**EMPLOYMENT AGREEMENT INFORMATION & TEMPLATE**

*The purpose of this information sheet is to provide employees and employers with basic information on employment agreements.*

**What is an employment agreement?**

It’s an agreement between the employer and the employee in relation to an offer of employment and is also known as an employment agreement.

Generally, an employment agreement should outline the duties and responsibilities of an employee, the amount that will be paid, leave entitlements and any other benefits and conditions.

An employment agreement is negotiable and can be changed by agreement. The agreement may not need to be in writing or cover everything. Some rights you have by law, even if it is not in your employment agreement.

If an employment agreement provides terms and conditions that are less than those provided for by law, the law applies. If an employment agreement states terms and conditions that are better than the law, the employment agreement terms and conditions apply.

**What should be in an employment agreement?**

As a minimum every employment agreement should contain the following details:

1. the date the agreement commences;
2. if the agreement is for a fixed term - the date the agreement expires;
3. the names of the employee and employer;
4. a description of the work to be performed by the employee;
5. the employee’s normal hours of work;
6. provisions for payment of wages or salary, annual leave, public holidays and sick leave; and
7. procedures for resolution of employment disputes.

An individual employment agreement may also contain any other terms and conditions agreed to by the parties.

**What about foreign workers**

Foreign workers are covered by the same labour legislation.

The employment terms, conditions and remuneration provided to a foreign worker cannot be less than those that are provided to local workers for the same or similar work.

**Settling disagreements/ disputes**

It is important that your employment agreement set out a dispute resolution process. Ideally, the resolution process should be set out in a simple 3 step process as suggested below:

*The first step is for the employee and employer to talk about the dispute (problem) and try to resolve the dispute*

*If there is no resolution, either party may refer the dispute (problem) to mediation. This is where a neutral 3rd party is appointed to mediate to assist the employer and employee to reach a resolution.*

*If there is no resolution from mediation, either party may refer the dispute (problem) to arbitration and the Court will appoint an arbitrator to determine a resolution for the employer and employee.*

**Can an employer make deductions from wages or salary?**

Apart from taxes, superannuation and any other consented deductions an employer cannot deduct any other money from the employee.

**Who can help me with my employment agreement?**

The Ministry would advise that in the first instance you should contact a lawyer to assist you with drafting an employment agreement.

The Labour Office can provide you with an employment agreement template that covers only the basic requirements, however it is merely a guideline and should not be relied on as being up to date and accurate.

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# FLOW CHART PROCESS

*NB: This template employment contract is provided as a guide for employers and employees to use, and is not to be relied upon as a legally enforceable agreement without legal advice being obtained in the circumstances of each case.*

**EMPLOYMENT AGREEMENT**

This Employment Agreement is made on this \_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| BETWEEN | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [enter business name here], of Rarotonga, Cook Islands (hereinafter referred to as “the Company”) of the one part |
|  |  |
| AND | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[enter the employees name here] of the other part |

1. **APPOINTMENT AND TERM**
   1. You shall be appointed as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [enter position], and report directly to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [enter name here]
   2. Your appointment will be for a term of \_\_\_\_\_\_\_\_\_ months from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. **DUTIES AND RESPONSIBILITIES**
   1. Your specific duties shall include:
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
6. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
7. **HOURS OF WORK**
   1. Your normal hours of work per week shall be no more 40 hours per week between the hours of \_\_\_\_\_\_\_\_and \_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[enter beginning of work week i.e. Monday] to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [enter ending of work week i.e. Friday]. You may be required to perform such overtime as may be reasonably required by the Company but you may refuse if you were not given reasonable notice of the extra hours or if you have safety and health reasons.
8. **REMUNERATION**
   1. SALARY PAYMENT - Your annual salary shall be $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which shall be paid weekly/ fortnightly/ monthly [circle option] directly to your bank account or by cash. Your annual salary provides for all hours worked.
   2. If required by the Company to work overtime, the Company will compensate you by providing one of the following:
9. Time off in lieu for each hour worked, to be taken at a mutually convenient time; or
10. 1 extra day annual leave
11. At the discretion of the Company, you may be remunerated at time and one half for hours worked in excess of 40hours.

**OR**

* 1. WAGE WORKER - You shall be paid \_\_\_\_\_\_\_\_\_\_\_per hour worked, which shall be paid weekly/ fortnightly/ monthly [circle an option] directly to your bank account or in cash. All hours worked in excess of ‘normal hours of work’ shall attract an overtime rate of time and one half (T1.5) All wages payment must be accompanied by a written statement from the Employer.
  2. The Company shall deduct from source all taxes and other payments (including superannuation) as required by law. Any other deductions need to be agreed upon with the Employee before the deduction.

1. **LEAVE ENTITLEMENTS**
   1. Annual Leave
      1. You shall be entitled to 10 working days paid annual leave for every twelve months of service. This leave entitlement shall accrue after three 3 months continuous employment and may be pro-rated at the mutual convenience of both parties.
   2. Public Holidays
      1. You are entitled to public holidays as a matter of law pursuant to the Public Holidays Act 1999.
      2. Where it is necessary for you to work on a public holiday, and by agreement with the Company, you shall be awarded **one** of the following as compensation:
2. Time off in lieu.
3. 1 extra day annual leave
4. Double your ordinary rate of pay
   1. Sick Leave
      1. You are entitled to a minimum of 5 days paid sick leave per annum.
      2. The Company may require you to provide a medical certificate
5. **DISPUTE RESOLUTION PROCESS**
   1. In the event of any dispute arises during the course of your employment regarding:
6. the interpretation and application of this employment agreement or
7. an alleged breach of this agreement or
8. an alleged breach of the minimum terms and conditions as provided for by law or
9. a personal grievance

the following steps must be taken.

* + 1. You must notify the Company of your dispute or grievance as soon as practically possible
    2. The Company agrees to meet with you within 3 working days to try and negotiate a resolution of the dispute
    3. If the dispute cannot be resolved, either you or the Company may, by written notice to the other, refer the dispute for mediation.
    4. If the dispute cannot be resolved at mediation, either you or the Company may refer the dispute for arbitration under the Arbitration Act 2009

1. **TERMINATION**
   1. The Company may terminate this agreement and your employment giving 7 days written notice, or 7 days remuneration in lieu of notice.
   2. The Company may terminate this agreement and your employment without notice for reasons of serious misconduct.
   3. You may terminate this agreement and your employment giving 7 days written notice to the Company.
2. **ACCEPTANCE**
   1. I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, have read, understand and accept the terms and conditions of employment as set out in this Agreement of Employment Agreement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Employee - Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Employer - Date

(The Company)