

Employment agreements for new employees

Checklist for employers

What does the Employment Relations Act require?

Every employee is entitled to have at least certainty of their conditions of employment in writing before they commence work. This applies both where there is a collective agreement in place and also where the work is to be covered by an individual employment agreement.

There is a specific process to be followed for new employees where there is a collective employment agreement covering the work. This varies slightly depending on whether or not the employee is a member of the appropriate union.

The first question is to determine whether the work is covered by a current collective agreement. The work is deemed to be covered by a current collective agreement if there is a collective agreement that covers the work the employee is to be doing **and** the employer is a party to that collective agreement.

Where there is no collective agreement covering the work

The employer and the employee are free to negotiate terms for an individual employment agreement (IEA). The agreement must be recorded in writing but there is no set format. There are a number of points that must be included:

- The name of the employer (ie. The legal employer, not just the trading name of the practice) and the employee's name;
- A description of the work to be performed;
- An indication of where the work will be done;
- An indication of the arrangements for setting the hours of work;
- The wages or salary payable;
- An employee protection provision dealing with arrangements in the case of certain types of restructuring if the employee is a “non-vulnerable”¹ employee;
- A plain language explanation of the services available to resolve employment relationship problems, including reference to the 90 day limit to raise personal grievances; and
- If employment is fixed term, then details of the way in which employment will end and the reasons for it ending.

The agreement must not contain anything contrary to law or that is inconsistent with the Employment Relations Act (ERA).

As of 1 April 2011 the employer is required to retain a signed copy of an employee’s IEA which must be made available to the employee on request. A signed copy must be retained regardless of whether the agreement was entered into before or after 1 April 2011. An electronic or hard copy will be sufficient.

¹ Vulnerable employees are those working in the food catering and cleaning industries and in some industries can cover caretaking and laundry services.

We recommend that NZMA members use the sample IEA format set out in the "Individual Employment Agreement and Explanatory Notes" membership resource.

Where a collective employment agreement (CEA) applies to the work.

If the employee is already a member of the union party to the CEA, the conditions of employment are those contained in that agreement. You may agree to extra conditions, such as a higher rate of pay, but the employee cannot receive less than what is in the agreement at the commencement of employment.

If the employee is not a member of that union you are required to negotiate an individual employment agreement (IEA) with them. The terms and conditions of the IEA can be similar as the terms of the CEA, providing there was an opportunity for genuine negotiation. In addition to that, the employer must:

- INFORM the employee:
 - ❑ That the CEA exists and covers work to be done by the employee;
 - ❑ that the employee may join the union that is party to the CEA;
 - ❑ how to contact the union; and
 - ❑ that, if the employee joins the union, they will be bound by the CEA, and
- GIVE the employee a copy of the CEA

If there is more than one CEA applying to the work, the employer must meet these requirements in respect only to the CEA that binds more of the employer's employees than any other CEA. However, the employer must also inform the employee of the existence of the other CEAs covering the work they are to perform.

The employee can join the union at any time during their employment. If they join the union, they will automatically be covered by the CEA, and their IEA will no longer apply.

What happens if these steps aren't followed?

An employer who fails to adhere to all of the steps above may be liable to a penalty of up to \$10,000 for an individual and \$20,000 for a company or corporation.

Updated March 2015

Need more help?

Contact the NZMA:

Phone | 0800 65 61 61

Email | Robyn Fell: robyn@nzma.org.nz