

# **MANAGING THE WORKPLACE**

## **EMPLOYMENT CONTRACTS**

FAQ's from an employee's perspective...

### **What is an employment contract?**

When you accept a job offer you enter into a contract of employment with the employer. This means you agree to work for the employer and he or she agrees to pay you for that work. While it is not essential that the contract is in writing, it is best to get a written job offer. That way you can prove you have been hired rather than just offered a chance to do work experience. The contract ends when the employee resigns, is dismissed or the contract expires.

### **Where can the employment conditions in a contract come from?**

The employment conditions in a contract may rely on common conditions already in place at a workplace or the conditions may be negotiated on an individual basis at the time of settling the contract.

Common employment conditions already set at a workplace may have been established through one or more of:

- an award (federal or state);
- a formal collective agreement (federal or state); and
- informal discussions involving employees collectively at a workplace.

If the conditions in your contract are set by an award and/or a collective agreement then they will form the legal minimum entitlements that you can receive. However, you should be consulted on any new agreement that will cover you before it becomes binding by law. With all new certified agreements a vote is held at the workplace to decide whether to accept the agreement or not.

Individually negotiated conditions may be agreed by an employer and employee via:

- a formal individual agreement – federal or state (if federal the agreements are called Australian Workplace Agreements, that is, AWAs)
- an informal individual agreement at a workplace.

Discussions about employment conditions at the individual level may be started by the employer or the employee.

### **Can my employer vary my contract without my consent?**

As a general principle, a contract of employment is only able to be varied by mutual consent. This means that an employer cannot unilaterally transfer a worker to a different job or to a lower grade, impose a pay cut, or alter agreed hours of work. That said, an employer is not powerless to initiate changes in working conditions. An employer has some flexibility to give lawful and reasonable instructions as to how work is to be performed. Also, an employer may seek to include in an employment contract an express power to vary certain conditions.

**What is the difference between full-time, part-time and casual employment?**

Employment is either permanent or casual.

Permanent work can be either full-time or part-time.

Permanent full-time workers are usually required to work at least 35 hours a week. They are entitled to minimum conditions set by an award, agreement or industrial laws. Full-time employment is usually terminated by the employer or employee giving notice.

Permanent part-time workers generally receive the same conditions as full-time employees except that wage and leave entitlements are on a proportionate basis to the hours worked - for example they will get an hourly rate the same as a full-time employee but for less hours. Permanent part-time employees have entitlements to sick leave and annual leave. Both permanent full-time and permanent part-time employees have to observe the same notice of termination provisions.

Casual workers are employed on an hourly basis and actual hours may range from the minimum engagement period up to the same hours as a permanent full-time employee. The employee is paid an extra loading on top of the normal rate to make up for the lack of other benefits such as annual and sick leave. Casual workers are not guaranteed ongoing work. Under some awards they can opt to be full-time casuals or part-time casuals subject to certain conditions.

**Can my employer change my status from employee to contractor?**

An employer cannot change an employee's status from employee to contractor under any circumstances. However, an employer may be able to terminate a worker's job and contract that work out and the ex-employee can then tender for it. The employer would need to ensure the termination of the employment was in accordance with the law.

**Do entitlements continue on change of business ownership?**

Where an employer buys a business, transmission of entitlements will depend on any conditions of sale and the award or agreement that covers the business. Sometimes only long service leave entitlements transmit. The situation is more varied for personal leave or annual leave depending on the award or agreement that applies.

If the entitlements do not carry across to the new employer, the former employer will usually be required to pay out the leave entitlements accrued by the employees up until the time of sale, other than sick leave.

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**Disclaimer**

This information has been provided by Maddens Lawyers by way of general guidance and should not be treated as advice on the circumstance of any particular case. The relevant law is set out in the Workplace Relations Act 1996 and the Workplace Relations Regulations.