

STARTING EMPLOYMENT GUIDELINES

**1 Identify
which
TYPE of
contract is
required**

**2 Monitor
the 90-
Day Trial
Period**

**3 Deliver
a great
Induction**

Which Contract?

An Employment Agreement:

- Must be negotiated in Good Faith
- MUST be signed **before** they start
- MUST include a Job Description
- Signatories MUST have time and opportunity to seek advice before signing
- There is a whole list of clauses that **must** be included
- Other clauses are recommended although not obligatory

Mandatory Clauses:

In order for an employment contract to be valid by Law, it must contain at least the following clauses in writing:

- Names of parties to the agreement
- Position
- Job Description / List of Duties (must be detailed enough in order to evaluate performance against it)
- Place of work
- Working Hours
- 90-day Trial Period clause (NOT mandatory but it has to be included if you wish to use it)
- Type of Pay (eg: annual salary or hourly rate)
- Entitlements for working on public holidays
- Rights in contracting out
- Restructure due to transfer of business
- Negotiations with new employer in case of sale of business
- Refusal of offer to transfer or no offer of employment in case of sale of business
- Resolving employment relationship problems

Which contract should I use?

- Independent Contractor
- Casual Employee
- Fixed-term
- Part-time
- Full-time less than 40 hours guaranteed
- Full-time – 40 hours guaranteed

Independent Contractor or Employee?

Get this distinction right! It is not enough just to have a Contractor's Agreement in place – they can still successfully claim to be employees if the working relationship does not meet certain criteria.

Ask yourself:

- What were the intentions of the parties at the outset regarding the nature of the relationship?
- Does the person carrying out the service run a business of their own accord? Do they pay their own taxes?
- What is the degree of control that the employer / principal exerts over the work being done and the manner in which it is done?
- Conversely, what level of autonomy does the contractor / employee have over the work and the way it is done?
- To what extent is the person carrying out the duties considered an integral part of the business and is the work absolutely necessary for the running of the business?

Independent Contractor: A person or business that provides goods or services to another entity under terms specified in a contract or within a verbal agreement.

- In business of their own accord
- Claims GST and does own tax returns
- Provides invoices
- Understands and knows they are a contractor
- Able to work for other companies

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Casual Employment – consider the risks!

- What starts out as a genuine Casual employment often 'drifts' into a permanent employment situation – regular work pattern, expectation to have on-going work, main source of regular income, inability to refuse work (ie need to 'apply' for annual leave), inclusion in a roster of work etc.
- In such cases you will need to change their Employment Agreement to reflect change to permanent status. Therefore will need to start accruing annual holidays and may be hard to remove the 8% uplift in pay in lieu of holiday accrual.
- Once they change their status and become permanent employees, they can only be terminated with due cause and following due process as per all other permanent employees

Casual Employee:

- Work only when and as required, with intermittent or irregular work patterns
- No guaranteed hours or income
- No expectation of on-going employment - Employer not obliged to offer employment and employee not obliged to accept on-going engagement
- Usually hired for one-off business needs or for on-going work that is very irregular
- Employment normally terminates at the end of each engagement
- Have the same employment rights as permanent employees – paid annual leave, sick leave, bereavement leave etc
- Must also have a written Employment Agreement in place

Some must-have Documents and Templates to help you through your Starting Employment process:

[Quick Guide to Employment Agreements](#)

[Offer of employment cover letter](#)

[Universal permanent employment agreement](#)

[Universal Fixed-Term employment agreement](#)

[Universal casual employment agreement](#)

[Independent Contractor agreement](#)

[Job description template](#)

[Sample phrases for job descriptions](#)

[Sample code of conduct](#)

[6-month intro to business](#)

[Template induction manual](#)

[New employee checklist \(company\)](#)

[New employee checklist \(employee\)](#)

[And many more!](#)

Fixed-Term contracts

An employment agreement where the employer and employee agree that the employment will end:

- On a specified date, OR
- At the end of a specified period, OR
- On the occurrence of a specified event, OR
- At the conclusion of a specified project

In order to be a valid fixed term agreement the following conditions must be met:

1. The employer must have a genuine business reason for the employment to be for a fixed period
2. The employer must advise the employee when, how and why the employment will end
3. Both of these conditions – ie the reason for fixed term and the date, method and reason for ending it – must be included in a written Agreement

Permanent Employment Agreement

- For engagements that are expected to be **on-going**
- Could be **Full Time** (normally 40 hours per week) or **Part Time**
- Could be on an **agreed working pattern** (eg: shift work or normal office hours) or on **variable working patterns**
- Could have **fixed and guaranteed number** of hours per week or **variable hours** with a **minimum number of hours** per week guaranteed
- This could go all the way down to **zero guaranteed hours** for the right business reasons (eg: outdoor trade work cannot always guarantee that work will be available due to possibility of inclement weather)

Trial Periods**90-Day Trial Period**

- Only valid for **new employees** who have never worked for the employer before
- Must be **agreed to in writing** as part of the Employment Agreement
- Must be signed off by both parties **before** starting employment

Remember: If you think that our templates can help you through this process you can click on each link above and purchase the individual documents that you require. Otherwise you can purchase access to our entire document library for 12 months at just \$250 (+GST) [from here](#)

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