



Employment Agreement

States the requirements of employment agreements and the ins and outs of the negotiation process

- The information required in an agreement
- Negotiable terms and conditions
- The duration of an agreement

1.1 Employment Agreements

Agreeing to work together

Why this is important

It is important to have an employment agreement with all staff, as it clarifies the employee's rights and responsibilities. This is one of the important ways in which an employer can clearly communicate expectations to an employee and is the first step in effective performance management. In addition to this, employers are legally required to provide all employees with a written employment agreement.

This fact sheet will cover:

- The information required in an agreement
- Negotiable terms and conditions
- The duration of an agreement

Background

As of 2 October 2000, the Employment Relations Act 2000 replaced the Employment Contracts Act 1991. As a result, we now talk about agreements rather than contracts, emphasising the cooperative intent of the Act.

Who has to have an agreement?

The new Act makes it compulsory for employers to have a written agreement with all staff who commenced work, or renegotiated terms and conditions, after 2 October 2000. This includes all permanent and casual workers such as workers assisting with lambing.

Independent contractors and agricultural contractors are not covered by this Act although written contracts are still advisable.

Information required in an individual employment agreement

The employer must provide a written individual employment agreement that contains the following legal minimums:

- **The name of the employer and employee.** The name of the employer must be the name of the person or entity that pays the employee. In most cases this will be the name of the farm owner or farming partnership, but may also be a company or trust. The name should not be that of a manager, who has supervisory responsibility; however, the manager could be responsible for the employment of staff.
- **A description of the work to be performed.** As a minimum this should be a broad description of the type of work to be carried out on the farm. A one-liner to the effect of "general farm duties" is not enough. This description should also include any special or different tasks that are carried out on the farm.
- **An indication of where the work is to be performed.** This should include the locality and road address of the property. Also list any other properties that the employee may be required to work on, such as a runoff.

- **An indication of the hours of work.** Hours of work should be as accurate as possible. As good practice, the farming year should be split into seasons and different hours of work indicated for each season. You should also indicate when the employee is expected to be at work.
For example over weaning or docking an employee may work 60 hours per week between 6.00 am and 6.00 pm.
- **Remuneration.** This should include an explanation of how wage payments will be worked out, how often wages will be paid, when they will be paid and how they will be paid. Included in this section should also be any other allowances that will be paid including non-taxable allowances such as wet weather gear and taxable allowances such as accommodation, so that a total package value can be determined.
- **A plain language explanation of how employment problems will be resolved.** This should outline the employee's right to take up a grievance up to 90 days after becoming aware of the issue that they wish to raise a grievance for, and the steps the employer will take to ensure that any employment problems are dealt with in a timely and efficient manner. Employment problems may include, but are not limited to, personal grievances. It should also explain what options are available to both parties should internal procedures fail to deliver a satisfactory solution.

Other employment agreement issues

While the Employment Relations Act 2000 only specifies the above minimums, additional information should be included either in the agreement or as an attached policy manual that more clearly defines expectations. Some of this information may include:

- Leave entitlements
- Accommodation provisions and how rent will be deducted
- Health & safety obligations
- Performance review policies
- Workplace policies
- Security and confidentiality agreement
- Processes for dealing with termination of employment
- Processes for dealing with misconduct and serious misconduct
- Harassment policy.
- All deductions must be consented to in, freely given, writing by the employee under the Wages Protection Act of 1983

Negotiable terms and conditions of employment

A number of terms and conditions may be negotiated or bargained about in employment agreements. Bargaining and negotiation mean the same thing. Some of the things that may be negotiated include:

- Remuneration
- Frequency and method of payment
- Timing and frequency of pay reviews
- Hours of work and time off (including annual and special leave above the minimums)
- Training required or desired by the employee and how time and cost is dealt with
- How much notice is required when leaving
- What, if any, redundancy provisions are included.

Negotiating agreements with new employees

The employer must supply a draft employment agreement to the prospective employee and allow them the opportunity to seek advice about it prior to commencing work. Once advice has been received, the employee may seek to negotiate further changes to the agreement subject to final acceptance. The employer is obliged to enter into these negotiations in accordance with the principles of good faith (see Legal Responsibilities Fact Sheet 1.1).

Allowing time to seek advice

A potential employee must be provided with an appropriate amount of time to allow them to take a draft agreement away and get independent advice on its content. For a permanent employee this may be a period of one to two weeks, while for a casual employee this may be overnight, provided they have a reasonable opportunity to access advice.

Duration of the agreement

In the absence of written direction, the duration of an agreement is open-ended, which is to say there is no end date. There is no such thing as a one-year agreement unless there is a genuine reason for it to be a fixed term agreement. In general, it is assumed that the employer is engaged in a sustainable long-term business and that it is in the best interests of both the employer and employee for this

to continue. Therefore, the employee can expect to have a job until such time as they are made redundant, retire, decide to change jobs or are dismissed.

Fixed-term employment agreements

There are situations where it is appropriate to hire an employee for a fixed term. An employer may offer fixed-term employment where there are genuine reasons for doing so such as:

- Seasonal work, project work or work that will come to an end at a specified point
- Where an employee on a fixed term agreement is filling in for a permanent employee on leave.

Fixed term agreements cannot be used as a precautionary measure or to resolve any performance or personality issues.

The employer must advise the prospective employee prior to signing an agreement that the agreement is of a fixed term, the reasons for this and how or when the agreement will end. These terms must be included in the agreement.

What must NOT be in an employment agreement

Employment agreements must not include anything that goes against any law whether civil or criminal. An example of this may be an attempt to contract an employee out of statutory holidays. Unlawful provisions in an employment agreement cannot be enforced.

Drafting an employment agreement

For some businesses, drafting their own employment agreement may be appropriate. This can be a very technical exercise. Care must be taken to ensure that it is a legal agreement. There are numerous draft agreements in the marketplace that have a "fill in the gaps" type format that can be used to overcome problems with drafting an agreement.

Employment agreements must be negotiated, agreed upon and signed by the employer and the employee before employment commences, otherwise the agreement is deemed invalid.

Useful Links:

Federated Farmers of New Zealand

To purchase the following agreements from Federated Farmers, visit:
<http://www.fedfarm.org.nz/Search?SearchTerms=employment>

- Individual Employment Agreement-Permanent
- Individual Employment Agreement-Casual
- Individual Employment Agreement-Fixed Term

For a list of contract agreements, visit:

http://www.fedfarm.org.nz/FFPublic/Store/StoreLayouts/Contracts___Agreement_Pricelist.aspx

- <https://www.business.govt.nz/hiring-and-managing/hiring-people/creating-an-employment-agreement/>
This site is an extension of the Ministry of Business, Innovation and Employment. The site is kept up to date with current legislation and offers an online DIY tool to allow the creation of employment agreements that consider all of the rights and entitlements of both the employee and the employer.