

EMPLOYMENT CONTRACTS

Employment contracts can be confusing, particularly if you are just starting out in the workforce or if English is not your first language. This infosheet is designed to explain the key elements that are present in everyone's employment contract and what you can do if you encounter problems.

What is an employment contract?

If you have agreed with your employer that you will work in return for wages, you have an employment contract, regardless of whether or not your terms and conditions of employment are in writing.

Having an employment contract, whether it is written or verbal, means that you are an **employee**. This is different to being an independent or sub-contractor. An employee is someone hired for their time and skills (and usually to continue doing a job), whereas a contractor is someone hired to perform a service (like fixing a broken hot water system).

For more information on independent contracting see JobWatch's – infosheet "**Independent Contracting Traps**".

Employment contracts come in various forms. They can be written or verbal or a combination of both. The written component can be named different things like 'agreement' or 'terms and conditions of employment' or 'workplace agreement'.



JobWatch Inc is

an independent, not for profit, employment rights legal centre. It provides a free, confidential telephone information and referral service and other assistance to Victorian workers.

Hours:- Monday – Friday 9am-5pm
(Except Tuesday 12-2pm)

Phone: (03) 9662 1933 or
1800 331 617

Website: www.jobwatch.org.au

There may be implied terms to your contract which were not written down or verbally agreed upon but which are still binding. There are also various other rules which might affect your employment such as award conditions, collective agreements and legislation covering anti-discrimination and health and safety.

Written contract

If you are offered a written employment contract it **is important that you read and understand it before you sign and return a copy of the contract to your employer.**

You may wish to get some advice from your union, JobWatch or a lawyer before you agree to the terms of the contract to make sure that what you have been offered is a good deal and it complies with **minimum** terms and conditions of employment.

You should always keep a copy of the contract for your records.

You should not sign anything you haven't read or fully understood. It is a good idea to get some advice about a contract before signing it so that you understand the terms and conditions of your employment before you are locked into the contract.

What else is included in an employment contract?

Very few written contracts specify all of the terms and conditions that are applicable to both parties. Apart from the written terms of the contract, there may be other things that are still binding even if they have not been written down.

These things might include:

- details about your duties at work;
- what level you are (e.g. supervisor);

- any work rules or practices, policies or procedures used at your workplace;
- your rate of pay, your employment status, and your hours of work.

Implied terms in a contract of employment

Under an employment contract, you have both entitlements and obligations (duties) which may be explicit or implied. There are a number of implied obligations that bind all employers and employees. Below is an explanation of the implied obligations on each side of an employment contract. These obligations have developed over many years through decisions made by courts and tribunals in Australia and overseas. Some of these obligations have also been written into statute (ie, legislation) and so they may be referred to as 'statutory obligations'.

Employers have the following obligations towards their employees:

- to pay their employees' wages;
- to provide them with work (in certain circumstances);
- to provide them with a safe and healthy workplace; and
- to treat them with trust and respect – this means that the employer cannot do things that are likely to damage the employment relationship.

Employees have the following obligations to their employers:

- to perform their job with due skill and care – this means doing your job properly and not being negligent or incompetent;
- to obey all reasonable and lawful directions – this means doing what the employer tells you to do, as long as the instruction is *reasonable and lawful*;
- to account for money received; and
- to act in their employer's best interests – this means, for example, that you have to put your employer's financial interests before your own and you cannot operate in competition with your employer. This also means you should not do things that could damage or hurt your employer's business.

The above obligations are fundamental to the operation of every contract of employment. Failing to work in a way that is in line with your obligations as an employee could give your employer a reason to dismiss you. At the same time, if your employer breaches its contractual

obligations, you may be entitled to take legal action against them.

Depending on what the alleged breach is, you might, for example, sue for breach of contract in the Magistrates' Court of Victoria or bring an unfair dismissal claim against your employer if the breach has led to a termination of employment.

Alternatively, if the alleged breach involves an underpayment of wages, it may be more appropriate for you to recover those wages through the Office of Fair Work Ombudsman.

Always try to get a copy of a contract you have signed.

Refer to the JobWatch infosheet, **Unfair Dismissal** and the JobWatch booklet, **Recovery of Wages** for further information.

Your employer must comply with legal minimum standards

For any new position you start or any new contract you may enter into from now onward, you cannot receive employment conditions that are less than the legal minimum standards that are set out in:

- the National Employment Standards (NES); and
- any applicable modern award or enterprise agreement.

A contract containing terms and conditions that are lower than the minimum standards is unenforceable in relation to those terms and conditions. You may be able to recover money owed to you through the Fair Work Ombudsman, your union or through private legal action.

National Employment Standards

The NES sets out some of the minimum conditions of employment for all Victorian employees and provides for:

1. A maximum standard working week of 38 hours for full-time employees, plus 'reasonable' additional hours;
2. A right to request flexible working

- arrangements to care for a child under school age, or a child (under 18) with a disability;
3. Parental and adoption leave of 12 months (unpaid), with a right to request an additional 12 months;
 4. Four weeks paid annual leave each year (pro rata);
 5. Ten days paid personal/carer's leave each year (pro rata), two days paid compassionate leave for each permissible occasion, and two days unpaid carer's leave for each permissible occasion;
 6. Community service leave for jury service or activities dealing with certain emergencies or natural disasters. This leave is unpaid except for jury service;
 7. Long service leave;
 8. Public holidays and the entitlement to be paid for ordinary hours on those days;
 9. Notice of termination and redundancy pay; and
 10. The right for new employees to receive the Fair Work Information Statement.

Please note: some employees are not entitled to all the conditions in the NES.

For more information contact the Fair Work Infoline on 13 13 94

Modern awards

Most Victorian employees will also be covered by a modern award which, among other things, will set out the minimum rate of pay for your particular job as well as entitlements to overtime and penalty rates etc. Entitlements in modern awards are **in addition** to the NES.

If your employment is covered by an enterprise agreement, this will also provide further minimum conditions **in addition** to those set out in the NES.

If your employment is covered by one of these instruments your employment contract cannot provide lesser or inferior terms (even if the contract is in writing and even if it is signed).

Exceptions:

However, if you entered into a special type of (written) individual workplace agreement called an Individual Transitional Employment Agreement

(ITEA) or an Australian Workplace Agreement (AWA) after 27 March 2006, you **could have** signed away conditions that are contained in awards and agreements.

Individual flexibility arrangements

If your employment is covered by an enterprise agreement or modern award, you can vary your minimum entitlements by signing an Individual Flexibility Arrangement (IFA). For an IFA to be valid you must be better off over all. You should seek advice before signing an IFA.

Guarantee of annual earnings

Further, while a modern award might cover a particular type of employee, it will not apply to you if you have a written guarantee of annual earnings at or above \$108,300 (indexed annually).

Where to get help

JobWatch Inc:

(03) 9662 1933 (metro);
1800 331 617 (rural)

Fair Work Infoline

(Office of the Fair Work Ombudsman)
13 13 94

Fair Work Australia Helpline

1300 799 675

Victorian Equal Opportunity and Human Rights Commission:

(03) 9281 7111
1800 134 142

ACTU Worker Information line

(for referral to a union): 1300 362 223

Law Institute of Victoria

(for referral to a lawyer): (03) 9607 9550

Important disclaimer

The information in this brochure is of a general nature only. It is not a substitute for professional legal advice. Readers should not act on the basis of any information contained here without first obtaining legal advice relevant to their particular employment situation. JobWatch Inc