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INTRODUCTION

In this guide we outline rights and obligations for Employers and Employees.

All references to 'the Act' are to the Employment Relations Act 2000.

We also outline the obligations of Employers in hiring staff and providing Employment Agreements and suggest steps to take to avoid liability and promote Employer/Employee relationships.

We cannot cover all aspects of Employment law in this guide, however we encourage you to telephone us with any questions which arise. The government website www.ers.dol.govt.nz provides further information.

WHAT IS GOOD FAITH?

Good faith is the central principle in the Employment Relations Act 2000, and should govern all dealings between Employees/Unions and Employers.

Good faith creates an obligation for the parties not to mislead or deceive each other directly, indirectly, and simply promotes:

- mutual trust and confidence
- the use of common sense
- open, communicative relationships between parties

WHO IS AN EMPLOYEE?

An Employee is someone who has agreed to be under a contract of service or to work for a payment of some kind. This includes:

- A home worker (someone who works from home for somebody else)
- A person intending to work (someone who has accepted an offer of employment)

An Employee is not:

- A volunteer
- A self-employed person or an independent contractor
- A share-milker, or
- A real estate agent

The label which you use eg volunteer, contractor may not be accepted at law if the real nature of the relationship is at odds with the label.

ADVICE TO EMPLOYERS: LABELLING THE RELATIONSHIP

Be careful about what label you apply to the relationship between yourself and your worker. Although you may label the relationship as that of a hirer/contractor, the real nature of the relationship may be that of an Employer/Employee which may later give rise to a personal grievance.

HIRING AN EMPLOYEE

When offering an applicant a position the Act requires the Employer to:

- Provide them with a copy of the Employment Agreement
- Advise them that they can seek independent advice about the Agreement
- Give them a reasonable amount of time to get that advice
- Bargain fairly (special care is needed if the Employee is of diminished capacity)

The final Employment Agreement must be in writing. Carrying out these steps is an important part of acting in good faith.

EMPLOYMENT AGREEMENTS

Under the Act, all Employment Agreements must be in writing and must contain certain minimum clauses. This applies to everyone including casual and part-time Employees.

COLLECTIVE EMPLOYMENT AGREEMENTS

A collective Employment Agreement ("CEA") means an Employment Agreement between at least one union and one employer. A union must be registered. A group of Employees can not be covered by a CEA unless they are union members.

There are minimum terms for CEA's and specific requirements for the CEA bargaining process. Please contact us for further information.

INDIVIDUAL EMPLOYMENT AGREEMENTS

An individual Employment Agreement ("IEA") is an agreement between one Employer and one Employee. IEA's will not cover union members.

There are specific requirements and minimum terms for IEA's. Please contact us for further information.

FIXED TERM AGREEMENTS

Fixed Term Agreements expire at a certain time, whether it be when a project ends, or at the end of a season etc. They can only be used in limited circumstances where there is proper reason for the fixed term. For example, farm workers, seasonal workers and replacements for Employees on maternity/paternity leave.

The Employer must advise the Employee of the reasons for making the fixed term, and must explain why the employment will end.

Fixed Term Agreements may not be used to avoid obligations of good faith. In particular, Employers cannot get out of their responsibilities of fair dismissal by using this type of contract.

PROBATIONARY PERIOD

Under the Act, a probationary period must be in writing. Even when an employee is under a probationary period, the good faith obligations in dismissing an Employee apply. A probationary period does not mean an Employer can get rid of somebody without notice or consultation at the expiry of this period.

CASUAL AND PART-TIMERS

Employment Agreements must be in writing and this includes casual and part-time staff. All minimum rights still apply to these Employees.

ADVICE TO EMPLOYERS: AGREEMENTS

Under the Act, Employment Agreements must be in writing and contain certain minimum terms, including a plain language explanation of the procedure for resolving employment disputes.

MINIMUM REQUIREMENTS

There is range of legislation providing for minimum standards in the employment relationship. For example, The Holidays Act 2003, Parental Leave and Employment Protection Paid Parental Leave) Amendment Act 2002, Wages Protection Act 1983, Minimum Wage Act 1983, Equal Pay Act 1972 and Human Rights Act 1993.

EMPLOYMENT RELATIONSHIP PROBLEMS

Common types of relationship problems are:

- Employee does not believe that he/she has been paid sufficiently;
- Employee feels harassed by the employer or other employees;
- Disputes over employment conditions;
- Employees being 'edged out' of their employment;
- Unjustified disciplinary measures.

A personal grievance normally must be raised within 90 days. The remedies employees can seek for such employment problems are as follows:

- Reinstatement: Reinstatement is the primary remedy

- **Reimbursement:** This covers loss of wages and remuneration
- **Compensation:** Compensation for losses other than remuneration, for example, humiliation, loss of dignity, injury to feelings, or loss of benefit of any kind (monetary or non-monetary)
- **Recommendations in cases of sexual or racial harassment:** The Employment Court or Authority may recommend preventative or disciplinary action

DISPUTE PROCESS

If a dispute arises, Employers and Employees are encouraged to attend mediation to resolve the employment dispute. In fact, under the Act, there needs to be exceptional circumstances for Employers and/or Employees to object to attending mediation.

Mediation is a straight-forward meeting of the parties with an Employment Relations Services Mediator to assist the parties in reaching an agreed resolution.

If the employment dispute is not resolved at mediation, the next step in the employment structure is to attend an Employment Relations Authority investigation. At the hearing, the investigator will make a determination. This determination can be appealed and if so the employment dispute will be heard in the Employment Court. That determination can also be appealed.

SELLING YOUR BUSINESS

As a result of recent government amendments, if you are selling your business then you are required to negotiate with the purchaser of the business about the transfer of your Employees to the purchaser. If your business provides cleaning services, food catering services, laundry services or caretaking services then it is likely that your Employees will be regarded as vulnerable

Employees and if you sell your business it is likely that it will be mandatory that all of the effected vulnerable Employees will transfer to the purchaser.

ADVICE TO EMPLOYERS: EMPLOYMENT PROBLEMS

Seek our advice if your Employee raises an employment problem with you. How you respond will be crucial at any mediation or Employment Authority Hearing.

The Employment Team at Govett Quilliam is happy to help you with your Employment Agreements or with any question which arises in your workplace. Please telephone

- Andrew Laurensen
- Lucin Fraser
- Margaret McDougall.

Please call this office if you would like further information on any guides prepared by this firm. Copies are also available from our website.

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- *Buying or Setting Up a Small Business*
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