

## ***Employment Contracts – Checklist of the main provisions***

**A contract of employment is an oral or written agreement established when an employee accepts an offer of employment. A contract of employment must contain the minimum provisions as set out by the relevant Federal or State Award. Where these provisions are not in written form, they will be implied in the employment contract.**

Certain obligations and rights for both the employer and employee are enforceable by law. This article will discuss the main responsibilities of an employer and the provisions that should be included when creating an employment contract.

### **A. Basic Inclusions in an employment contract**

The following usual details should be recorded:

- Name and details of employer and employee;
- The date of birth of employees if under 21 years of age;
- Job title and brief description of work;
- Place of work;
- Employment status (e.g. full time, part-time, casual);
- If the employment is for a fixed term, the start and end dates of employment; and
- To whom the employee reports.

### **B. Employment Conditions**

The contract should state the **conditions, intentions, expectations** and **obligations** of all parties. Every contract is different and the drafting of employment contracts should be properly done, usually with the help of lawyers. It is also preferable that provisions in a contract be written in plain English to ensure clarity.

Common conditions include the following:

#### I. Agreed pay rate

The pay rate must not be below that of the minimum wage as set out by each state or federal award. The rate may include an initial pay rate under a probationary period and a pay rate at the end of probation as a continuing employee.

For *casual* employment, it should be made known to the employee that the pay rate already compensates for the giving up of sick and annual leave.

#### II. Hours of Work

A contract should include hours of work including meal breaks and what arrangements apply for additional hours (if any).

#### III. Leave Entitlements

Under Federal and State Acts, leave entitlements are required to be given by employers to their employees.

##### Annual Leave

- Full time continuing employees are entitled to 4 weeks (20 working days) of annual leave per year.
- Part Time employees are entitled to a number of days of annual leave in proportion to that worked.

Annual leave is cumulative if not taken in the year in which it first accrues.

## Page 2 of 2 - Employment Contracts - Checklist of the main provisions

The employer's responsibilities regarding annual leave include:

- paying the employee before the commencement of annual leave;
- give at least one month's notice to the employee if requiring them to take annual leave; and
- keeping records of their employees' annual holidays for a period of six years after the last annual leave was taken.

### Long service Leave

Under the *NSW Long Service Leave Act 1955*, employers are required to provide employees (full-time, part-time or casual) with 2 months paid long service leave if they have been working for them for a period of 10 unbroken years.

### Sick Leave

If employees are unable to attend work due to sickness, they are entitled to receive pay for these days taken off. General awards provide 5 days of sick leave for the first year of employment and 8 days for following years. Unpaid sick leave should be given (within reason) once all paid sick leave has transpired. *Casual* employees are however not entitled to sick leave.

### Parental Leave

Parental leave includes maternal, paternal and adoption leave and it is normally unpaid. Under the *Workplace Relations Act, 1996 (Cth)* full-time, part-time and casual employees who have worked for a minimum of 12 months are entitled to a maximum of 52 weeks parental leave. However, written notice of this leave should be given to the employer at least ten weeks prior to taking the leave, with full medical certificates. All parental leave must be taken within the child's first birthday or first anniversary of adoption.

Other leave entitlements include Bereavement leave and Personal Carer's leave.

## IV. Superannuation entitlements

Under the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, employers are obligated to contribute at least 9 percent of an employee's earning base into a superannuation fund or Retirement Savings Account. Payment should be made at least quarterly and by the 28<sup>th</sup> day of the month following the relevant quarter.

Superannuation does not have to be paid to employees who are not covered by the *Superannuation Guarantee* legislation. These employees include:

- Those aged 70 or over;
- Those paid less than \$450.00 a week;

- Those under 18 years of age and working less than 30 hours a week; and
- Those employed for domestic or private work for 30 hours or less a week .

## **C. Pay records**

Under the *Industrial Relations Act 1996 (NSW)* an employer must provide payslips and include certain information in the payslips to employees. Payslips must contain the name of employer and Australian Business Number, name of employee, period of employment to which the pay relates, date of payment, the net pay and amounts deducted (for Pay As You Go tax, etc).

Employment records should be kept for a minimum of six years. Employment records should state when employment of the employee started, classification of employee (as either full-time, part-time, or casual) and whether they are temporary or permanent staff.

A record of all leave and superannuation contributions should be kept by the employer.

## **D. Conclusion**

As an employer, it is vital to ensure that all minimum requirements as specified by law are satisfied when creating an employment contract. If not, the employee is entitled to report the non-compliance to the relevant government authority which would result in fines and compensation payable by the employer.

*Comasters is able to vet employment agreements, and also prepare suitable ones for employers.*

© Comasters 2005.

**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

## **Comasters Law Firm and Notary Public**

Suite 101, Level 1, Capitol Terrace  
743-755 George Street  
Sydney NSW 2000, Australia  
Phone: (612) 9288 0300 Fax: (612) 9288 0399  
Email: [comasters@comasters.com.au](mailto:comasters@comasters.com.au)  
Website: [www.comasters.com.au](http://www.comasters.com.au)