

Guide: Building an employment agreement

Legal status and requirements

Under the Employment Relations Act (ERA) you must supply a written agreement to your new employee, and they must sign it to indicate acceptance of your terms and conditions of employment. Until it is signed by both parties, it remains a draft Employment Agreement. The prospective employee signs it to signify they accept the terms and conditions of employment. It may be that when the prospective employee reviews the draft, some issues require clarification or further negotiation.

Once it is signed by both employer and the prospective employee, it has legal status as a contract. Once signed by the candidate, the agreement must be held by you and you must be able to supply a copy to the employee on request.

Where an employer has provided an employee with an intended agreement the employer must also retain the 'intended agreement' even if the employee has not yet signed it or agreed to the terms and conditions.

An intended agreement cannot be treated as the parties' employment agreement if the employee has not signed it or agreed to the terms and conditions specified in the intended agreement. Make sure your records clearly distinguish between which have been sent out as intended agreements and those that have been finalised.

Putting together the employment agreement

Employment agreements will vary across different industries and employment groups. You may already have standard employment agreements for your business. We recommend that you have these reviewed from time to time by your legal advisor to ensure they comply with legal requirements.

If you want help with individual employment agreements, you can use the [Employment Agreement](#) builder on the Ministry of Business, Innovation and Employment website.

Alternatively you can use a specialist provider, such as:

- Employers and Manufacturers Association ([EMA](#))
- [Federated Farmers of New Zealand](#)
- Or your local or preferred legal specialist

What needs to be in the Employment Agreement?

Generally, agreements should contain full details of all the matters discussed with the employee and should cover any potentially contentious issues. These would include:

- Full details of the job specification and terms and conditions of that job
- Use of the business telephone and payment for any phone calls
- Rules in relation to overtime and who will authorise overtime
- Meal breaks and the regular paid rest breaks that every employee is expected to take
- Policy on damage caused to company vehicles or plant and equipment and who will pay for it
- Rules for the use of an employee's vehicle and any reimbursement the employee will receive for that use
- Possibly, a non-competition clause

The employment agreement should also cover such issues as:

- Redundancy

- Dismissal
- The types of leave available
- How to deal with grievances (this is mandatory under the Employment Relations Act)
- Disputes
- Performance management

It is also a good idea to state the employer's policy on issues such as discrimination and sexual harassment in the workplace.

The section "What to include in the Employment Agreement" sets out more detail of what should be included in an Employment Agreement.

Changes to agreements for existing employees

It is sometimes necessary to change an employment agreement for an existing employee, for instance when changes to employment conditions arise out of changes to employment legislation.

Under Section 63A (2) of the Employment Relations Act, when implementing any change to an employee's employment agreement in addition to obtaining the employee's consent, an employer must do at least the following:

- Provide the employee with a copy of the intended agreement, or the part of the intended agreement under discussion
- Advise the employee that they are entitled to seek independent advice about the intended agreement, or any part of the intended agreement
- Give the employee a reasonable opportunity to seek that advice
- Consider any issues the employee raises and respond to them

What to include in the Employment Agreement

	Mandatory	Recommended
1.	Parties The parties to the agreement: the employer and the employee	
2.	Position <ul style="list-style-type: none"> • Position (Employment Classification) • Job Specification/Description (a concise outline of work tasks, functions and duties) • Place of work • If the agreement is for fixed term employment, the way in which the employment will end and the reasons for ending the employment in that way 	<ul style="list-style-type: none"> • Probation period/90-day trial period • Carrying out lawful and reasonable instructions of the company • Position variation • Professional development/training
3.		Employment Status <ul style="list-style-type: none"> • Employment status: <ul style="list-style-type: none"> – permanent, casual, or fixed term – full-time or part-time
4.	Remuneration <ul style="list-style-type: none"> • Rates of pay or wages (either hourly, weekly, monthly, or annual salary) 	<ul style="list-style-type: none"> • Payment for leave
5.	Hours of Work <ul style="list-style-type: none"> • Agreed hours of work or, if no hours of work are 	<ul style="list-style-type: none"> • Closedowns

	<p>agreed, an indication of the arrangements relating to the times the employee is to work</p> <ul style="list-style-type: none"> Public Holidays: the employment agreement must state that the employee will be paid at least time-and-a-half for any time worked on a public holiday. All other public holiday rights are covered by law, even if they are not written into the employment agreement (including whether the employer has a policy of not permitting transfer of public holidays to alternative dates) 	<ul style="list-style-type: none"> Sick leave, bereavement leave, long service leave, alternative holidays, study leave, family violence leave Annual holidays (including whether the employer will consider requests to cash up to one week's leave of any year's entitlements) Accumulation of leave Overtime authorisation Rest and meal breaks
6.		<p>Performance Appraisals and Reviews</p> <ul style="list-style-type: none"> Review procedures Review of remuneration Bonus payments
7.		<p>Termination</p> <ul style="list-style-type: none"> Employer's right to dismiss employee with and without notice Period of notice
8.		<p>Restrictions</p> <ul style="list-style-type: none"> Employment restrictions Confidentiality Clause Client Contact Restriction Damages Intellectual Property Protection
9.		<p>Supply of Motor Vehicle/Equipment</p> <ul style="list-style-type: none"> Use of firm's motor vehicle (conditions relating to usage — policy re any damage caused to employer's vehicle) Policy re payment of any motor vehicle fines Supply/Reimbursement of costs of mobile phone
10.		<p>Expenses Incurred on Behalf of Employer</p> <ul style="list-style-type: none"> Use of employee's motor vehicle (method of reimbursing for utilisation) Expenses incurred on behalf of employer Home telephone
11.		<p>Payments to Be Made by Employer?</p> <ul style="list-style-type: none"> Subscriptions to professional and trade associations? Credit cards? Entertainment/promotion expenditure? Car parking expenses?
12.		<p>Workplace Practices</p> <ul style="list-style-type: none"> Workplace is smoke free: With very limited exceptions, employers must take 'all reasonably practicable steps' to ensure workplaces are smoke free. While a smoke-free workplace is mandatory, it's the employer's choice whether to include a workplace practices clause in the employment agreement or elsewhere, e.g. the Team Member Handbook Other workplace practices

13.		<p>Redundancy</p> <ul style="list-style-type: none"> • There are no statutory rights to redundancy compensation in New Zealand law. However, it is recommended to establish how a redundancy situation will be managed when the employment relationship commences, rather than at a later time which may be stressful both for the employer and employee • For example, in the event of a redundancy situation arising, no redundancy payment will be made to the employee
14.	<p>Employee Protection Provision</p> <p>In the event of a sale, transfer or restructure of business, the employer is to negotiate with the new employer in relation to affected employees.</p>	<p>Examples:</p> <ul style="list-style-type: none"> • The employer may require an offer of a similar position. “The employer will negotiate with the new employer, including whether the affected employees will transfer to the new employer on the same terms and conditions.” • The employer may activate redundancy provisions if the employee is not transferred to the new employer. “Where the employee either chooses not to transfer to the new employer, or is not offered employment by the new employer, the employer will activate the redundancy provisions of the employment agreement.”
14.	<p>OR, where applicable, Vulnerable Employees Provision</p> <p>Specific categories of employees have the right to transfer to the new employer on their existing terms and conditions of employment:</p> <ul style="list-style-type: none"> • Cleaning services and food catering services in any place of work • Laundry services for the education, health or age-related residential care sector • Orderly services for the health or age-related residential care sector • Caretaking services for the education sector • Other specified occupations whose members tend to have little bargaining power and in sectors vulnerable to frequent restructuring <p>If the employer proposes to sell or transfer its business, vulnerable employees may elect to transfer to the new employer on the same terms and conditions of employment. Note the Employment Relations Act sets out further detail about vulnerable employees and redundancy</p>	<p>Note: Other categories of employee may apply to have the protections given to “vulnerable employees” in a restructuring process. The application process set out in the Act must be followed.</p>
15.		<p>Disciplinary Procedures</p> <p>Set out the process to be followed</p>
16.	<p>Resolving Employment Relationship Problems</p> <p>An explanation of steps to be taken to deal with workplace problems if they happen.</p> <p>These procedures must be set out in a schedule attached to the Agreement.</p>	
17.		<p>Good Faith</p>

	Both parties must deal with each other in good faith and be active and constructive in establishing and maintaining a productive employment relationship. It is an obligation that binds both the employer and employee.
18.	<p>Sundry Items — Employment Agreement</p> <ul style="list-style-type: none"> • Adherence to the business' health and safety policies • Use of firm's telephone • Payment for private calls • Private use of work computers and devices • Use of surveillance cameras

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