

Explanation

- 1) This Employment Agreement is intended for use as a compliance document only. It contains all the clauses that must be in an Employment Agreement, but not all the clauses that your business may require in order to effectively deal with your employment relationships. This is because every business is different, and you should draft clauses that deal with your specific requirements.**
- 2) In addition, we recommend taking time to consider whether the compliance clauses contained in this agreement meet your requirements, or whether they should be amended. For example, you should consider whether your business requires employees to work flexible hours, or whether you need employees to work from different locations.**
- 3) In addition to the minimum compliance clauses, you might like to include provisions in your employment agreements. These should be specifically tailored to meet your business' requirements. Some examples of additional terms you may consider are as follows:**
 - Harassment and Discrimination clauses**
 - Confidentiality requirements**
 - Restraint of trade/non-solicitation clauses**
 - Fixed term or probationary employment (NOTE – these must be in writing or they cannot be enforced)**
 - Trial period (in certain circumstances only)**
 - Company vehicle policies**
 - Performance review clauses**
 - Examples of misconduct and disciplinary processes**
 - Intellectual property provisions**
 - Internet and email policies**
 - Conflict of interest provisions**
 - Employee's representations and warranties**
 - Any additional benefits for employees, such as long service leave, health insurance, car-parking, superannuation etc.**

INDIVIDUAL EMPLOYMENT AGREEMENT

PERMANENT FULL TIME OR PART TIME EMPLOYEE

PARTIES

.....
(referred to as "the employer")

and

.....
(referred to as "the employee")

GENERAL

- 1) This agreement commences [**date**] and remains in force unless replaced or terminated in accordance with the termination clause.
- 2) This individual employment agreement also incorporates the provisions of the employer's Staff Handbook, which is subject to amendment from time to time. In any instance where the Staff Handbook specifies a different condition of employment to that expressly stated in this employment agreement, the provisions of this agreement will override the Staff Handbook. **NOTE: remove this clause if you do not have additional terms of employment in a staff handbook.**

TRIAL PERIOD (voluntary clause)

- 3) A trial period will apply for a period of [**not exceeding 90 calendar days**] from when the employee commences employment, to assess and confirm suitability for the position. During the trial period or at its end, the employer may terminate the employment relationship, and the employee may not pursue a personal grievance on the grounds of unjustified dismissal. The employee may pursue a personal grievance on the grounds specified in sections 103(1)b-g of the Employment Relations Act. **NOTE: Parties may only agree to a trial period if the employer employs fewer than 20 employees at the beginning of the day the employment agreement is entered into; and if the employee has not previously been employed by the employer.**

LOCATION

- 4) The work of the employee will be based primarily at the(location)..... office of the employer located at(address).....

DUTIES

- 5) The employee is appointed to the position of (Position).....
- 6) The position reports to the(i.e. floor manager).....
- 7) The duties of the employee are those attached to this employment agreement. Other duties reasonably within the capability of the employee may also be required from time

to time. The employee's duties may be altered following consultation with the employee.

- 8) The employee is expected to perform the duties diligently and to use best endeavours to promote the interests of the employer in doing so.

HOURS OF WORK

- 9) Normal hours are between(time i.e. 8.30am-5.00pm).....(days i.e. Monday to Friday).... Normal requirements of the job mean that the employee must work hours in excess of these if required. The employee is expected to be flexible with time arrangements.

REST BREAKS (if employee's work period is 2 hours to < 4 hours)

- 10)** The Employee shall be entitled to a paid rest break of **[insert duration minimum 10 min]**, on each working day to be taken at **[insert time]** or such other time as the parties agree from time to time.

OR

REST / LUNCH BREAKS (if employee's work period is 4 hours to < 6 hours)

- 10)** The Employee shall be entitled to a paid rest break of **[insert duration minimum 10 min]**, on each working day to be taken at **[insert time]** or such other time as the parties agree from time to time. The employee will also be entitled to a lunch break on each working day of **[insert duration minimum 30 min]**, to be taken at **[insert time]** or such other time as the parties agree from time to time.

OR

REST / LUNCH BREAKS (if employee's work period is 6 hours to < 8 hours)

- 10)** The Employee shall be entitled to **two paid** rest breaks of **[insert duration minimum 10 min]**, on each working day to be taken at **[insert time]** or such other time as the parties agree from time to time. The employee shall be entitled to an unpaid lunch break of **[insert duration minimum 30 min]**, on each working day to be taken at **[insert time]** or such other time as the parties agree from time to time.

TEA BREAK (voluntary provision)

- 10')** The parties agree that the Employee shall be entitled to a tea break of **[insert duration]** at **[insert time]** or after **[insert period of work]**.

REMUNERATION

- 11) Salary/Hourly rate is \$..... (amount then when employee is paid i.e. \$30,000 per annum paid fortnightly in arrears).....
- 12) All monies owed to the employee will be ...(how employee is paid i.e. credited directly to the employee's bank).....

LEAVE ENTITLEMENTS

- 13) The employee's leave entitlements are inclusive of and not in addition to the entitlements contained in the Holidays Act 2003 ("the Act").
- 14) If The Employee needs any more information about their holiday entitlements they can contact the Department of Labour on 0800 800 863 or <http://www.infoline.govt.nz>.

ANNUAL LEAVE

- 15) Annual Leave is provided in accordance with the Act.
- 16) The Employee is entitled to annual leave of **4 weeks** per year after each 12 months continuous service.
- 17) Annual leave is to be taken at a time or times that the employer and the Employee agree. In the absence of agreement, annual leave will be taken at a time or times directed by the employer on expiry of at least 14 days written notice of the date that annual leave is to start.
- 18) All annual leave should be taken no later than one year from the date that it accrues.
- 19) Untaken annual leave will be paid out upon the termination of the employee's employment.

PUBLIC HOLIDAYS

- 20) The following days will be observed as public holidays:
 - a) Christmas Day;
 - b) Boxing Day;
 - c) New Year's Day;
 - d) 2nd of January;
 - e) Waitangi Day;
 - f) Good Friday;
 - g) Easter Monday;
 - h) ANZAC Day;
 - i) Sovereign's birthday
 - j) Labour Day; and
 - k) anniversary day or the day locally observed as that day.
- 21) If Christmas Day, Boxing Day, New Year's Day or 2 January fall on a Saturday or Sunday, and the Employee does not ordinarily work on Saturday or Sunday, then the holiday will be observed on the following Monday or Tuesday respectively.
- 22) The Employee may be required to work on a public holiday. The Employee will be specifically advised in advance that they have to work on that day.
- 23) If the employee works on a public holiday they will be paid at time and a half the proportion of their relevant daily pay for the hours worked on that day.
- 24) If the employee works on a public holiday and that day would otherwise have been a working day for them, in addition to the payment referred to in clause 23), they will receive an alternative holiday to be taken in accordance with the Act.
- 25) The employee can take the employee's alternative holiday on a day that is agreed between the parties. If the parties cannot agree, and it is within 12 months of the employee's entitlement arising, the employee may give the employer 14 days notice of the day the employee will take. The employee must first consider the employer's views on whether that day is convenient.
- 26) If 12 months have passed since the employee's entitlement to an alternative holiday has arisen and the parties have not been able to agree on a date then the employer can give the employee 14 days notice of the date that the alternative holiday will be taken.

- 27) If 12 months have passed since the employee's entitlement to an alternative holiday arose the employee may request that the employer exchange their entitlement for a payment that we agree upon.
- 28) If the employee is on call on a public holiday that would otherwise be a working day for the employee and they are not called in the employee is entitled to an alternative holiday if for all practical purposes the employee have not had a whole holiday.

SICK LEAVE

- 29) After working for the employer for six continuous months (or over a period of 6 months the employee has worked at least an average of 10 hours a week and no less than 1 hour in every week during that period or no less than 40 hours in every month during that period) ("the Entitlement Period") the employee will become eligible for sick leave in accordance with the Act.
- 30) Sick Leave may be taken if the employee, or their spouse or a person that depends on the employee for care is sick or injured.
- 31) The employee is entitled to 5 days paid sick leave per annum which is paid at their relevant daily pay. If the employee is absent for 3 or more consecutive days on sick leave the employee may be required to produce a doctor's certificate to the employer.
- 32) Untaken sick leave may accumulate to a maximum of 20 days but will not be paid out upon the termination of the employee's employment.

BEREAVEMENT LEAVE

- 33) After working for the employer for the Entitlement Period, the employee will be eligible for bereavement leave in accordance with the Act. Bereavement leave is paid at the employee's relevant daily pay.
- 34) The employee is entitled to three days paid bereavement leave upon the death of the employee's: spouse, parent, child, brother or sister, grandparent, grandchild, spouse's parent.
- 35) The employee is entitled to one day paid leave upon the death of another person that we accept after assessing the closeness of the relationship, the responsibility for arrangements and cultural aspects in relation to the death.

HEALTH & SAFETY

- 36) The employee will comply with the requirements of the Health and Safety in Employment Act 1992. This Act, its regulations and codes of practice, set out how the employer and the employee are both legally responsible for the employee's personal health and safety in employment, the health and safety of other employees and the health and safety of other persons in the work place.
- 37) The employee shall take all reasonable precautions for their health and safety and the health and safety of other employees. In particular, the employee shall comply with all rules and policies concerning health and safety which apply from time to time.
- 38) These obligations include:
 - a. Constantly being vigilant in continuing to identify hazards.
 - b. If the employee become aware of any hazard or accident that may affect their or any other person's health and safety, the employee must immediately report the matter to the employer.

- c. The employee shall report any workplace injury or illness, including stress related illnesses, to the employer as soon as the employee become aware of the injury or illness.
- 39) In the event of any workplace injury or illness being reported:
 - d. The employee consents to the collection and release of all medical information including any notes, current or historical, regarding the injury or illness or any pre-existing conditions that may have contributed to the injury or illness; and
 - e. The employer may require the employee to undergo a medical examination or assessment, at the employer's expense, by a registered medical practitioner or specialist nominated by the employer and to furnish a report of such visit to the employer.

TERMINATION

- 40) Either party will give neither more nor less than **[notice period]** notice of termination of employment. Notice must be given in writing.
- 41) The company reserve the right to pay out the employee's notice period instead of the employee working out their notice.
- 42) If the employee gives less than the proper notice, the company is entitled to deduct the balance of unworked notice from any money owed to the employee or to otherwise recover the sum.
- 43) During the notice period, the company may require the employee to cease some or all of their normal duties and to substitute others in their place.
- 44) Upon termination of this agreement, the employee will immediately return to the employer all books, papers, records, documents, motor vehicles, products, keys and access or security cards and any other items of the company's property which the employee have in their possession or use.

POOR PERFORMANCE OR MISCONDUCT

- 45) Proper cause for termination of employment will arise in the event of repeated poor performance or misconduct. In either event, reasonable performance improvement procedures shall apply prior to any termination notice being given.

INCAPACITATION

- 46) The company may terminate the employee's employment upon giving the notice required under paragraph **40** if:
 - a) The employee suffers illness or injury that would incapacitate them from carrying out their duties under this agreement and this incapacity continues for a period of more than 20 working days, or
 - b) The employee is incapacitated at different times for more than 60 working days during any one 12 month period.

REDUNDANCY

- 47) Redundancy means a situation where the Employee's position is deemed superfluous to the Company's requirements because of a reorganisation or restructuring, or a decision is made not to conduct work of that type or some other similar reason.

- 48) Restructuring means a situation where the Company enters into a contract or arrangement under which the Company's business (or part of it) is undertaken by another person or the Company's business (or part of it) is sold or transferred. It does not include the termination of a contract or arrangement under which the Company carries out work for another party, a sale of shares or any arrangements or contracts entered into if the Company is in receivership or liquidation.
- 49) The Employee will be affected by a restructuring if he or she is, or will be, no longer required by the Company to perform his or her work and the type of work that the Employee does (or work that is substantially similar) is, or is to be, performed by employees of the new employer. A new employer means the person who undertakes, or proposes to undertake, the Company's business (or part of it) for the Company or to whom the Company's business (or part of it) is, or is to be, sold or transferred.
- 50) Negotiations with a new employer in relation to a restructuring will include discussion related to the following items:
- a) The affected employees and their positions. Affected employees give the Company authority to release that information;
 - b) Whether the negotiations are confidential or commercially sensitive;
 - c) Taking into account confidentiality and commercial sensitivity, the information that will be given to affected employees and when that will occur;
 - d) Whether the new employer is prepared to negotiate a transfer of affected employees' employment, and if so whether the transfer will be on the same terms and conditions of employment or on other terms and conditions of employment;
 - e) Whether the transfer will recognise service related benefits;
 - f) Whether the transfer will include the transfer of accrued benefits and if so, what benefits will be transferred;
 - g) Whether the new employer will have access to the affected employees and when will that occur; and
 - h) Whether the affected employees will have access to the new employer and when will that occur.
- 51) If the Company is able to negotiate a transfer of the Employee's employment the Employee may choose whether or not to transfer to the new employer.
- 52) If the Employee chooses to transfer to the new employer no redundancy compensation is payable and the notice period specified in clause **40** does not apply. If the transfer of the Employee's employment is to include a transfer of the Employee's accrued benefits, or some of them, the Employee agrees that the Company may transfer any or all of his or her accrued entitlements to the new employer.
- 53) If the Employer is:
- a) unable to negotiate a transfer; or
 - b) the Company is able to negotiate a transfer but the Employee chooses not to transfer; or

- c) the Employee is made redundant in any other circumstances;

the Company will consider whether there are any alternative positions available within the Company that may be suitable for the Employee's skills, experience, qualification and attributes.

- 54) If the Company is unable to identify an alternative position or the Employee elects not to apply for or accept any alternative position the Employee will not be entitled to any redundancy compensation, but will be entitled to receive the notice period specified in clause 40 commencing at the time that the Employee is informed that his or her position will become redundant, including any time the employee's redundancy was subject to the completion of restructuring.
- 55) If the employee is made redundant, including as a result of restructuring, the employee is not entitled to redundancy compensation.

RESOLVING EMPLOYMENT RELATIONS DISPUTES

- 56) The Department of Labour can assist you with information regarding employment entitlements and rights such as holidays and employment relationship problems. If you need any more information about your employment rights and entitlements you can contact the Department of Labour by calling 0800 800 863.

WHAT IS AN EMPLOYMENT RELATIONSHIP PROBLEM?

- 57) Employment relationship problems are any problems relating to or arising out of an employment relationship. These can include personal grievances (such as unjustifiable dismissal, unjustifiable action resulting in a disadvantage, discrimination, sexual or racial harassment and duress), disputes about the existing terms and conditions of your employment, withholding or failing to pay wages or salary or any other money, failing to comply with the terms of your employment agreement but excludes the fixing of new terms and conditions.

RAISING A PERSONAL GRIEVANCE

- 58) If the employment relationship problem is an alleged personal grievance you must make the company aware of the personal grievance within 90 days of the date on which the action giving rise to the grievance occurred or came to your attention, whichever is the later. If you do not raise a grievance within 90 days you can only raise a grievance with our consent or with the leave of the Employment Relations Authority.

INTERNAL SERVICES

- 59) If you believe that you have an employment relationship problem you should first discuss the problem with your immediate supervisor. If you feel uncomfortable talking to your supervisor then you should speak with a more senior manager. However, if you do not wish to discuss the problem with us or after discussions the problem has not been resolved, you may seek assistance from one or more of the external services set out below.

EXTERNAL SERVICES

- 60) The Department of Labour's Employment Relations Service ("ERS") exists to help employers, employees and unions make the Employment Relations Act 2000, and thus your employment relationship, work. The services the ERS provide are:

- **Information** - ERS's first job is to provide straightforward information and answer questions relating to employment relations. ERS provides information about all employment-related issues.
- **Mediation** - You have the right to ask the ERS to mediate an employment relationship problem. ERS's mediators can operate informally by coming to the workplace, by meeting the parties separately or together, or through a series of different meetings. If asked by all parties, mediators can make a decision for the parties.
- **Investigation** - The Employment Relations Authority is available to formally investigate the issues and make a decision.
- **Employment Court** - If either party are not satisfied with a decision by the Employment Relations Authority, then they are entitled to take a case to the Employment Court.

VARIATIONS

- 61) The terms and conditions of this employment agreement may be reviewed from time to time. Any variation agreed to must be recorded in writing otherwise it will have no effect. Note that the Staff Handbook may be amended from time to time.

EMPLOYEE'S ACCEPTANCE

- 62) The employee has read and agreed with the terms and conditions of this employment agreement and the Staff Handbook.
- 63) The employee acknowledges that he or she has received a copy of this agreement and the Staff Handbook prior to signing this agreement and has had reasonable time and opportunity to obtain advice before signing it.

Dated:2009

.....
Signed by the employee

.....
For and on behalf of the employer