
Employment Agreements

Date : April 27, 2018

The Importance of Comprehensive Employment Agreements

Navigating Australia's complex employment system can pose significant challenges for employers including when it comes to employment agreements.

Protect and Defend

The importance of comprehensive employment agreements cannot be overstated as they can:

- afford an employer greater control and power over matters such as remuneration, duties, termination, confidential information, intellectual property and restrictive covenants
- promote compliance and consistency with the Fair Work Act and relevant industrial laws and instruments
- assist employees to minimise (and sometimes eliminate) a wide variety of claims including underpayment claims and breach of contract / constructive dismissal claims
- assist employers to pursue claims for any loss suffered due to an employee breach of a confidentiality, intellectual property and/or restrictive covenant obligation

Depending upon the situation at hand, the costs of not having comprehensive employment agreements in place can be catastrophically high.

Essential Terms

Terms that should be contained in a comprehensive employment agreement include:

- employment type (e.g. casual, part-time, full-time, fixed-term)
- commencement date and location of work
- position, role and duties
- remuneration (this should be clear and unambiguous)
- compliance with policies
- leave entitlements
- notice of termination
- confidentiality and intellectual property obligations

Depending upon the circumstances, annualised salary clauses, absorption/set-off clauses and/or restrictive covenants may be desirable or even essential.

The Circle of Knowledge

The rights and obligations of employees and employers may be covered by multiple other documents and laws including:

- Modern Awards
- enterprise agreements

- individual flexibility agreements
- guarantees of annual earnings
- the National Employment Standards (for those covered by such provisions within the Fair Work Act)
- various other Federal, State and Territory laws
- the common law

Thus, it is vital employers know what other laws and documents apply and which ones take priority in the event of any inconsistency.

Complicating Factors

An employer cannot force a current employee to sign a new employment agreement and, if they do, this may give rise to a myriad of claims including constructive dismissal and claims to set aside the agreement (such as for duress or coercion or lack of consideration) which is why doing so with consent and by giving consideration (such as a pay rise) are important.

Set and Forget?

Never! Employment agreements often require review whenever there are agreed variations, changes to business practices, and/or changes to relevant industrial laws and instruments.

Going Forward

Having the right employment agreement in place can act as both a 'sword' and a 'shield' for an employer and therefore an employer should ensure all employees have one.

More Information

Please call the leading employment lawyers in Parramatta, the Matthews Folbigg Workplace Solutions employment law team on 9635 7966 to speak with one of our employment lawyers.