

*Under the Employment Relations Act 2000*

In the Employment Court

EMPC XXX / XXX

Auckland Registry

In the matter of an election to have a matter  
heard in the Employment Court

Between

**AN EMPLOYER**

Plaintiff

And

**AN EMPLOYEE**

Defendant

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**COMMON BUNDLE OF DOCUMENTS**

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Filed by:

<b>Document Number</b>	<b>Document Date</b>	<b>Description</b>	<b>Page</b>
1	01/01/00	Employment Agreement	1
2	01/02/03	Letter from Joe Bloggs to Jane Doe	13
3	02/03/04	Photograph of office	14
4	05/06/07	Letter from Jane Doe to Joe Bloggs	15

# Individual Employment Agreement between an Employer and an Employee

Dated: 1 January 2000

## 1 The Parties

### 1.1 Individual Employment Agreement

The parties to this employment agreement are:

1. **An Employer**, the "Employer"; and
2. **An Employee**, the "Employee".

## 2 The Position and the Duties

### 2.1 Position

The Employee is being employed as **XXXXXXX**.

### 2.2 Duties as set out in the job description

The Employee shall perform the duties set out in the Job Description attached to this agreement.

### 2.3 Reporting

The Employee shall report to **XXXXXX** or to any other representative of the Employer designated from time to time by the Employer.

### 2.4 Performance Objectives

The Employer shall, in consultation with the Employee, set the Employee objectives at least on an annual basis. These objectives shall be taken into account by the Employer when assessing the Employee's performance.

### 2.5 Performance reviews

The Employer shall conduct a performance review of the Employee on at least an annual basis. This review shall be taken into account in any salary reviews.

## 3 Nature and Term of the Agreement

### 3.1 Individual Agreement of Ongoing and Indefinite Duration

This Employment Agreement is an individual employment agreement entered into under the Employment Relations Act 2000. The employment shall commence on **XXXXXXX** and shall continue until either party terminates the agreement in accordance with the terms of this agreement. The clauses in this agreement may be varied or updated by agreement between the parties at any time.

## **4 Obligations of the Relationship**

### **4.1 Obligations of the Employer**

The Employer shall:

- (i) Act as a good Employer in all dealings with the Employee
- (ii) Deal with the Employee and any representative of the Employee in good faith in all aspects of the employment relationship, and
- (iii) Take all practicable steps to provide the Employee with a safe and healthy work environment.

### **4.2 Obligations of the Employee**

The Employee shall:

- (i) Comply with all reasonable and lawful instructions provided to them by the Employer
- (ii) Perform their duties with all reasonable skill and diligence
- (iii) Conduct their duties in the best interests of the Employer and the employment relationship
- (iv) Deal with the Employer in good faith in all aspects of the employment relationship
- (v) Comply with all policies and procedures (including any Codes of Conduct) implemented by the Employer from time to time, and
- (vi) Take all practicable steps to perform the job in a way that is safe and healthy for themselves and their fellow employees.

## **5 The Place of Work**

### **5.1 Fixed Place of Work**

The parties agree that the Employee shall perform their duties at **the Office**.

## **6 Hours of Work**

### **6.1 Full Time Hours of Work**

The Employee's hours of work shall be **XX** hours per week on **XXXX days**, between the hours of **XXXX am and XXXX pm**.

### **6.2 Lunch Breaks**

The Employee shall be entitled to a lunch break on each working day of employment, of **XXXXX**, to be taken at **lunchtime** or such other time as the parties agree from time to time.

### **6.3 Tea Breaks**

The parties agree that the Employee shall be entitled to a tea break of **XXXXX** at **morning tea and afternoon tea** or after **[insert period of work]**.

## **7 Wages/Salary/Allowances**

### **7.1 Annual Salary**

The Employee's salary shall be **\$XXXXXX** per annum, which shall be paid **fortnightly** on **[insert day on which payment will be made]** into a **bank account nominated by the Employee**.

### **7.2 Review**

The Employer agrees to review the Employee's salary/wages on the 12 month anniversary of this employment agreement and every 12 month anniversary thereafter. The parties agree that the Employee shall not have any necessary entitlement to an increase, but, the Employer agrees to conduct this review in good faith and to consult with the Employee during the review.

## **8 Holidays and Leave Entitlements**

### **8.1 Short Form Clause on Annual Leave as set out in the Holidays Act**

The Employee shall be entitled to paid annual leave of four weeks per year after 12 months continuous employment with the Employer, in accordance with the Holidays Act.

If the employee leaves their employment before becoming entitled to enough annual holidays to cover the amount of annual holidays they took in advance:

- the employer may recover the amount paid to the employee for holidays taken in advance that is not covered by the employees annual holiday entitlement.

This clause is subject to the Wages Protection Act 1983. The employee's signature will satisfy the written consent requirement of section 5 of the Wages Protection Act 1983.

### **8.2 Payment for work on a Public Holiday**

The employee shall be entitled to be paid for the time actually worked on a Public Holiday at the rate of time and a half of their relevant daily pay, or time and a half of

the portion of average daily pay (if applicable) that relates to time actually worked on the day

### **8.3 Sick Leave as set out in the Holidays Act**

The Employee shall, after 6 months employment with the Employer, be entitled to 5 days sick leave for each subsequent 12 month period of service. Sick leave can be taken where the Employee is sick or where the Employee's spouse or a person who is dependent on the Employee is sick or injured.

Sick leave entitlements can be accumulated from year to year up to a maximum entitlement of 20 days.

### **8.4 Bereavement Leave as set out in the Holidays Act**

The Employee is entitled after 6 months employment to paid bereavement leave of up to three days in relation to the death of their parent, grandparent, sibling, child, grandchild, spouse, or parent of their spouse.

The Employee is entitled to one days paid bereavement leave if the Employer considers the Employee has suffered a bereavement through the death of another person.

### **8.5 Parental Leave**

The Employee shall be entitled to parental leave in accordance with the Parental Leave and Employment Protection Act 1987.

### **8.6 Unpaid Leave**

Applications for unpaid leave will be given reasonable consideration by the Employer, but shall be granted only at the Employer's sole discretion having regard to the requirements of the Employer's business and operations. Applications for unpaid leave will be considered in situations such as for compassionate reasons; to undertake a course of work-related study; or to gain additional work-related experience.

### **8.7 Jury Duty**

Where the Employee is called for jury duty, the Employer shall continue the Employee's full pay for the duration of the jury service for days that would otherwise have been working days, and the Employee will pay to the Employer any jurors fees received by them.

## **9 Other Entitlements/Benefits**

### **9.1 Kiwisaver**

The Employee has the option of joining KiwiSaver, and as a new employee will be automatically enrolled into KiwiSaver. KiwiSaver is a voluntary, work-based savings initiative to help New Zealanders with their long-term saving for retirement. More information about KiwiSaver, including what employers and employees need to do to start a savings scheme, is available from <http://www.kiwisaver.govt.nz>.

When an employee is enrolled into a KiwiSaver scheme the Employee's KiwiSaver contributions will be deducted from their pay. The Employer will also make employer contributions to the Employee's KiwiSaver scheme if the employee is aged 18 years or over. A new employee has limited time to opt out of the KiwiSaver scheme, up to eight weeks from their first day of employment, although a late opt-out is sometimes possible. An existing employee who is eligible for KiwiSaver has the option of joining a KiwiSaver scheme. If an existing employee decides to join KiwiSaver they will not be able to opt out. The Employee should inform the Employer if they are already a member of KiwiSaver. See the enclosed information pack or visit <http://www.kiwisaver.govt.nz> for more information.

The Employee is entitled to an employer contribution to their KiwiSaver account or their complying account, if they are aged 18 years or over, under the new KiwiSaver legislation.

From 1 April 2009, employers will contribute a minimum of 3% of employees' gross salary or wage. Employees are expected to contribute a minimum of 3% of their gross salary or wage. The Employee contribution will be deducted from the Employee's pay.

For further information regarding employee and employer contributions to KiwiSaver, visit <http://www.kiwisaver.govt.nz>.

## **10 Health and Safety**

### **10.1 General Health and Safety Obligations**

Both the Employer and the Employee shall comply with their obligations under the Health and Safety in Employment Act 1992. This includes the Employer taking all practicable steps to provide the Employee with a healthy and safe working environment. The Employee shall comply with all directions and instructions from the Employer regarding health and safety and shall also take all reasonable steps to ensure that in the performance of their employment they do not undermine their own health and safety or the health and safety of any other person.

### **10.2 VDU and work-station requirements**

Because the Employee will be using a computer as part of their job, the Employer and Employee shall consult about the hazards represented by the equipment and the work environment to ensure that both parties have regard to the recommendations set out in the Department of Labour Approved Code for the Safe Use of Visual Display Units.

## **11 Other Employment Obligations**

### **11.1 Confidential Information**

The Employee shall not, whether during the currency of this agreement or after its termination for whatever reason, use, disclose or distribute to any person or entity, otherwise than as necessary for the proper performance of their duties and responsibilities under this agreement, or as required by law, any confidential information, messages, data or trade secrets acquired by the Employee in the course of performing their services under this agreement. This includes, but is not limited to, information about the Employer's business.

### **11.2 Copyright and other Intellectual Property**

All work produced for the Employer by the Employee under this agreement or otherwise and the right to the copyright and all other intellectual property in all such work is to be the sole property of the Employer.

### **11.3 Conflicts of Interest**

The Employee agrees that there are no contracts, restrictions or other matters which would interfere with their ability to discharge their obligations under this agreement. If, while performing their duties and responsibilities under this agreement, the Employee becomes aware of any potential or actual conflict between their interests and those of the Employer, then the Employee shall immediately inform the Employer. Where the Employer forms the view that such a conflict does or could exist, it may direct the Employee to take action(s) to resolve that conflict, and the Employee shall comply with that instruction. When acting in their capacity as Employee, the Employee shall not, either directly or indirectly, receive or accept for their own benefit or the benefit of any person or entity other than the Employer any gratuity, emolument, or payment of any kind from any person having or intending to have any business with the Employer.

### **11.4 Use of Internet and Email**

The Employee will have access to email and the Internet in the course of their employment. The Employee shall ensure that at all times their use of the email and Internet facilities at work meets the ethical and social standards of the workplace. Whilst a reasonable level of personal use is acceptable to the Employer, this must not interfere with the Employee's employment duties or obligations, and must not be illegal or contrary to the interests of the Employer. The Employee shall also comply with all email and Internet policies issued by the Employer from time to time.

### **11.5 Privacy Obligations**

The Employer and the Employee shall comply with the obligations set out in the Privacy Act 1993. The Employee must not breach the privacy of any customer or client in the course of their employment.



## **12 Restructuring and Redundancy**

### **12.1 Employer to provide information and consider comments in restructuring situations**

In the event that all or part of the work undertaken by the employee will be affected by the employer entering into an arrangement whereby a new employer will undertake the work currently undertaken by the employee, the employer will meet with the employee, providing information about the proposed arrangement and an opportunity for the employee to comment on the proposal, consider and respond to their comments.

### **12.2 Employer to require offer of similar position in restructuring situations**

The employer will negotiate with the new employer, including whether the affected employees will transfer to the new employer on the same terms and conditions, and will include in the agreement reached with the new employer a requirement that the employee be offered a position with the new employer at the same or similar terms of employment.

### **12.3 Employer to activate redundancy provisions if employee not transferred to the new employer**

Where the employee either chooses not to transfer to the new employer, or is not offered employment by the new employer, the employer will activate the redundancy provisions of this agreement.

### **12.4 Definition of Redundancy**

Redundancy is a situation where the position of employment of an employee is or will become surplus to the requirements of the Employer's business.

### **12.5 Redundancy Process**

In the event the Employer considers that the Employee's position of employment could be affected by redundancy or could be made redundant, the Employer shall, except in exceptional circumstances, consult with the Employee regarding the possibility of redundancy and, before a decision to proceed with redundancy is made, whether there are any alternatives to dismissal (such as redeployment to another role). In the course of this consultation the Employer shall provide to the Employee sufficient information to enable understanding and meaningful consultation, and shall consider the views of the Employee with an open mind before making a decision as to whether to make the Employee's position of employment redundant. Nothing in this clause limits the legal rights and obligations of the parties.

### **12.6 Notice of Termination due to redundancy**

In the event the Employee's employment is to be terminated by reason of redundancy, the Employee shall be provided with **XXXX weeks'** notice in writing. This notice is in substitution for and not in addition to the notice set out in the general termination clause.

### **12.7 Compensation - Fixed Amount**

In the event the Employee's employment is terminated on the basis of redundancy, the Employee shall be entitled to redundancy compensation in the sum of **\$XXXXX**.

## **13 Termination of Employment**

### **13.1 General Termination**

The Employer may terminate this agreement for cause, by providing **XXXX weeks'** notice in writing to the Employee. Likewise the Employee is required to give **XXXX weeks'** notice of resignation. The Employer may, at its discretion, pay remuneration in lieu of some or all of this notice period.

### **13.2 Termination for Serious Misconduct**

Notwithstanding any other provision in this agreement, the Employer may terminate this agreement summarily and without notice for serious misconduct on the part of the Employee. Serious misconduct includes, but is not limited to:

- (i) theft;
- (ii) dishonesty;
- (iii) harassment of a work colleague or customer;
- (iv) serious or repeated failure to follow a reasonable instruction;
- (v) deliberate destruction of any property belonging to the Employer;
- (vi) actions which seriously damage the Employer's reputation.

### **13.3 Suspension**

In the event the Employer wishes to investigate any alleged misconduct, it may, after discussing the proposal of suspension with the Employee, and considering the Employee's views, suspend the Employee on pay whilst the investigation is carried out.

### **13.4 Abandonment of Employment**

In the event the Employee has been absent from work for three consecutive working days without any notification to the Employer, and the Employer has made reasonable efforts to contact the Employee, this agreement shall automatically terminate on the expiry of the third day without the need for notice of termination of employment.

### **13.5 Obligations of Employee on Termination**

Upon the termination of this agreement for whatever reason, or at any other time if so requested by the Employer, the Employee shall immediately return to the Employer all information, material or property (including but not limited to computer disks, printouts, manuals, reports, letters, memos, plans, diagrams, security cards, keys, and laptop computers) either belonging to or the responsibility of the Employer and all copies of that material, which are in the Employee's possession or under their control.

## **14 Resolving Employment Relationship Problems**

If the employment relationship is to be as successful as possible, it is important that the Employer and Employee deal effectively with any problems that may arise.

This procedure sets out information on how problems can be raised and worked through.

### **What is an employment relationship problem?**

It can be anything that harms or may harm the employment relationship, other than problems relating to setting the terms and conditions of employment.

### **Clarify the problem**

If either the Employer or Employee feels that there may be a problem in the employment relationship, the first step is to check the facts and make sure there really is a problem, and not simply a misunderstanding.

Either party might want to discuss a situation with someone else to clarify whether a problem exists, but in doing so they should take care to respect the privacy of other employees and managers, and to protect confidential information belonging to the Employer. For example, the Employee could seek information from:

- Friends and family
- The Ministry of Business, Innovation & Employment on 0800 20 90 20 or on its website at [www.dol.govt.nz/er/solvingproblems/index.asp](http://www.dol.govt.nz/er/solvingproblems/index.asp)
- Pamphlets/fact sheets from the Ministry of Business, Innovation & Employment
- Their union (if they are a union member), a lawyer, a community law centre or an employment relations consultant.

### **Discuss the problem**

If either party considers that there is a problem, it should be raised as soon as possible. This can be done in writing or verbally. Provided the Employee feels comfortable doing so, they should ordinarily raise the problem with their direct manager. Otherwise the problem can be raised with another appropriate manager. A meeting will usually then be arranged where the problem can be discussed. The

Employee should feel free to bring a support person with them to the meeting if they wish.

The parties will then try to establish the facts of the problem and discuss possible solutions.

### **The Next Steps**

If the parties are not able to resolve the problem by talking to each other, a number of options exist:

- Either party can contact the Ministry of Business, Innovation & Employment, who can provide information and/or refer the parties to mediation.
- Depending on the nature of the problem, the issues involved may also be ones that the Labour Inspectors employed by the Ministry of Business, Innovation & Employment can assist with, i.e. minimum statutory entitlements such as holiday, leave or wages provision.
- Either party can take part in mediation provided by the Ministry of Business, Innovation & Employment (or the parties can agree to get an independent mediator).
- If the parties reach agreement, a mediator provided by the Ministry of Business, Innovation & Employment can sign the agreed settlement, which will then be binding on the parties.
- The parties can both agree to have the mediator provided by the Ministry of Business, Innovation & Employment decide the problem, in which case that decision will be binding;
- If mediation does not resolve the problem, either party can refer the problem to the Employment Relations Authority for investigation.
- The Employment Relations Authority can direct the parties to mediation, or can investigate the problem and issue a determination.
- If one or other of the parties is not happy with the Employment Relations Authority's determination, they can refer the problem to the Employment Court.

In limited cases, there is a right to appeal a decision of the Employment Court to the Court of Appeal.

### **Personal Grievances**

If the problem is a personal grievance, then the Employee must raise it within 90 days of when the facts that give rise to the grievance occur or come to their attention. A personal grievance can only be raised outside this time frame with the agreement of the Employer or in exceptional circumstances.

If the employee's employment agreement contains a trial period clause, they may not raise a personal grievance on the grounds of unjustified dismissal. The employee may raise a personal grievance on other grounds as specified in sections 103(1)b-g of the Employment Relations Act, and in the trial period clause of this agreement.

## **15 Acknowledgement of the Agreement**

### **15.1 Variation of Agreement**

The parties may vary this agreement, provided that no variation shall be effective or binding on either party unless it is in writing and signed by both parties.

### **15.2 Entire Agreement**

Each party acknowledges that this agreement contains the whole and entire agreement between the parties as to the subject matter of this agreement.

### **15.3 Severability**

The various provisions of this agreement are severable and if any provision is held to be invalid or unenforceable by any court of competent jurisdiction, then such invalidity or unenforceability shall not affect the remaining provisions of this agreement.

### **15.4 Deductions from Salary/Wages**

Where requested by the Employee, the Employer shall deduct from their salary/wages any agreed amount for matters such as superannuation, a staff social club or union fees and pay the amount to the organisation specified by the employee. The Employer shall also be entitled to deduct from any salary payment payable upon termination of employment any overpayment made to the Employee for leave taken in advance.

### **15.5 Employee Acknowledgment**

The Employee acknowledges that:

- (i) they have been advised of their right to take independent advice on the terms of this agreement
- (ii) that they have been provided with a reasonable opportunity to take that advice
- (iii) that they have read these terms of employment and understand these terms and their implications, and
- (iv) that they agree to be bound by these terms of employment and the Employer's policies and procedures as implemented by the Employer from time to time.

## 16 Declaration

### 16.1 Declaration

I, **An Employer**, offer this employment agreement to **An Employee**.

**Signed by:**..... **Date:**.....

I, **An Employee**, declare that I have read and understand the conditions of employment detailed above and accept them fully. I have been advised of the right to seek independent advice in relation to this agreement, and have been allowed reasonable time to do so.

**Signed by:**..... **Date:**.....

1 February 2003

Jane Doe  
123 Street  
AUCKLAND

Dear Jane

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Yours faithfully

Joe Bloggs



02/03/04 08:35



5 June 2007

Joe Bloggs  
456 Road  
AUCKLAND

Dear Joe

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Yours faithfully

Jane Doe