or relative, in fact almost anyone who has not been convicted of a serious criminal offence.

You have to negotiate in good faith, which means both you and the employee have to listen to the other's point of view.

Beyond that, there is a requirement that if and when you reach an agreement the employer has to be confident that the employee is able to understand its provisions. Particular care has to be taken if the employee is young, sick or emotionally distressed. Particular care must also be taken if the employee has a mental, educational or communication disability. You must also ensure the person has the opportunity to seek independent advice and doesn't rely on your advice or the advice of someone acting on your behalf.

If and when you reach an agreement, it has to be in writing, and the following must be included:

- The names employer and employee
- A description of the work to be performed
- An indication of where the work is to be performed
- An indication of working hours
- The wages or salary to be paid

- A plain-language explanation of the services available to resolve any problems (a suggested wording is available from the Employment Relations Service)
- A reference to the fact personal grievances must be lodged within 90 days of any incidents occurring
- Anything else you have agreed.

Also, the agreement can't contain anything illegal.

NEGOTIATING A COLLECTIVE AGREEMENT

If there is a relevant collective agreement and the new employee is a member of the relevant union

The collective agreement automatically covers the new employee if the agreement covers the work to be performed by the new employee, plus the new employee is a member of the relevant union. Additional terms can be negotiated as long as they can be accommodated within the terms of the collective agreement.

If there is a relevant collective agreement but the new employee is not a member of the relevant union

For the first 30 days of employment the employee will have an individual employment agreement based on the collective agreement. After the 30 days the employee's terms and conditions of employment can be changed by agreement.

When offering the new employee the position, the employer must:

- Inform the new employee there is a collective agreement
- Inform the employee of their right to join the union and give them the union's contact details
- Inform the employee that if they join the union the collective agreement will bind them
- If the employee does not join the union, the terms and conditions of work are the same as those of the collective agreement for the first 30 days
- Give the employee a copy of collective employment agreement
- Inform the union that a new employee has begun work

PROBLEM SOLVING

If problems do arise in an employment relationship, employees and employers can get help by contacting Employment Relations Infoline, however the first steps are very important. The following steps are a guide to resolving a problem:

- 1 Be clear about the facts – make sure that what you think has happened or is happening is not just based on an assumption you have made or a misunderstanding.
- 2 Talk to each other – employers and employees should try to resolve the problem by discussing it with each other. Union members can ask their union, and employers can ask their employers' association, to approach the other party for them.

If an employee believes they have a personal grievance, they must raise it with his or her employer within 90 days of the action complained of, or the date they became aware of it whichever is the later.

- 3 Clarify whether you do have a problem, and if so, what your problem is. – Don't delay this step. Discuss your problem with family or friends or advisers to clarify what the problem actually is. Search the Employment Relations Infoline web site (www.ers.dol.govt.nz) for basic information on employment rights, entitlements and obligations or call the Employment Relations Infoline (0800 800 863) and talk to experts such as your employers' association, union, lawyer, community law office or other experts.
- 4 If the problem is not resolved by discussion either party may contact the Employment Relations Infoline who may provide mediation services. These services include information, mediation or advice on what services are available and how to access them. The Employment Relations Authority may be the next step. The Authority will consider whether there is still a chance to resolve the problem by mediation. If you are not satisfied with a determination of the Authority, go to the Employment Court for a judicial hearing. The Court may also direct the parties to get further mediation assistance if it thinks that may be useful.

STAFF RECORDS

It is important to keep staff records noting starting dates, qualifications, review outcomes, employees expectations and ambitions, training courses undertaken etc. Staff must know that these records are treated as "confidential".

FURTHER RESOURCES

The easiest way to obtain further information on the Employment Relations Act and the Employment Relations Service, is to view our website at:

www.ers.dol.govt.nz

When you need additional information on bargaining or about an issue that has arisen in your workplace, the Employment Relation Service can be contacted on:

0800 800 863 info@ers.dol.govt.nz

If you would like a list of our other community resources, or to be put on our mailing list, contact us at:



Phone (09) 486-4820

Fax (09) 486-4823



Visit North Shore Community and Social Services Inc.
Mary Thomas Centre, 3 Gibbons Rd, Takapuna



Write P.O.Box 33 284, Takapuna, North Shore City



email info@nscss.co.nz

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