

# Employment Lifecycle Series

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Now that you have chosen the right candidate, and successfully on-boarded them after reading our previous articles in our Employment Lifecycle Series, you should take a second (or two) to have a think about how you want to document that employment relationship. An important aspect for any business is the contracts that it enters into and ideally, all contracts should be prepared carefully and tailored for the specific business and its needs. How a business approaches its employment contracts should be no different.



## The Importance of Written Employment Contracts

The basic relationship between an employee and employer is contractual, in that there is a basic promise by an employee to perform duties, in return for payment from the employer. As a result, even without a written contract there will at least be a verbal or non-written agreement between the employee and employer based upon their discussions. A verbal agreement will rarely be sufficient however – it can create all kinds of headaches when and if an employment relationship sours and needs to be ended. A written contract is important in setting clear expectations between and obligations on the parties.

### Key features

The following are a few key features that all employers should incorporate into their employment contracts:

- 1** Ensure contracts are in writing to create certainty and to minimise disputes about an employee's terms and conditions. The contract can be in a formal agreement style or in a more informal letter style – if properly drafted, both will be enforceable.
- 2** Tailor employment contracts to reflect the needs of your business, the different types of staff to be employed (from executive to shop floor level), and the basis of the employee's employment – employees may be employed full-time, part-time, casual, for a fixed or maximum term, or on a shift work basis, and each require different terms.
- 3** Clearly set out an employee's position, main duties and responsibilities, the usual work location, and the employer's general expectations on the employee protecting the employer's business and acting in the employer's best interests.
- 4** Determine whether the employee will be covered by the terms of a modern award (and if so, what the relevant award classification is) or an enterprise agreement. Where this is the case, the contract must be consistent with the employer's obligations arising from such an award or enterprise agreement. For award-covered employees paid an "all-in" salary which is intended to cover penalties, allowances and loadings (e.g. annual leave loading, regular overtime), you should consider including an off-setting clause which details precisely which award entitlements are compensated by the employee's salary or enter into an individual flexibility agreement.
- 5** The contract needs to set out clearly an employee's remuneration (whether a salary or wage) and that remuneration needs to comply with any relevant award minimum rate. The contract should also set out any potential commission or bonus an employee may receive (and the basis for determining if it is paid and calculated), any other benefits the employee may receive (such as an allowance, car or mobile), and needs to make clear whether the remuneration is inclusive or exclusive of mandatory employer superannuation contributions.

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**6** Consider whether some terms in the contract would be better placed in a policy, particularly where flexibility in changing those terms in the future may be necessary. We will publish an article shortly looking at this topic in detail.

**7** Ensure that periods of notice for termination by both the employer and employee are clearly defined and are sufficient to satisfy any minimum statutory obligations. Without an express notice period, a court may impose a period of “reasonable notice” in order for the parties to end their relationship. Also a contract should allow an employer to make a payment instead of notice, where the employer does not wish or require the employee to continue working during their notice period.

**8** Consider what protections may be required in relation to:

- a. protecting confidential information (including appropriate and relevant definitions for your business);
- b. ensuring all intellectual property developed or conceived is disclosed to, and owned by, the employer; and
- c. post-employment restraints on the activities that an employee can engage in after their employment ceases.

**9** Ensure the contract has an entire agreement clause. This is particularly important, for example, for long-term employees who have been employed on a series of verbal or written contracts and variation letters, and where a new contract is intended to encapsulate all terms and conditions of employment in one document.

## Providing the contract to the potential employee

When providing the contract to the potential employee, you should also provide the employee with a Tax File Number Declaration, a Superannuation Choice Form, and a copy of the Fair Work Information Statement. Make sure the potential employee has sufficient time to review the contract and to raise any concerns they may have, but it is important to require employees to sign their contract as a condition of starting employment and to return a signed copy.

## Contracts throughout the employment lifecycle

Understandably, employment contracts are often only front of mind when an organisation is recruiting. However, employers should also remain cognisant of employment contracts throughout the employment relationship – and consider updating them when changes such as a promotion or changes in responsibilities occur. Our brief tips in this respect are:

- review contracts regularly and amend to reflect changes in legislative entitlements, modern awards and best practice. Even better, consider how you can future-proof employment contracts against legislative changes or changes in an employee’s position or job title, duties or responsibilities;
- unilateral variations (just by an employer) that reduce an employee’s entitlements will generally not be enforceable, so ensure that any changes to contractual terms are accepted by an employee in writing; and
- when introducing new contracts for existing employees, the best approach is to whenever possible link the offer of the new contract with the offer of a new or increased benefit to the employee. This could occur as part of any annual remuneration review, an offer of promotion, or the awarding of some discretionary benefit.

Gadens can assist employers by reviewing their existing employment contracts or by preparing new contract templates, to ensure that they are legally compliant and reflect best practice.

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