



# The Role of Employment Agreements in Preventing Workplace Disputes

## Introduction

Employment agreements are a fundamental tool in managing the employer-employee relationship. When well-drafted, they can help prevent workplace disputes by clearly setting out the rights and obligations of both parties.

Previously, I've posted articles about law changes that have needed to be reflected in employment agreements (see an example [here](#)), and also about the different types of employment arrangement and how each requires some different clause wording in agreements (read that post [here](#)).

This article discusses some considerations for what should be included in employment agreements generally, and the important role these agreements often have to minimise the risk of disputes or penalties when a dispute is addressed by the Courts.

## Key Clauses in Employment Agreements

There are some mandatory clauses that must be included, as well as many other types of clauses that may be appropriate for your business or organisation and the role. A comprehensive employment agreement will cover several key areas, such as the following (some being mandatory and some optional):

- **The Names of the Parties:** The agreement must include the names of the employer and employee, so that it's clear who the parties to the agreement are.

- **Job Description:** A description of the work to be performed must be included. However, a full job description document can sit outside the agreement as well, and this can detail role requirements, expectations, behaviours, qualifications, skills and experience, relationships, authority levels, and provide more detail about the scope of work.
- **Work Hours, Breaks, and Leave Entitlements:** Detail the employee's working days, hours, start and finish times, rest and meal breaks, overtime details (if relevant), and leave entitlements including those covered in the Holidays Act as well as any additional leave entitlements you may offer e.g. Birthday Leave.
- **Place of Work:** As well as where the employee will likely carry out the role (e.g. the company's premises in Nelson), it's helpful to also note whether travel may be required in the role too.
- **Remuneration and Benefits:** Specify the employee's wages or salary, bonuses, or any additional benefits, including non-monetary contractual benefits that you wish to provide e.g. health insurance or additional retirement contributions. Clarity on pay can prevent misunderstandings that could lead to disputes.
- **Availability Provision:** If you have salaried roles that may on occasion need to work outside of their usual work hours, it's likely you'll want to include an availability provision in the employment agreement.
- **Trial Period or Probationary Period:** If you wish to include a trial period clause, it must contain the necessary wording, can only be included in agreements for people who have not

previously been employed by the company or organisation, and it needs to be brought to the attention of the person the agreement is being offered to. They have the right to seek independent advice about this clause (as well as the rest of the agreement) before deciding whether to agree to it.

- **Non-solicitation and Non-Competition or Restraint:** Where appropriate (and there are a number of considerations with restraint clauses in particular) you may want to include non-solicitation (e.g. of customers, employees, suppliers, contractors), or even a restraint provision. It is recommended that you seek advice before including a restraint clause.
- **Termination Procedures:** Include the conditions under which the employment relationship can be terminated, notice periods, and any redundancy arrangements. This helps avoid disputes over wrongful termination or redundancy.
- **Employee Protection Provision:** A legal requirement, this clause explains what will happen in restructuring situations where the employer sells, transfers or contracts out all or part of its business.
- **Confidentiality and Intellectual Property:** Set out the expectations regarding the handling of confidential information and the ownership of intellectual property created during employment.
- **Dispute Resolution Process:** Outline a clear process for resolving disputes, including steps for internal resolution and the use of mediation or the Employment Relations Authority if necessary.

## Common Pitfalls in Employment Agreements

Despite the importance of having correct employment agreements, many employers fall into some common traps:

- **Vague Language:** Ambiguity in employment agreements can lead to differing interpretations and disputes. Ensure that all terms are clearly defined and unambiguous.
- **Failure to Update Agreements:** Employment agreements should be regularly reviewed and updated to reflect changes in the law, policies and procedures, or the employee's role.
- **Overly Rigid Clauses:** While it's important to be clear, overly rigid clauses can limit flexibility and lead to disputes if the business or the employee's circumstances change.
- **Including Policy Details:** If policy details are included in employment agreements, instead of in a policy document outside the agreement, then you can end up with multiple versions of policies to administer, and to change a policy for all staff you would need to renegotiate employment agreements that contained an old version of the policy.

## The Role of Employment Agreements in Dispute Resolution

Employment agreements play a crucial role in dispute resolution by providing a reference point for both parties. When disputes arise, having a well-drafted agreement can help:

- **Clarify Terms, Conditions and Expectations:** By clearly setting out the terms of employment, agreements can clarify what was expected of each party, helping to resolve misunderstandings.

- **Provide Role-specific Information:** Employment agreements provide the legal requirements relevant to the employment relationship, but also the business and role-specific requirements, which aren't provided for in legislation.
- **Prevent Escalation:** By including a clear dispute resolution process, employment agreements can help prevent disputes from escalating into more serious conflicts.

## **Practical Tips for Drafting Effective Employment Agreements**

To maximise the effectiveness of employment agreements in preventing disputes, it is recommended that employers seek the assistance of an expert to prepare their employment agreement templates. The following should also be considered:

1. **Customise for Each Role:** Tailor the employment agreement to the business, role and employee. A template can be used as a base but will need customising.
2. **Scheduled Reviews of Templates:** Have your employment relations expert reviews your agreement templates on a regular basis to ensure they remain compliant with current employment laws and best practices. This can help prevent issues that arise from legal non-compliance.
3. **Communicate Clearly:** Before the agreement is signed, ensure that the employee has been given time to seek independent advice about it. This is a requirement and can prevent future disputes arising from misunderstandings.

## Conclusion

A well-drafted employment agreement is a powerful tool in preventing workplace disputes. They help establish a solid foundation for the employer-employee relationship. Preparation by an expert, and regularly reviewing and updating employment agreements, as well as ensuring clear communication with employees, are key steps in maintaining a harmonious and legally compliant workplace.

Please do not hesitate to contact me if you have any questions about employment agreements or if you would like assistance to prepare or review your employment agreements.

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