

UNDERSTANDING EMPLOYMENT CONTRACTS

This article outlines the legal issues relating to employment contracts, specifically those in operation in Victoria. It is essential that both employees and employers understand the nature of such contracts, as they will impact on both the ability of the employer to run an efficient and profitable business and for the employee's work life.

In the commercial world, there are many essential contracts and agreements. A contract for employment is one of the most important for both employees and employers. An employment contract represents the relationship of two parties for the purpose of mutual benefit. The contract will also set out a number of duties and obligations that are inherent in the employee/employer relationship.

The provisions of an employment contract may be drawn from a number of different sources. In Victoria (which does not have its own system of industrial relations), employers must observe:

- the provisions of the federal Workplace Relations Act 1996;
- the application of Commonwealth awards;
- enterprise agreements for particular industries;
- agreements with individual workers.

In addition to the statutory framework, employment contracts must adhere to general common law principles.

It is important that both employers and employees understand the nature of these contracts, as they will impact upon the ability of an employer to carry on their business in an efficient and profitable manner, and an employee to enjoy a fulfilling and economically stable work life.

Elements of an employment contract

Like any other contract in the business world, a contract of employment has particular requirements before it becomes legally binding.

A contract is a binding agreement between parties where there has been an offer and acceptance with consideration. There are a number of requirements that have to be satisfied before the parties have entered a legal contract. The main requirements are intention, offer/acceptance, and consideration:

Intention to enter into legal relations

Individuals may sometimes perform work without any intention that what they do will create legally binding and enforceable arrangements.

Offer and acceptance

The employer will offer a contract and the employee must accept. The agreement need not be in writing, so acceptance may not simply be a signature on a form. An individual reporting for work after being invited to do so will be an acceptance.

Consideration

This is the exchange of something of value. In employment this is the exchange of wages for labour.

Types of Employment Contracts

These days there are a number of different types of employment contracts.

What is in a standard employee contract?

An employment contract may be verbal, or can be a complex written document. Under common law, there will be various standard responsibilities for both employees and employers.

The general responsibilities of employers will include:

- providing work;
- paying for work;
- providing a safe workplace; and
- not directing an employee to do anything dangerous or illegal.

The general responsibilities of employees will include:

- working with care;
- performing reasonable duties as requested; and
- being truthful and honest at work.

The employment contract will also set out the rate of pay, superannuation, and other matters concerning leave conditions. The contract may detail the award or enterprise agreement that the employee is under.

Many different employment contracts will include a number of unique clauses and conditions. For example, employees in highly competitive industries or professions may agree not to work for rival companies for a certain period after finishing with their employer, or to keep certain information confidential.

The Workplace Relations Act 1996

Minimum conditions

Employee contracts in Victoria are governed by the Workplace Relations Act 1996, which is administered in this State by the Department of Employment and Workplace Relations and by the Australian Industrial Relations Commission. The Act sets out various minimum conditions that are required by law to be inherent to every employment contract, including:

- **Leave:** This leave will consist of paid 'annual leave' and 'sick leave'. The legislative minimum for both kinds of leave is four weeks for annual leave and one week work for sick leave.
- **Unpaid maternity and paternity leave:** This is unpaid leave of 52 weeks upon the birth of a child. The Act includes various conditions related to the provision of this leave. Conditions such as the right to return to work after the end of the leave, and transfer into safe work environment for a pregnant woman.
- **Termination of employment:** These are minimum standards relating to the period of notice that an employer needs to give an employee before terminating their employment. The period required is proportional to the length of service.

Awards and Enterprise Agreements

The Workplace Relations Act 1996 also sets in place a system of wage determination of awards and enterprise agreements. Awards are minimum wage standards that are usually made on an occupational basis. Awards continue to be determined and used in many industries.

However, the Act favours the creation of enterprise agreements. Enterprise agreements can be between a class of workers (represented by a Union) or may be made individually between employees and employers.

This system of 'enterprise bargaining' allows individual organisations to create wage and salary rates that suit individual business needs. All agreements are, of course, beholden to the minimum conditions and responsibilities set out by the Act and the common law.

Common Rule Awards

From the 1st of January 2005, Common Rule Awards ("CRA's") have been approved by the Australian Industrial Relations Commission across a number of industries.

The CRA's will apply to employees in a particular occupation or industry not already covered by the Federal Award or Certified Agreement whose work is of the type covered by the Award.

A workplace may have a CRA, an Enterprise Agreement and the minimum terms and conditions set out in Schedule 1A of the Workplace Relations Act applying simultaneously to different employees.

The main areas in which an employer's obligations will be increased by reason of the applicability of the CRA are wages, penalties and allowances, annual leave loading, redundancy entitlements and accident make up pay.

The wages, penalties and allowances will apply from the first pay period commencing on or after 3 January 2005 but no later than 5 January.

The annual leave loading apply will apply for leave commencing on or after 31 January 2005. It will also apply to leave accumulated prior to that date.

Most Awards will have a limit on the period of service which will count towards redundancy pay.

Accident make up pay will apply to any injury occurring on or after 3 August 2004.

Where there is a dispute in relation to the applicability of an Award, provision has been made for such disputes to be determined by the Commission pursuant to Section 99 of the Workplace Relations Act.