

EMPLOYMENT LAW FOCUS

Back to Basics - The Mandatory Requirements in Employment Agreements

Since 1 July 2011 it became law that an employer must hold a copy of a signed employment agreement for each employee. What are the basic legal requirements of a valid employment agreement?

It was impossible to miss the general climate of buoyant optimism and economic growth springing from the pages of last month's Waikato Business News. In addition to the long sunny days the Waikato has been enjoying, the economic climate also appears to hold the promise of bright days ahead, with employment figures for the region in the final quarter of 2013 showing year-on-year job growth of 26% according to Peter Osborne, the head of Trade Me Jobs.

Statistics like this not only indicate growing

confidence in the regional economy for businesses, but offer increased encouragement for school leavers, university graduates and those looking to move up the career ladder in 2014. Mr Osborne predicts that this strong growth will be at its peak in January and February but will continue throughout the year.

For companies looking to expand their workforce, this is also an opportune time to give some consideration to when your employment agreements were last updated.

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Yes, I know. For most, employment agreements are about as exciting and attractive as a wet plastic bag. But employment agreements are more than just a box to be ticked to stay within the law (and holding a signed employment agreement for each of your employees is the law and has been since 1 July 2011). Employment agreements are the founding document which sets out how you and your employees will work together and develop your relationship - workplace wedding vows if you like!

The most basic requirements are the 5 'Ws': who (the parties), where (location), when (the hours), what (the job description), and wages. In addition to this are two other mandatory requirements: a clause which specifies what will happen in the event the company is sold or transferred, usually known as an employee protection provision ('EPP') and a clause which states that if an employee wishes to raise a personal grievance they must do so within 90 days of the action or of the employee becoming aware of the action.

However, the average employment agreement should contain considerably more than the bare necessities and can contain all sorts of useful clauses that state what will happen if the business is suddenly halted by a disaster, what steps you might take if your employee turns up to work drunk or what the parties will do if the employee becomes medically incapacitated for an extended period of time and there is no-one else to do their job.

Many employers will also seek the comfort of putting new employees on a trial period for the first 90 days. Trial periods for new employees were first introduced to the Employment Relations Act 2000 in 2010 for employers with fewer than 20 employees. This was extended out to companies with any number of employees following amendments to the Act which came into effect on 1 April 2011.

The requirements for a trial period clause are quite specific and include, amongst other things; that a trial period is for new employees only (that

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have not worked for the employer even for one hour). A trial period clause must state the period of time for the trial period (which cannot exceed 90 days), that during that period the employer may dismiss the employee and if the employer does so then the employee is not entitled to bring a personal grievance in respect of the dismissal.

Trial periods have a number of complex rules and fish hooks that have developed as cases have gone through the courts. For example, for a trial period to be valid, it must have been agreed to via the signing of the employment agreement

before the employee starts work. Employers who do wish to use trial periods are highly recommended to seek legal advice before putting someone on a trial period or dismissing them in accordance with one.

For further information on employment agreements and trial periods please contact:
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