

Employment Protection Provision Clause

SAMPLE

From 1 December 2005, all existing and new employment agreements must contain an “Employee Protection Provision”. An employee protection provision is a clause in an employment agreement that aims to provide employment protection for employees in restructuring, sale of business or contracting out situations. Failure to include the clause exposes an employer to breach of statutory claims and penalties, and leaves the employer vulnerable if a restructure situation arises.

Employee protection provisions, like other employment conditions, must be negotiated and agreed. Employment agreements entered into after 1 December 2005 will have to contain an employee protection provision. Employment agreements in existence before 1 December 2005 will have to be altered to include an employee protection provision.

Sample employment protection clause:

Business Sale, Transfer or Contracting Out

In the event that the employer is restructuring in terms of section 69L of the Employment Relations Act (i.e. is selling, transferring or contracting out all or part of its business to a new entity with the result that the work the employee performs is no longer required to be performed in-house), the following provisions will apply (in addition to any redundancy clauses):

- (a) The employer will enter into discussion with the new entity and will encourage it to offer you employment on unchanged terms and conditions and recognise your service as continuous. However, the final decision on these matters rests entirely with the new entity.
- (b) You are free to choose whether or not to accept any offer of employment that may be made by the new entity. The employer may also offer you alternative employment, which you are free to accept or reject.

Need more help?

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