



Fact Sheet

Employment Contracts, Position Descriptions & Independent Contractor Agreements

By law, employers are required to provide details to employees about the terms and conditions of their employment, their pay, and their duties and responsibilities. This includes the identity of the employer, start (and maybe end) dates of employment, rate of pay, leave entitlements, etc.

Beyond basic legal requirements, position descriptions and contracts protect both employers and employees – they provide clarity about expectations and entitlements, and are important documents to rely upon if there is a dispute. It is essential that position descriptions and contracts are kept relevant and up to date.

Key Considerations for Employment Contracts

- In Australia, employment contracts don't need to be in writing. However, it is sensible to have employment contracts in writing to protect employers in case of a dispute about the terms and conditions of employment. The contract guides the employment relationship, and having no written contract in place can be a significant risk to your business.
- A written employment contract, including a position description, meets your legal requirements under the Fair Work Act to provide details to employees about their employment. See the Fair Work Website for what your record-keeping obligations are in this space: <https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping?fbclid=IwAR3ACKsVi3dQu4rgbk9jD7k7IcOeCX6zTLwxJ6DoQZ8h41CUijkDkcd-zn4>
- The written contract should include, but is not limited to:
 - the nature and status of employment
 - the award the employee is covered under if the employee is covered by an award (e.g. Clerks Private Sector Award 2010)
 - commencement date
 - employer details
 - employee name and position
 - detail on probationary/qualifying period
 - location of employment
 - hours of work
 - remuneration
 - return of property
 - deductions
 - confidential information
 - policies and procedures
 - superannuation
 - period of notice and termination.
- Ensure that any tricky situations are dealt with lawfully and sensibly, with the help of a professional if required. This can include casuals, particularly in the current situation where a recent case has challenged where employers and employees draw the line between casual and permanent staff.

Key Considerations for Position Descriptions

This information and advice is general in nature, based on our interpretation of current legislation and policy, and does not take into account your specific circumstances. You should consider whether the information is appropriate to your needs and seek professional advice if required.



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It's best practice to include a position description in the contract. A position description will ensure that both parties understand what the duties of the position are. It is a good idea to include a clause in the employment contract that allows the employer to change the duties or ask the employee to conduct other duties that could be 'reasonably' asked of them. That way, you do not have to list every duty in a position description and the position description is merely a guideline.

If the employee is award covered, a good starting place is to use the classification (and job descriptions) from the appropriate award. Position descriptions can also be drafted in consultation with an employee.

Key Considerations for Independent Contractor Agreements

An independent contractor is a person (e.g. a sole trader or partnership) or entity (e.g. a corporation) conducting a business or undertaking. An independent contractor will be engaged to perform work under a contract for service. They do not have the legal status of an employee and is engaged by a principal — as opposed to being employed by an employer. Independent contractors are generally responsible for their own taxation, superannuation and insurance.

But take note, we have seen "sham contracts". This is when an employer deliberately disguises an employment relationship as an independent contracting arrangement, instead of engaging the worker as an employee. This is usually done to avoid paying employment entitlements such as superannuation, workers' compensation, leave, and certain taxes.

Frequently Asked Questions

Do casuals need employment contracts? YES. Employment law is developing all the time, and it's important to ensure that you're up to date. There's been a recent case (Workpac) that has required an extra clause for casual contracts to prevent casual employees (who later decide they are permanent) from being able to claim a 25% casual loading and permanent leave entitlements such as annual leave. If the employee turns out to be permanent and seeks to be paid permanent entitlements, then they will have to pay-back the casual loading.

What if I get a contract wrong? The employer may not be able to rely on the terms on the contract or worse, having a written contract (if the wrong contract is chosen) could be putting the business at risk. For example, if the business engages an employee on rolling fixed-term contracts (for a set period of time eg; 2 yrs, 2 yrs, 2 yrs) the employee may have the same entitlements as an employee on a conventional on-going permanent contract (eg; unfair dismissal rights and the entitlement to redundancy).

When would you need to update an employment contract? E.g. change in hours, salary, role and type of employment

If it's a small pay rise or change in hours but the position remains unchanged, there is no need for a complete new contract. You could provide a cover letter stating the small change but also note that the terms and conditions of the employment contract otherwise remain unchanged.

For larger changes, such as moving from part time to full time, full time to casual, promotions to senior positions, large pay increases — you should provide a new contract of employment

How can a business incorporate an Individual Flexibility Agreement into their contract of employment?

You can include an individual flexibility agreement to accompany the contract of employment.

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Flexibility provisions within modern awards allow employers and an individual employee to enter into an arrangement, whereby certain terms of the award are modified to meet the individual circumstances of the employment relationship.

You need to identify the terms of the award of which you wish to vary the effect. Once doing so, the Flexibility Agreement will need to identify, with sufficient detail, how the effect of that particular Award term is being modified by the Flexibility Agreement. For example, it will be necessary to show that a particular entitlement has been removed, altered, or even increased.

In addition, you must ensure that the Flexibility Agreement results in the employee's terms and conditions of employment being better off overall than if the Flexibility Agreement didn't apply. Therefore, you must also ensure that the Flexibility Agreement identifies in sufficient detail, how the Agreement ensures the employee is better off overall, as compared to the Award. For example, it will be necessary to show what benefits or entitlements an employee will receive (such as an increase in their wage) for entering into the Flexibility Agreement.

One reason why you might want to keep individual flexibility arrangements separate to a contract is because IFA's can be changed or terminated by either party giving 13 weeks' notice.

What do I do now?

- Change your thinking - employment contracts and position descriptions are important risk mitigation tools for your business, not tedious and unnecessary paperwork. You can save yourself a lot of pain by having robust contracts in place, and getting professional advice and support to assist you.
- Ensure you are meeting your employer obligations in relation to record keeping.
- Review your employment contracts to ensure they are crystal clear in their terms of engagement, entitlements and obligations.
- Review your position descriptions to ensure that you and your employees are clear on the expectations of their role.
- Ensure you have good policy in place around employment contracts, and follow the steps.
- If you're not sure, get professional advice to ensure you are meeting your obligations and to reduce risk to your business.

Need help? Contact Pinnacle People Solutions for tailored advice and support for your business by email to admin@pinnaclepeoplesolutions.com.au or call 1300 856 231

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