

## EMPLOYMENT CONTRACTS

An employment contract is a formal, binding agreement between an employee and his or her employer. Capable of being enforced through the civil courts, employment contracts are a vital aspect of any employment relationship, outlining terms and conditions under which an individual is employed.

### Main content

An employment contract should contain all information relevant to that employment relationship including:

- > **Bound parties:** employer and employee, details such as trading name, ABN, etc.;
- > **Employment type and duration:** full time, part time, casual, fixed term, trainee, apprentice, etc.;
- > **Application:** commencement date, probationary period, applicable award or Enterprise Agreement (EA) read in conjunction with contract, etc.;
- > **Remuneration:** pay, allowances, entitlements, non-monetary benefits, bonuses, superannuation, etc.;
- > **Employment conditions:** hours of work, duties, responsibilities, overtime, location of work, etc.;
- > **Leave:** annual, personal, compassionate, discretionary, parental etc.;
- > **Termination:** notice, redundancy, serious misconduct, etc.; and
- > **Fidelity:** conflict of interest, confidentiality, intellectual property, post-employment activities, etc.

### Types of employment contracts

There are three main types of employment contracts:

- > permanent ongoing (full time or part time);
- > fixed term for a specified period (full time or part time); and
- > casual.

### Common mistakes

An employment contract should not contain any terms that are unfair, unjust or discriminatory nor should it contain any terms that are in breach of any relevant legislation (e.g. the National Employment Standards (NES) or the *Equal Opportunity Act 2010 (Vic)*).

An employment contract should also not contain terms that refer directly to matters that may change over time such as company policies or legislation. Rather, the contract should specify their importance and stipulate they will apply in their most current form at any given point in time.

### The Victorian Chamber of Commerce and Industry says:

Every employment relationship is unique and as such will require a different employment contract based upon the exact circumstances of that situation. A professionally and carefully drafted employment contract will not only clearly outline the rights and obligations of both employee and employer but will also prevent or greatly reduce any future legal risks.

## Frequently Asked Questions (FAQs)

### **Can you have a verbal employment contract?**

A binding employment contract can exist without being in writing. However, it is very difficult to prove (or disprove) not only its existence but also any specific details. There are a number of pre-requisite legal principles the courts will look for to determine whether a binding contract exists (e.g. offer, acceptance, consideration, intention to be legally bound, certainty and capacity). Failure to prove any or all of these requirements can render an employment contract unenforceable or void.

### **Can I terminate a fixed-term employment contract early?**

Any employment contract can be terminated at any point providing it is in line with the termination clause contained within the agreement. The termination clause must comprehensively detail the circumstances that allow for termination and the process which must be followed. You must also consider any relevant legislation that could deem the dismissal unfair or discriminatory when seeking to enact a termination clause in an employment contract.

### **I have an existing employee without an employment contract, can I make him/her sign a new contract?**

As the employee is already working for you an employment contract already exists, even though it is not expressed in writing, creating implied obligations on both the employee and employer. Any new employment contract containing additional duties or obligations on an employee can only be put in place by agreement between both parties. It is very important to have a signed agreement in place prior to the commencement of employment.

### **Can I change an employment contract?**

Changing any aspect of an existing employment contract requires the agreement of all parties to that agreement. As any change will effectively make a new contract, the legal principles stated above will need to be present.

### **How often should a contract be reviewed?**

Whenever there is a change to any applicable legislation, the employee's position, the employer's organisational structure or any other relevant circumstance the employment contract should be reviewed and updated. This will ensure it remains appropriate and compliant with such legislation, or accurately reflects the changed employment relationship.

### **Does every employee need an employment contract?**

While there is no legislative requirement for employees to have a written employment contract, the Victorian Chamber considers the employment relations issues and legal risks for our members are too great not to put a clear, defensible, written employment contract in place.

## Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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