

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 information sheet 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 Job Watch's leaflet - **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'.



Job Watch 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.job-watch.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, enterprise bargaining 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, Job Watch or a solicitor 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 Workplace Ombudsman.

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

Refer to the Job Watch infosheet, **Unfair and Unlawful Dismissal** and the Job Watch 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 Australian Fair Pay and Conditions Standard; and
- any applicable Federal awards and agreements.

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 Workplace Ombudsman, your union or through private legal action.

Australian Fair Pay and Conditions Standard

The Australian Fair Pay and Conditions Standard sets out minimum conditions of employment for all Victorian employees **except** those employees who are covered by an Australian Workplace Agreement (AWA) or certified agreement that was entered into before 27 March 2006.

The Standard provides for:

- basic hourly rates of pay (these depend on your classification. The lowest classification is currently \$12.75 per hour);
- a maximum of 38 ordinary hours of work per week plus reasonable additional hours;
- four weeks' annual leave for permanent full time employees;
- ten days' paid personal leave (including sick and carer's leave) for permanent full time employees) plus two days' *unpaid* carer's leave per occasion required for all employees, including casuals;
- two days' paid compassionate leave per occasion required for permanent employees;
- 52 weeks' unpaid parental (maternity, paternity or adoption) leave.

Federal Awards

Many Victorian employees are also covered by Federal awards or collective (or certified) agreements. These provide minimum conditions **additional** to those set out in the Australian Fair Pay and Conditions Standard. 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).

However, if you enter into a special type of (written) workplace agreement such as an Australian Workplace Agreement (AWA) after 27 March 2006, you **can** sign away conditions that are contained in awards and agreements, provided they are not the conditions set out in the Standard. There are special rules which apply to entering into these workplace agreements. You should be very cautious about entering into an AWA or other workplace agreement.

For more information see Job Watch's infosheet – ***Making Workplace Agreements.***

Where to get help

Job Watch Inc:

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

Workplace Rights Inquiry Line (WRIL) 1300 882 648

Workplace Infoline: 1300 363 264

Workplace Ombudsman: 1300 724 200

Workplace Authority: 1300 366 632

Australian Industrial Relations Commission: 1300 79 9675

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

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