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Guide to Employment Contract Negotiation and Disputes

1. What is an "employment contract"?

An employment contract is a legally binding agreement between an employee and an employer and includes terms such as remuneration, expected hours of work and termination notice.

Most employment contracts are in writing but some employment contracts are verbal.

The law also implies terms such as the duty of an employee to be loyal to its employer. For more information about the duty of loyalty refer to our Guide to Employment Restraints.

2. When is an employment contract created?

This can be a complex issue. Usually an employment contract is created when an offer of employment has been accepted and essential terms of the employment (such as remuneration) have been agreed with sufficient certainty.

3. How can an employment contract be changed?

As with any contract, the agreement of both parties is required to vary an employment contract. This can be contentious, for example if an employer wants to introduce terms of restraint to the employment contract after the employment has already commenced.

4. Fixed term and maximum term contracts

Sometimes the employment contract is stated to end at a particular date or upon the occurrence of a particular event such as the end of a client project. These can be complex matters and you should consider taking legal advice about your situation.

5. Termination notice

The Fair Work Act and modern awards specify the minimum termination notice that should be given by employers and permanent employees. Usually the employment contract will also state a termination notice period, which may sometimes be longer than the FWA or modern award. In some cases the law may imply a longer termination notice than the FWA or modern award if no termination notice period is stated in the employment contract.

6. Employment restraints and confidentiality

Sometimes an employer includes terms that restrict the employee's activities after the employment has terminated, or that define what information of the employer's is

protected by confidentiality after the employment has terminated. Refer to our “Guide to Employment Restraints” for more information.

7. Reviewing and negotiating an employment contract

Employment contracts should be read carefully to ensure that the terms are suitable. For example any unnecessarily onerous employment restraints should be queried and negotiated. Any changes should be negotiated before signing the employment contract, as the contract cannot be varied after without the employer’s agreement.

8. Disputing an employment contract

Where an employment contract may have been breached, an attempt should first be made to resolve the issue directly with the employer. It is usually recommended to keep a careful written record of any discussions, and to confirm the issues of concern by an email or letter to the employer.

National system employees have certain protections when making a complaint or enquiry about their employment. Refer to our Guide to Workplace Protections for more information.

Any agreement reached should be recorded in writing.

If the issue remains unresolved then it may be necessary to take legal advice about issuing a formal demand and then taking legal action. The type of legal action to take will depend upon the disputed issue and the amount in dispute. Some situations are suitable for simplified court procedures, whereas other situations may require an application to a higher court.

9. Further information

You should consider contacting WorkLegal without delay for advice about a employment contract negotiation or dispute.