

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 mutual agreement. Although oral employment agreements are accepted legally, it is preferable to have an agreement in writing and make it cover all important aspects of the employment relationship. Refer to the Employment Relations Act 2012 for guidance on the minimum terms and conditions that are compulsory to all contracts. It is strongly advised to have the contract reviewed by a lawyer to ensure your rights and obligations, as an Employer or an Employee, are covered.

If an employment agreement provides terms and conditions that are less than those provided for by law, the law will supercede the contract and apply. If an employment agreement states terms and conditions that are better than the law, the contract's terms and conditions will 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 and/or reference to a job description;
5. the employee's normal hours of work;
6. the rate of payment of wages or salary, leave entitlements; guarantee of protection of wages 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 Migrant workers

Migrant workers are covered by the same labour legislation and share the same protection and rights as our local workforce. However, they also have specific circumstances that require special consideration such as repatriation and medical insurance. These should be outlined in the contract to avoid misunderstanding and disputes.

It is strongly advised to discuss all terms and conditions of the contract with the migrant worker before they leave their home country and give them enough time to review the contract with their own legal support before signing.

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:

1. *The first step is for the employee and employer to talk about the dispute (problem) and try to resolve it at an internal level.*
2. *If this fails, 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.*
3. *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.*

The Ministry of Internal Affairs, Labour and Consumer Services also offers informal dispute resolution support and also registers complaints for investigation and issuing of advice and recommendation.

Can an employer make deductions from wages or salary?

The Employer can only deduct taxes and superannuation contribution from the employee's wages. Any other deduction requires prior consent from the employee, preferably in written form or a court order.

How much should an employee be paid?

All Employees should be paid at the minimum wage rate and above, whether they are a wage earner or a salary earner. Minimum wage rate are reviewed annually by law. Any other increases in pay are to be negotiated by the Employee and the Employer.

What is a payslip?

Every payment should be accompanied by a payslip. This is a legal requirement and is compulsory. The payslip provides information on the number of hours worked, the rate of pay, the leave entitlements, any deductions and finally the gross and net pay amounts.

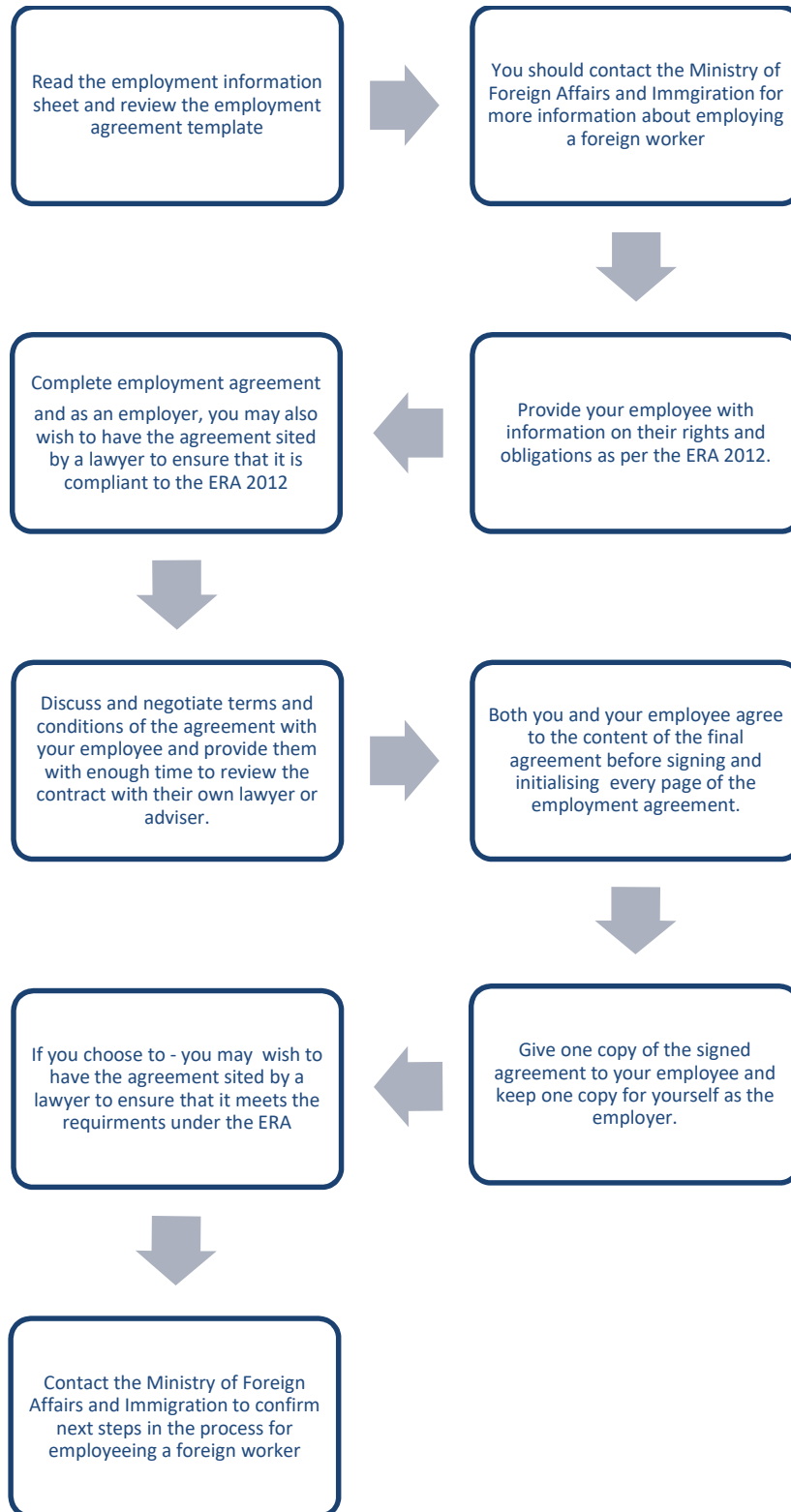
Who can help me with my employment agreement?

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

The Labour and Consumer Service 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 employment contract template 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

1.0 Appointment and Term:

1.1 The Employer appoints the Employee as XXX for the terms and conditions set out in this agreement and based on the *Job Description* provided below and/or attached.

1.2 The appointment is for X years starting from XXX with the option for extension only based on excellent performance and conduct and at the sole discretion of the Employer.

1.3 The Employee is subjected to a probation period of X months to assess performance and conduct in line with the company’s business operation. Failing the probation period assessment means immediate termination and repatriation back to home country.

2.0 Job Description:

The Employee’s specific duties shall be: XXX

Detailed Job description and performance appraisal process will be provided upon induction on the first day of work.

3.0 Remuneration and Hours of work

3.1 The Employee will be paid as a wage earner at the Cook Islands minimum wage rate per hour, reviewed annually. The 2019 minimum wage rate is NZ\$ 7.60/hour.

3.2 The Employee's normal hours of work shall be no more than 40 hours per week for the usual business hours between Monday to Saturday.

3.3 The Employee will be paid on a weekly/fortnightly basis, directly into a nominated bank account or in cash, always accompanied by a payslip.

3.4 The Employee may be required to perform overtime (above 40 hours of work) as may be reasonably required by the Employer and as a result, will be entitled to overtime pay (one and a half). The Employee may refuse to do overtime if the Employer fails to give a reasonable notice of the extra hours or if the Employee has valid safety and health reasons.

3.5 The Employee is entitled to one day rest per week.

4.0 Rest and Meal Breaks

4.1 The Employee, who works at least 3 hours, is entitled to take a rest period of not less than 10 minutes during the 3 hours.

4.2 The Employee is entitled to a rest and meal break of at least 30 minutes after 5 hours of work.

5.0 Protection of Wages and Deductions

5.1 As per the Cook Islands Law, the Employer shall deduct PAYE and CINSF contributions directly from the weekly pay to submit to the respective authorities.

5.2 The Employee agrees to a deduction of NZ\$ XXX weekly for XXX reasons.

5.4 Any other deductions can be operated with authorisation from the Employee.

5.5 All deductions are duly recorded on the payslip.

6.0 Repatriation Process

6.1 The Employer will pay for an airfare ticket for the Employee back to their home country **only** upon completion of the contract term.

6.2 Should the contract end before its full term for any of the reasons outlined in section 11 below, the Employee shall be responsible for paying their own airfare back.

6.3 The Employer will be responsible for notifying the Immigration Office of the cancellation of the work permit as required.

6.4 The Employer will return any unused money deducted for the purpose of repatriation back to the Employee at the end of the completion of the contract term.

6.5 The Employer reserves the right to offer a release letter for the Employee to continue employment in the Cook Islands with another Employer.

7.0 Leave Entitlements

7.1 Annual Leave

7.1.1 The Employee is entitled to 10 working days paid annual leave accrued for every twelve months of employment.

7.1.2 The Employer can require the Employee to work for 6 months' maximum before using the annual leave entitlement for the first time.

7.1.3 Annual leave will be taken at the mutual convenience of both parties.

7.2 Public Holidays

7.2.1 The Employee is entitled to public holidays pay at your ordinary rate as a matter of law pursuant to the Public Holidays Act 1999:

- New Years Day 1st January
- Day After New Year 2nd of January
- Good Friday
- Easter Monday
- ANZAC Day 25th of April (During Weekdays only)
- Ui Ariki Day every first Friday of July
- National Gospel Day 26th of October
- Christmas Day 25th of December
- Boxing Day 26th of December

7.2.2 Should the Employee be required to work on a public holiday, and by agreement with the Company, the Employee shall be awarded **one** of the following as compensation:

- | | |
|------------------------------|-------------------------------------|
| (a) Time off in lieu. | (c) Double the ordinary rate of pay |
| (b) 1 extra day annual leave | |

7.3 Sick Leave

7.3.1 The Employee is entitled to 5 days paid sick leave accrued for every twelve months of employment.

7.3.2 The Employer can require the Employee to work for 6 months' maximum before using the sick leave entitlement for the first time.

7.3.3 The Employer may require the Employee to provide a medical certificate after 2 days of consecutive sick leave.

7.4 Maternity and Paternity Leave

7.4.1 The Employee, who is pregnant, is entitled to 6 weeks' maternity leave, which can commence no earlier than 2 weeks before the expected delivery date and no later than the date of birth.

7.4.2 The Employee, who is pregnant, is entitled to a maternity leave pay of 6 weeks at her original rate of pay. If the Employee is a Cook Islander, her Employer can apply for the Government Funded Maternity Leave Fund for assistance.

7.4.3 The Employee is entitled to return to the position usually held prior to her leaving for maternity leave or a position with conditions equivalent to her original position.

7.4.4 The Employee, whose partner or spouse has given birth, is entitled to 2 working days paid leave, paid at the original rate of pay and 3 working days of unpaid leave, in the 6 weeks following the birth.

8.0 General Duties and Obligations of the Employer

8.1 The Employer shall abide by the Laws of the Cook Islands, including the Employment Relations Act 2012.

8.2 The Employer shall be responsible for the Employee's incoming airfare and transit visa into the country (Cook Islands) and the costs of the application process in country for the continued valid work permit in the Cook Islands.

8.3 The Employer shall be responsible for assisting the registration of the Employee with Tax Department and the CINSF Office.

9.0 General duties and responsibilities of the Employee

9.1 The Employee shall abide by the laws of the Cook Islands, including the Employment Relations Act 2012 as well as respect the customs and traditions of our people.

9.2 The Employee shall be responsible to pay for personal costs related to the work permit application such as medical documentation, insurance cover, english lessons, police clearance, birth certificate issuance and other associated costs in the country of origin (Indonesia).

9.3 The Employee undertakes to perform diligently and faithfully as per the Job Description and abide by the Company's policies and staff manuals, including the code of conduct.

9.4 The Employee shall be responsible for complying with the registration process of the Tax Department and the CINSF Office.

10.0 Workplace Health and Safety

10.1 The Employer shall abide by the principle of duty of care and ensure a healthy and safe work environment which is also free from violence and harassment.

10.2 The Employee shall abide by the Employer's instructions and the company's policies and staff manuals to maintain a healthy and safe environment which is also free from violence and harassment.

10.3 To assist with the costs involved in the event of illness, accident or death arising out of or in the course of the Employee's employment, the Employer shall contribute to the Government Workers Compensation Scheme available to cover the cost.

10.4 For any case of illness, accident or death arising *outside the hours of work*, the Employee is required to have a personal insurance coverage for the duration of the employment term in the Cook Islands. In the absence of an insurance cover, any expenses incurred by the Employer will be charged back the Employee and/or Employee's next of kin and notification sent to the nearest Indonesian Embassy or Consulate.

11.0 Variation of contract

11.1 If at any particular time during the term of this Contract the responsibilities and obligations of the Employee are so altered, both parties may in agreement conclude a variation of this contract to reflect the changed nature of employment and other terms and conditions.

12.0 Termination of contract

The present contract can be terminated in the following circumstances:

12.1 Termination based on underperformance and capacity

12.1.1 The Employer shall conduct regular performance appraisals to assist in any termination process involving underperformance and/or capacity issues.

12.1.2 The Employer may terminate the contract for underperformance by giving at least 1 weeks notice period or pay in lieu.

12.1.3 The Employer shall provide a notice letter of termination and give reasonable time to the Employee to respond before making a final decision.

12.2 Termination based on misconduct or serious misconduct

12.2.1 The Employer shall provide adequate human resources structure to deal with misconduct.

12.2.2 The Employer may proceed to terminate the contract for misconduct by giving at least 1 weeks notice period or pay in lieu.

12.2.3 The Employer shall provide a notice letter of termination and give reasonable time to the Employee to respond before making a final decision.

12.2.4 Any case of serious misconduct warrants an immediate dismissal forfeiting any notice period. A non-exhaustive list of serious misconduct:

- Theft
- Violence and Harassment in the workplace
- Breach of any Cook Islands Laws
- Drugs and Alcohol abuse
- Abandonment of post (after 3 consecutive days of absence without notification).

12.3 Termination due to restructuring

12.3.1 The Employer shall inform the Employee of any restructuring possibilities with fair advance.

12.3.2 The Employer may proceed to terminate the contract for restructuring purposes by giving at least 2 weeks notice period or pay in lieu.

12.3.3 The Employer shall provide a notice letter of termination and give reasonable time to the Employee to respond before making a final decision.

12.4 Resignation on behalf of Employee

12.4.1 The Employee may decide to resign by providing a written letter of resignation and respecting a notice period of 1 week.

12.5 Termination Entitlements

12.5.1 All termination entitlements such as unpaid wages and unused annual leaves, shall be paid out to the Employee's as soon as practicable.

13.0 Employment dispute resolution

13.1 In the event of any dispute or grievance arising between the parties regarding this Contract or the interpretation of any clause herein contained or hereby contemplated, or arising in the course of employment, both parties should attempt to find a resolution internally with the Company Manager.

13.2 Should that fail, the parties can contact the Labour and Consumer Services of the Ministry of Internal Affairs as an informal dispute resolution support and advice.

13.3 Should the parties wish to continue through the formal process as prescribed by the ERA 2012, the dispute (problem) should then be referred to mediation and arbitration for final resolution.

14.0 ACCEPTANCE

This contract shall be construed and take effect in accordance with the Cook Islands Employment Relations Act 2012, and other related legislation thereof.

I, _____, have read, understand and accept the terms and conditions of employment as set out in this Agreement of Employment Agreement.

Employee: *(sign here)* _____

Date: _____

Employer: *(sign here)* _____

Date: _____