

EMPLOYMENT CONTRACTS

Network SA Staff Selection Resource Sheet for Children's Services June 2009

All employees have an employment contract, even if there is no written 'employment contract'.

In law, there are a number of different types of documents and unwritten arrangements which become part of a contract of employment.

These could include

- Letter of appointment
- Job description
- Individual employment contract
- Relevant award, NAPSA or registered agreement
- Workplace policies and procedures
- Custom and practice at a particular workplace
- Oral/verbal arrangements between an employer and employee

A contract isn't just a piece of paper

All of the items on the left can form part of a 'contract of employment'.

Letter of appointment

This can be a brief letter which offers the job to the person, with information about the job title, the award or agreement, the wage, the hours, whether permanent full time, part time or casual, the starting date and time, the probationary period if any, who to report to and where, and what you need the candidate to do to confirm their acceptance e.g. return a signed letter of acceptance, provide certificates as evidence of qualifications etc.

Job description

This has information about the job itself and the skills, knowledge and experience required to do the job, plus where the job is placed in the service's structure.

Examples of job descriptions are available from the Network SA website www.networksa.org.au.

Individual (written) employment contract

This is an important piece of legal documentation in your service, but it does not have to be complicated. It's really an agreement where the employer says 'this is what I am offering you and these are the conditions'. Once it is signed and dated by both the employer and the employee, it is legally binding.

It should include the following:

- The names of the employer and employee
 - Job title and brief description of duties (or attach the full job description)
 - Position classification and relevant industrial award, NAPSA, or workplace agreement
 - Status (full-time/part-time/casual).
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- The date when the employment began (and if it is not a permanent post, the date when the period of employment is expected to end)
- Place of work (with an indication if the employee is expected to work in other locations)
- Hours of work (commencing and ceasing times of work, or earliest start times and finishing times, number of hours to be worked each week)
- Rate of pay and intervals at which it is to be paid; method of payment
- Expectations of the employer – statement informing employee that organisational policies and procedures will apply.
- Ending the employment - how the contract may be terminated, and in particular, the amounts of notice required, consistent with award, agreement or legislative requirements.
- Requirements to work overtime/shiftwork if these apply (e.g. staff meetings).
- Probationary period if any, and the review date and procedure before they become a full member of the team.
- Any undertaking that the employer or employee has made (such as a course of study).
- Special dress standards including specific uniform requirements, protective clothing, wearing or otherwise of jewellery, etc
- Special conditions of employment in children's services e.g. no smoking, no alcohol, no substance abuse, police checks, confidentiality
- Acceptance of the offer of employment and conditions should be notified by the prospective employee to the employer in writing (e.g. tear-off attachment or sign a second copy as acknowledgement of the terms and conditions relating to the position).

If the contract is for a fixed term, the employee should be advised before the contract ends that the end date is approaching and that the employment will cease on the date advised in the contract. You should make a note for yourself at the time the contract is signed that you will need to do this. If you intend to offer the person another contract, this should also be done before the first contract ends. If you allow the employment to continue past the end date of a contract without signing a new fixed term contract, that employee becomes part of your 'permanent' workforce because they are no longer bound to a fixed term contract.

Relevant award, NAPSA or registered agreement

Certain terms and conditions of work are governed by awards and registered agreements. It is important that both the employer and employee know which award or agreement applies to their workplace. As a general rule, they cannot contract out of the terms and conditions in that award or agreement.

You can however negotiate to provide better working conditions than those required by law (for example, six week's annual leave instead of four) but you should always seek professional advice before doing so as there are industrial and financial (budget) pitfalls for the unwary.

Workplace policies and procedures

Workplace policies and procedures outline the expectations and requirements of the employer which apply to employees of the organisation. They act as guidelines within the particular workplace. They may include a code of conduct, as well as a range of policies relating to communication, any special conditions, health and safety, equal opportunity, discrimination, bullying and harassment, procedures for applying for leave etc.

Custom and practice at a particular workplace

Sometimes there is a well known practice or custom in the service or organisation that has been established without exception for a very long time, which could be construed as an employment condition. Usually such practices would be written into the individual employment contract or documented as a policy, but even if they are not, an employee may be able to successfully argue in an industrial commission that they have a right to have the practice / custom apply to them.

Oral/verbal arrangements between an employer and employee

A verbal contract between an employer and employee may be made during the interview process or on offering the position. This should be followed up with a written confirmation of the agreement, to protect both parties. It could prove difficult to prove the existence of a particular agreement if it has not been put in writing.

Other sources impacting on the content of contracts and conditions of employment

- Legislation relating to employment conditions (such as Occupational Health & Safety, tax laws, privacy laws)
- Common law rules and terms (for example, an employee must comply with reasonable and lawful directions of the employer, provided that they fall within the scope of the job description and the nature of the position, and employees must act in good faith towards their employer).
- Rulings of courts and tribunals that relate to conditions of employment
- Special provisions for apprenticeships and traineeships

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Published by Network SA Resource, Advisory & Management Services Inc,
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