

EMPLOYMENT CONTRACTS

DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only. If you are not a Victorian employee or a Queensland or Tasmanian national system employee, you should obtain specialist legal advice about your case as soon as possible.

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.

Who can use this infosheet?

This infosheet is designed for **Victorian** and national system employees in **Tasmania** and **Queensland** only.

If you are a **Victorian** employee, you can use this infosheet unless you were employed in a sector that provides essential services of core government functions, including state infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use this infosheet unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use this infosheet unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

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 from 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'.

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

© Job Watch Inc – August 2019

Employment Rights Information for Workers – 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 workers.

Hours: Mon–Fri 9am–5pm (Wednesday until 8:30pm)

modern award conditions, enterprise 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.

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

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.

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 some 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 (i.e., legislation) and so they may be referred to as 'statutory obligations'.

1. Employers

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.

2. Employees

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.

Refer to the JobWatch infosheet ‘Unfair Dismissal’ for further information and note that there is a 21 day time limit for filing a claim.

Alternatively, if the alleged breach involves an underpayment of wages, it may be more appropriate for you to recover those wages through the Fair Work Ombudsman (FWO) — see ‘Where to get help’, page 4.

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

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 FWO, your union or through private legal action.

National Employment Standards

The NES sets out some of the minimum conditions of employment for most Victorian, Tasmanian and Queensland 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 in certain circumstances e.g. to care for a child of school age or younger, if you have a disability or are 55 years of age or older
3. parental and adoption leave of 12 months (unpaid), with a right to request an additional 12 months
4. if permanent, four weeks paid annual leave each year (pro rata if part-time)
5. if permanent, ten days paid personal/carer’s leave each year (pro rata if part-time), 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 (unpaid except for jury service)
7. long service leave
8. if permanent, public holidays and the entitlement to be paid for ordinary hours on those days
9. if permanent, notice of termination and redundancy pay

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, Tasmanian and Queensland 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).

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 \$138,900 (indexed annually).

Where to get help

Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94
Fair Work Commission Helpline	1300 799 675
JobWatch <i>(Telephone interpreters available for non-English speakers.)</i>	Metro: 9662 1933 Rural: 1800 331 617 www.jobwatch.org.au
ACTU Worker Information line (for referral to a union):	1300 362 223
Law Institute of Victoria (for referral to a lawyer):	(03) 9607 9550
Queensland Law Society (for referral to a lawyer)	1300 367 757
Law Society of Tasmania (for referral to a lawyer)	6234 4133

JobWatch acknowledges and is grateful for the financial support of the State and Federal Governments, the Office of the Fair Work Ombudsman and Victoria Legal Aid.



Fair Work
OMBUDSMAN



Victoria Legal Aid

JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.