



Employing New Staff

Tips and Best Practice

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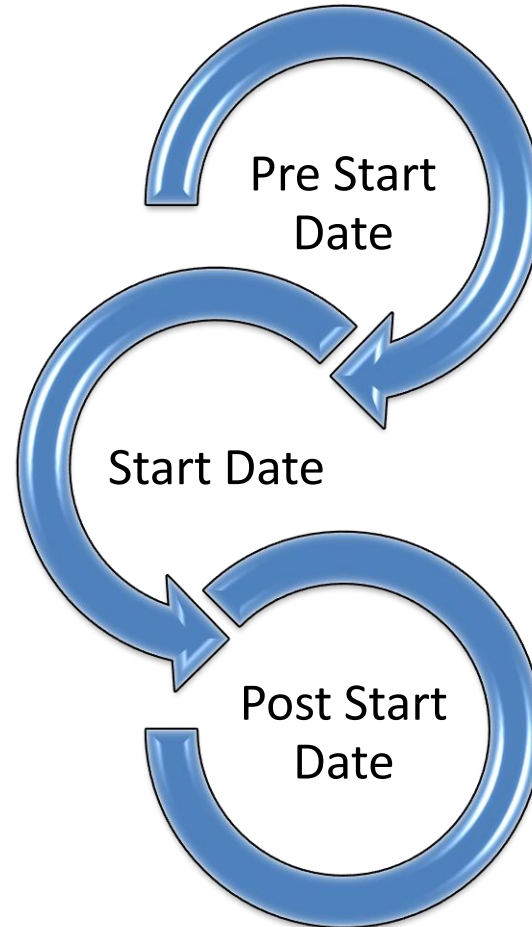
About Us

- Part of The EI Group
- An experienced team of workplace lawyers dedicated to providing workplace relations advice and legal representation in employment law and industrial law matters
- Our services include:
 - Industrial Relations
 - Enterprise Agreement Making
 - Equal Employment Opportunity and Anti Discrimination
 - Terminations and Adverse Action
 - Staying Compliant
 - Legal Advice and Representation

Topics Covered

- 1) Compliance requirements upon engaging new staff
- 2) Employment status
- 3) Contracts of Employment and Letters of Appointment
- 4) Importance of Company Policies
- 5) Differences between engaging an Employee and a Contractor

Compliance Requirements



Pre Start Date Compliance

Job Description

What tasks will this employee be completing?

Where will this position fit within the business?

How will I measure whether the employee is performing as expected?

Employment Status

- Permanent Full Time
- Permanent Part Time
- Casual

Differences between Permanent Full Time, Permanent Part Time and Casual

Permanent Full Time

Works 38 hours a week

Accrues sick/carers leave and is entitled to 10 days paid per annum

Accrues annual leave and is paid for time off on annual leave

Entitled to notice of termination and redundancy pay, (as applicable)

Permanent Part Time

Works less than 38 hours a week on a regular shift pattern

Accrues sick/carers leave and is entitled to pro rata 10 days paid per annum

Accrues annual leave and is paid for time off on annual leave

Entitled to notice of termination and redundancy pay, (as applicable)

Casual

Can work more or less than 38 hours a week

Paid a casual loading

Flexible and variable shift pattern

Not paid for annual leave, sick/carers leave, compassionate leave

No entitlement to notice of termination or redundancy pay

Coverage

An employee's employment will be covered by either:

i) Employee Collective Agreement

or

ii) Modern Award

or

iii) Neither of the above = Award and Agreement free and the employee and employer will only need to comply with the National Minimum Wage and the NES

Fair Work Information Statement



From 1 January 2010, this Fair Work Information Statement is to be provided to all new employees by their employer as soon as possible after the commencement of employment. The Statement provides basic information on matters that will affect your employment. If you require further information, you can contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au.

▲ The National Employment Standards

The *Fair Work Act 2009* provides you with a safety net of minimum terms and conditions of employment through the National Employment Standards (NES).

There are 10 minimum workplace entitlements in the NES:

1. A maximum standard working week of 38 hours for full-time employees, plus 'reasonable' additional hours.
2. A right to request flexible working arrangements to care for a child under school age, or a child (under 18) with a disability.
3. Parental and adoption leave of 12 months (unpaid), with a right to request an additional 12 months.
4. Four weeks paid annual leave each year (pro rata).
5. Ten days paid personal/carer's leave each year (pro rata), two days paid compassionate leave for each permissible occasion, and two days unpaid carer's leave for each permissible occasion.
6. Community service leave for jury service or activities dealing with certain emergencies or natural disasters. This leave is unpaid except for jury service.
7. Long service leave.
8. Public holidays and the entitlement to be paid for ordinary hours on those days.
9. Notice of termination and redundancy pay.
10. The right for new employees to receive the Fair Work Information Statement.

A complete copy of the NES can be accessed at www.fairwork.gov.au. Please note that some conditions or limitations may apply to your entitlement to the NES. For instance, there are some exclusions for casual employees.

If you work for an employer who sells or transfers their business to a new owner, some of your NES entitlements may carry over to the new employer. Some NES entitlements which may carry over include personal/carer's leave, parental leave, and your right to request flexible working arrangements.

▲ Modern awards

In addition to the NES, you may be covered by a modern award. These awards cover an industry or occupation and provide additional enforceable minimum employment standards. There is also a Miscellaneous Award that may cover employees not covered by any other modern award.

Modern awards may contain terms about minimum wages, penalty rates, types of employment, flexible working arrangements, hours of work, rest breaks, classifications, allowances, leave and leave loading, superannuation, and procedures for consultation, representation, and dispute settlement. They may also contain terms about industry specific redundancy entitlements.

If you are a manager or a high income employee, the modern award that covers your industry or occupation may not apply to you. For example, where your employer guarantees in writing that you will earn more than the high income threshold, currently set at \$118,100 per annum and indexed annually, a modern award will not apply, but the NES will.

Transitional arrangements to introduce the modern award system may affect your coverage or entitlements under a modern award.

▲ Agreement making

You may be involved in an enterprise bargaining process where your employer, you or your representative (such as a union or other bargaining representative) negotiate for an enterprise agreement. Once approved by Fair Work Australia, an enterprise agreement is enforceable and provides for changes in the terms and conditions of employment that apply at your workplace.

There are specific rules relating to the enterprise bargaining process. These rules are about negotiation, voting, matters that can and cannot be included in an enterprise agreement, and how the agreement can be approved by Fair Work Australia.

You and your employer have the right to be represented by a bargaining representative and must bargain in good faith when negotiating an enterprise agreement. There are also strict rules for taking industrial action. If you have enquiries about making, varying, or terminating enterprise agreements, you should contact Fair Work Australia on 1300 799 675.

▲ Individual flexibility arrangements

Your modern award or enterprise agreement must include a flexibility term. This term allows you and your employer to agree to an Individual Flexibility Arrangement (IFA), which varies the effect of certain terms of your modern award or enterprise agreement. IFAs are designed to meet the needs of both you and your employer. You cannot be forced to make an IFA, however, if you choose to make an IFA, you must be better off overall. IFAs are to be in writing, and if you are under 18 years of age, your IFA must also be signed by your parent or guardian.

▲ Freedom of association and workplace rights (general protections)

The law not only provides you with rights, it ensures you can enforce them. It is unlawful for your employer to take adverse action against you because you have a workplace right. Adverse action could include dismissing you, refusing to employ you, negatively altering your position, or treating you differently for discriminatory reasons. Some of your workplace rights include the right to freedom of association (including the right to become or not to become a member of a union), and the right to be free from unlawful discrimination, undue influence and pressure.

If you have experienced adverse action by your employer, you can seek assistance from the Fair Work Ombudsman or Fair Work Australia (applications relating to general protections where you have been dismissed must be lodged with Fair Work Australia within 60 days).

▲ Termination of employment

Termination of employment can occur for a number of reasons, including redundancy, resignation and dismissal. When your employment relationship ends, you are entitled to receive any outstanding employment entitlements. This may include outstanding wages, payment in lieu of notice, payment for accrued annual leave and long service leave, and any applicable redundancy payments.

Your employer should not dismiss you in a manner that is 'harsh, unjust or unreasonable'. If this occurs, this may constitute unfair dismissal and you may be eligible to make an application to Fair Work Australia for assistance. It is important to note that applications must be lodged within 14 days of dismissal. Special provisions apply to small businesses, including the Small Business Fair Dismissal Code. For further information on this code, please visit www.fairwork.gov.au.

▲ Right of entry

Right of entry refers to the rights and obligations of permit holders (generally a union official) to enter work premises. A permit holder must have a valid and current entry permit from Fair Work Australia and, generally, must provide 24 hours notice of their intention to enter the premises. Entry may be for discussion purposes, or to investigate suspected contraventions of workplace laws that affect a member of the permit holder's organisation or occupational health and safety matters. A permit holder can inspect or copy certain documents, however, strict privacy restrictions apply to the permit holder, their organisation, and your employer.

▲ The Fair Work Ombudsman and Fair Work Australia

The Fair Work Ombudsman is an independent statutory agency created under the *Fair Work Act 2009*, and is responsible for promoting harmonious, productive and cooperative Australian workplaces. The Fair Work Ombudsman educates employers and employees about workplace rights and obligations to ensure compliance with workplace laws. Where appropriate, the Fair Work Ombudsman will commence proceedings against employers, employees, and/or their representatives who breach workplace laws.

If you require further information from the Fair Work Ombudsman, you can contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au.

Fair Work Australia is the national workplace relations tribunal established under the *Fair Work Act 2009*. Fair Work Australia is an independent body with the authority to carry out a range of functions relating to the safety net of minimum wages and employment conditions, enterprise bargaining, industrial action, dispute resolution, termination of employment, and other workplace matters.

If you require further information, you can contact Fair Work Australia on 1300 799 675 or visit www.fwa.gov.au.

Specific Employee Checks

- Criminal Record
- Medical Examination
- Visa
- Forklift Licence
- Responsible Service of Alcohol (RSA)
- Drivers Licence

Post Start Date Compliance



Induction

- Introduce employee to the workplace, their manager and colleagues
- Occupational Health & Safety Induction
- Provide employee with company policies
- Inform employee of where the Company's Collective Agreement or applicable Modern Award can be accessed
- Inform employee where a copy of the NES can be accessed

Ongoing Compliance

- Pay the employee correct rate of pay, weekly or fortnightly, as agreed.
- Make superannuation contributions.
- Display copy of:
 - Modern Award (*as applicable*)
 - Collective Agreement (*as applicable*)
 - National Employment Standards (NES)

On Boarding Summary

ACTION	COMPLETED?
Job Description written and agreed with employee	
Status agreed and communicated to employee	
Agreement or Award Coverage known	
Classification determined	
Rate of Pay / salary determined and agreed	
Any relevant checks completed	
Information gathered for Employee Record	
Given employee a Fair Work Information Statement	
Carried out Induction	
Given employee copy of Company Policies	

Contracts of Employment & Letters of Appointment

Letter of Appointment = Short succinct letter stating basic terms of engagement

Contract of Employment = More detailed contract detailing all applicable terms and conditions of employment

Basic Terms of Engagement

Terms of Engagement

Start Date:

Job Title:

Probationary Period:

Award / Agreement classification:

Rate of Pay / Salary:

Status: (FT / PT / Casual)

Hours / Days of Work:

Reporting to:

Frequency of Pay:

Notice of Termination:

Location of Policies and Procedures:

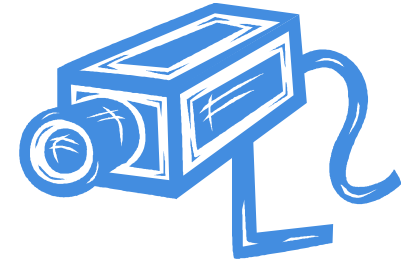
Probationary v Qualifying Period

Probationary Period - contractual agreement where employee's performance will be assessed at the end of the first 3 months of employment.

Minimum Qualifying Period – Minimum period of employment of either 6 months or 12 months from the employee's start date, dictated by Fair Work Act 2009, after which an unfair dismissal claim can be lodged.

Workplace Surveillance

Before an employer can monitor an employee with CCTV or monitor their use of company computers and email



they must first be notified in writing

Questions?



Company Policies

Benefits of Company Policies

- 1) Inform Employees of standards of behaviour expected
- 2) Detail processes and procedures that must be followed
- 3) Risk management in the event of a claim being lodged

Types of Policies

- Code of Conduct
- Leave (annual leave, personal leave, compassionate leave, long service leave, parental leave)
- Performance Management & Appraisals
- Discipline & Termination
- Discrimination, Harassment, Bullying & Equal Opportunity
- Grievance Handling
- Occupational Health & Safety

Differences between engaging an Employee and a Contractor

EMPLOYEE

Entitled to minimum terms and conditions of employment as per Fair Work Act 2009 and NES

CONTRACTOR

Parties free to contract terms as required, subject to the Independent Contractors Act 2006

Key Differences

EMPLOYEE

- In an Employment Relationship
- Paid for time worked with Employer deducting income tax
- In receipt of paid leave entitlements
- Not responsible for providing own equipment
- Provide personal service
- Work hours dictated by Employer
- Do not take commercial risks and cannot make a profit or loss

INDEPENDENT CONTRACTOR

- Engaged in a commercial relationship
- Paid for results achieved
- Provide their own tools and equipment
- Free to delegate work to others
- Have relative freedom in the way they work
- Does not have to provide services to Employer on an exclusive basis
- Free to accept or reject offers of work
- In a position to make a profit or loss
- Responsible for payment of own tax

Sham Contracting

Where an Employer engages someone as an '*Independent Contractor*' when the true nature of the relationship is that of an '*Employee*'

Consequences?

- Backpayment of wages
- Superannuation payments
- Accrual and payment of leave
- Right to bring an Unfair Dismissal claim

Takeaways

1) Is the Employee being paid correctly?

CHECK

- Permanent or Casual?
- Covered by Collective Agreement? Classification?
- Covered by Modern Award? Classification?

Takeaways

2) Is the Employee clear about the job they are performing, their entitlements and when they are expected to work?

CHECK

- Provided with a Job Description?
- Received letter of appointment or contract of employment?
- Provided with Fair Work Information Statement?
- Informed about 3 month Probationary Period?

Takeaways

3) Has an accurate Employee Record been completed?

CHECK

- Employee completed a Tax File Declaration, Superannuation and bank details?
- Required information been recorded accurately, stored where it can be accessed and retained for 7 years?

Takeaways

4) Company Policies

CHECK

- Do you have policies to cover all necessary areas?
- Are policies up to date?
- Have the policies been made available to employees, and stored somewhere easily accessible?
- Have employees been trained on the policy information?
- Has the employee signed an acknowledgment that policies have been read and understood?

Takeaways

5) Company wants to engage someone as an Independent Contractor?

CHECK

- Have you analysed how the work will be performed, by whom, how the Contractor will be paid and who will provide the equipment and facilities?
- Have you got a clear contract with the Contractor defining the parameters above, detailing the payment of tax and insurance and how the contract will be brought to an end?

Questions?

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