

Individual Employment Agreements: Back to Basics

Whilst individual employment agreements should be tailored to meet the specific needs of a business, there are nonetheless, certain clauses that are not optional - an employer is required by legislation to include such clauses in its individual employment agreements.

The MUST HAVE Clauses

Individual employment agreements are required to be in writing and under section 65 of the Employment Relations Act 2000, contain:

- The names of the employer and employee.
- A description of the work to be performed by the employee.
- An indication of where the employee is to perform the work.
- An indication of the arrangements relating to the times the employee is to work.
- The wages or salary payable to the employee.
- An Employment Relationship Problem Clause (explaining the services available for the resolution of such problems and including the reference to the 90 day limit within which any personal grievance must be raised by an employee with the employer).
- In addition, under the 2004 amendments to the Employment Relations Act 2000 (section 69K), an individual employment agreement (and collective agreements) must contain an Employee Protection Clause. This provides protection to employees where the employer's business is restructured (that is defined as sold or contracted out) and must set out the process the employer will follow in negotiating with any potential purchaser of the business or contractor about the impact for existing employees.
- If an employee is employed with an initial probationary period, this must be included in writing in the individual employment agreement to be enforceable. Similarly, if an employee is employed for a fixed term, the employment agreement must state the way in which the employment will end and the reasons for the employment ending in that way.
- The employment agreement must include a clause acknowledging an employee's right to T1.5 for work on a public holiday.
- When there is a collective agreement in place that covers the work to be completed by the employee, despite any individual employment agreement the employee may sign, for the first 30 days of employment the terms and conditions of employment will be those contained in the collective agreement.

- Additional terms and conditions can be negotiated provided these are not inconsistent with those contained in the collective agreement. After the initial 30-day period, the employer and employee can negotiate terms and conditions of employment as they see fit.
- The employer has significant obligations in respect of advising the employee of the existence of the collective agreement and that s/he may join the union. It is advisable in such a situation to include a clause clarifying the impact of the collective agreement upon the employee's terms and conditions of employment.

The SHOULD HAVE Clauses:

Whilst not required, there are numerous other clauses that it is advisable to include in an individual employment agreement. For example, the length of any notice period required in the event of termination should be included to prevent confusion over how much notice the parties should give to each other in the event employment is terminated.

Any entitlement to redundancy compensation should be addressed in the agreement. Likewise, if there is no entitlement to redundancy compensation, this should be specified to avoid the situation where the employee believes there is an entitlement to be reasonably compensated, which is entirely at odds with the employer's view. Other often included clauses would cover topics such as restraint of trade and non-solicitation, salary and performance reviews, confidentiality, misconduct/serious misconduct and suspension.

Under the Wages Protection Act 1983, an employer can only make deductions from an employee's wages for amounts owed to it with the employee's consent. Often at the time such a recovery is attempted, an employee may not be of a mind to give the required consent. For this reason it is advisable to include in the employment agreement a clause specifying that the employee agrees to the employer making deductions from amounts owed to the employee where the employer is owed money by the employee.

As is probably clear from the above, an employer needs to consider carefully the clauses it wishes to include in any employment agreement. Employers are also recommended to regularly review their employment agreements to ensure compliance with ever changing legislative requirements and that any standard agreement still meets the needs of the organisation.

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