

IMPORTANT INFORMATION

1. Templates are provided as a basis from which to draft a contract of employment. Templates are not intended to be used without further amendment being made and information being inserted to address the circumstances of each employee.
2. Whether you comply with your minimum legal obligations in a particular case may depend on a range of factors. Accordingly, the Victorian Chamber of Commerce and Industry cannot warrant that a contract based on the Template will comply with minimum requirements of relevant legislation including the Fair Work Act or any Modern Awards applicable to your business.
3. Every effort has been made to ensure the Template is an appropriate basis from which to draft a contract of employment. It is made available on the basis and understanding that the Victorian Chamber, its employees, officers, authors or agents are not providing legal advice and do not accept responsibility for any action, or decision not to act, taken on the basis of using the Template or any information contained in a Template.
4. The Victorian Chamber does not make any warranty, guarantee or promise that a Template is accurate, complete or up to date. To the extent that you acquire goods or services as a consumer (as defined in the Competition and Consumer Act 2010) you may have certain rights and remedies that cannot be excluded or restricted by agreement. Nothing herein operates to exclude the application of any implied warranty or the imposition of any liability imposed by the Competition and Consumer Act 2010 (“Non – Excludable Obligations”). Except in relation to Non-Excludable Obligations, all warranties, guarantees, rights and liabilities that may be implied by statute or general law are expressly excluded under these terms.
5. Except in relation to Non Excludable Obligations, the Victorian Chamber and its employees, officers, authors or agents expressly disclaim all and any liability to any person, whether a member of VCCI or not, in respect of any action or decision to act or not act which is taken in reliance, whether partially or wholly, on the information in the template , and no responsibility or liability is accepted for any losses incurred in contract, tort, negligence, or any other cause of action, or for any direct or consequential loss including loss of profit or revenue. In relation to the Non-Excludable Obligations, the Victorian Chamber's liability to you for any failure to comply with the Non-Excludable Obligations is limited to:
 - a) if the provision of a Template is considered a service, the cost of supplying that service again or payment of the cost of having the service supplied again; or
 - b) if a Template is considered goods, the cost of replacing a Template or payment of the costs of replacing a Template.
6. We strongly recommend you contact the Victorian Chamber Workplace Relations Advice Line and/or the Victorian Chamber Workplace Relations Consultants to obtain advice relevant to your particular circumstances.

GUIDELINES

In utilising the enclosed Employment Agreement Template the following matters should be noted:

1. You should ensure it is compliant with the **minimum wages** (including transitional wage rates), terms and conditions of any Modern Award that is relevant to an employee.
2. A Template contains options for “**Remuneration**” with respect to how an employee is to be paid. Consequently, you must make an election for each employee as to whether they are to be paid an annual total salary, weekly rates, an all-inclusive hourly rate of pay or a base hourly rate of pay (the latter being either the relevant Award rate or, where no Award applies or covers an employee, then the National Minimum Wage rate). Once that election is made you need to ensure it is consistent throughout an agreement by including the correct option where highlighted in the Template.
3. Where you pay an annual salary or an all-inclusive hourly rate for all work performed, you must ensure the payment meets **minimum entitlements** under that Award. For instance, if there is an Award overtime entitlement, you need to ensure that the payment meets that overtime entitlement otherwise due under that Award. If you require any assistance in determining minimum wages and conditions due under an Award, please phone the Victorian Chamber Workplace Relations Advice Line or engage one of our Workplace Relations Consultants to undertake a wages audit.
4. Some Awards like the Clerks – Private Sector Award 2010 (“Clerks Award”) provide an option of paying **annualised salaries** in contrast to some other Awards which do not make such provision. The Clerks Award requires certain conditions are met to pay an annualised salary, including that Award entitlements which are to be satisfied by the annualised salary are to be stated in writing. Further, a periodic reconciliation is to be carried out annually to ensure the Clerks Award annualised salary continues to satisfy all Award entitlements due to each employee.
5. A periodic review should be undertaken from time to time to determine whether Award employees are receiving their correct entitlements under the relevant Award.
6. The use of **timesheets**, if not being used already, will assist you to maintain an accurate record of hours worked.
7. You may have **HR policies** relevant to employees. You should consider engaging the Victorian Chamber Workplace Relations Consultants to review the currency of policies.
8. The Victorian Chamber can provide clarity around the Template, including any of the optional clauses, if required, at an additional cost (please refer to your Service Agreement). If you are unsure of any term or how it operates in relation to your particular circumstances, you should seek our assistance.
9. Please remember to provide new employees with a copy of the **Fair Work Ombudsman’s Information Statement** that is required under the National Employment Standards / Fair Work Act 2009.
10. Awards provide for **individual flexibility arrangements** (“IFAs”) to be entered into between an employer and individual employees. These agreements allow the parties to agree to vary the application of certain Award terms, including hours of work, overtime and penalty rates. Please seek our assistance if there are any questions about the use of IFAs. Please note, an IFA cannot be used as a condition of employment, nor can it be entered into prior to commencing employment.

Optional Clauses:

There are several clauses in the template contract(s) which may or may not be relevant to your employees' specific circumstances and which are discussed below. These clauses are optional and may be deleted. Please seek advice if required.

11. Award employees who receive in excess of the high-income threshold (currently \$148,700 per annum indexed annually on July 1) may be classified as **high-income employees**. It is possible to enter into a guarantee of annual earnings with a high-income employee in accordance with the Fair Work Act. Where a guarantee of annual earnings is in place, an employee is not subject to the application of the relevant modern award during the guarantee period.
12. Clause addressing **Confidential Information**: such a provision will not necessarily be relevant to some or all of your employees. If not, this clause should be deleted. However, if retained, you should ensure practical measures are in place to protect what your business considers to be Confidential Information. Such measures will include notifying and training employees as to what is considered to be Confidential Information as well as securing information from unauthorised use- i.e. by passwords, lock and key. You may wish to consider obtaining legal advice with this issue.
13. Clause addressing **Intellectual Property Rights**: such a provision will not be relevant to all of your employees. If not, this clause should be deleted. You may wish to consider obtaining legal advice with this issue. (NB. This clause is not included in the apprentice/traineeship contract).
14. Clause providing for a post termination **Restraint**: such a provision will not be relevant or appropriate for all of your employees. If not, this clause should be deleted. If the provision is simply adopted as drafted in the Template, it may not create a legally enforceable right against each and every employee who is party to an agreement containing this provision. Post-termination restraints are often difficult to enforce unless they are found by a court to be reasonable to protect the legitimate interests of a business. To improve the prospects of successful enforcement, they require careful drafting by a lawyer. While you will need to insert a definition of 'area' and 'business' where provided, how you do so may make it difficult to enforce that restraint. You may wish to consider obtaining legal advice with this issue. (NB. This clause is not included in the apprentice/traineeship contract).

Other Types of Contracts

15. A true **fixed term contract** is intended to be used for employees who are employed for a specified period or task. If you terminate a true fixed term contract before the end of the specified term, you will generally be required to pay out the balance of the term and may be subject to unfair dismissal and redundancy claims. There may also be risks if you allow the employment of a fixed term employee to continue beyond the end of the specified term. If you require advice or assistance in relation to fixed term employees, please contact us. As an alternative, using a **not-true fixed term contract**, which also specifies an end date but enables either party to terminate prior to the nominated end date with notice, will minimize the risk of having to pay out the balance of the contract term. However, an employer using this type of contract will need to comply with legislation relating to dismissal.
16. In addition to the employment contract, the employment of an **apprentice or trainee** is also governed by a **formal training contract** that is agreed between the business, the apprentice/trainee and the relevant State/Territory training authority. The Victorian Chamber cannot provide advice in relation to the training contract. Assistance in relation to the terms and/or operation of the formal training contract should be obtained from the relevant training authority directly.

For more information contact the [Victorian Chamber](#):

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