**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 important to note that recruitment and contracts for workers from the Philipines and certain parts of Indonesia are subjected to their own national laws. Employers in the Cook Islands should therefore contact either an agent or the respective embassies to enquire further on the specifics of recruiting workers from those destinations.

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.

The repatriation process at the end of the employment period needs to be discussed fairly and in accordance with Immigration and Labour laws, taking into consideration any request for transfer within the country. Repatriation should not be used as a retaliation measure against the employee.

**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 an employee should 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 between the Employee and the Employer, taking into consideration for example: additional duties, seniority in the role, performance, conduct and upskilling.

**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 PAYE, the leave entitlements, any deductions and finally the gross and net pay amounts.

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

You may contact a lawyer to assist with the drafting of an employment agreement. You should also refer to the employment agreement template, as provided by the Ministry of Internal Affairs (see hereafter or go to [www.intaff.gov.ck](http://www.intaff.gov.ck)) because it will allow you to meet all the minimum terms and conditions as stipulated by the Employment Relations Act 2012.

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# FLOW CHART PROCESS

*NB: Skip steps number 2 and 8 for recruitment of local workers.*

*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,** under the terms and conditions as 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** and ending on the **XXX** with the option for renewal, should both parties agree.

1.3 The Employee is subjected to a probation period of **X** months to assess performance and conduct fairly and in accordance with the Company’s assessment criteria and policy. Failing the probation period assessment may lead to the opportunity for re-training and/or termination of the employment.

**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 2022 minimum wage rate is NZ$ 8.50/hour).

3.2 The Employee’s normal hours of work shall be no more than 40 hours per week for the usual business hours.

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 reasonably required by the Employer and is 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 health and safety 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 paid rest period of not less than 10 minutes during the 3 hours.

4.2 The Employee is entitled to a rest and meal break (paid or unpaid) 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 and submit to the respective authorities.

5.2 Any other deductions should authorised by the Employee prior to the deductions and are listed here: **NZ$ XXX weekly** for **XXX reasons.**

5.3 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 upon completion of the contract term.

6.2 Should the contract end before its full term for any of the reasons outlined in section 12 below, the Employee may 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)
 | * Queen’s Birthday every first Monday of June
* 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 compensation:

1. Double the ordinary rate of pay
2. Time off in lieu.
3. 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, commencing 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.

7.4.3 The Employer can apply for the Government Funded Paid Maternity Leave Scheme (GFPML) for assistance (Contact Ministry of Internal Affairs) if the Employee, who is pregnant, is a Cook Islander or PR, or spouse/partner of a Cook Islander or PR, or a child of a PR. The Employer is responsible for paying the maternity leave for any other categories of Employees.

7.4.4 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.

7.4.5 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 work permit application process and any other costs as discussed and agreed with the Employee.

8.3 The Employer shall train, instruct and monitor the Employee as per the Job Description and follow the Company’s policies and staff manuals, including the code of conduct.

8.4 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.

9.2The 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, and any other costs as discussed and agreed with the Employer.

9.3 The Employee undertakes to perform diligently 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, by providing clear instructions, training and company policy on Workplace Health and Safety.

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 In the event of any illness, accident or death *arising out of or in the course of* the Employee’s employment, the Employer will record it in the Accidents Register in the formal approved by the Ministry of Internal Affairs. If the accident has resulted in death or serious bodily injuries (requiring hospitalisation for a period of 48hrs or more within 7 days of te accident), the Employer shall notify the Ministry of Internal Affairs, Labour and Consumer Services, within 48hours of the accident, specifying the nature of the accident, the name, age and residence of the employee and the measures taken by the Employer as a result of the accident.

10.4 For any case of illness, accident or death arising *outside the hours of work*, the Employee is advised to have a personal insurance coverage for the duration of the employment term in the Cook Islands. In the absence of an insurance cover, both parties need to agree on the payment of the associated.

**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 Resignation on behalf of Employee**

12.1.1 The Employee may decide to resign by respecting a notice period of 1 week. It is recommended to providing a written letter of resignation.

**12.2 Termination based on underperformance and capacity**

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

12.2.2 Prior to terminating, the Employer shall provide reasons for terminating in writing and give reasonable time to the Employee to respond before making a final decision. It is recommended to provide a written letter of termination to record the final decision.

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

**12.3 Termination based on misconduct or serious misconduct**

12.3.1 The Employer shall provide adequate human ressources structure to deal with misconduct, such as a code of conduct.

12.3.2 Prior to terminating for misconduct, the Employer shall provide reasons for terminating in writing and give reasonable time to the Employee to respond before making a final decision. It is recommended to provide a written letter of termination to record the final decision.

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

12.3.4 Any case of serious misconduct warrants an immediate dismissal forfeiting any notice period and requirement to provide reasons in writing. List of serious misconduct must be listed in the Code of Conduct and may include the following:

* 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).

**12.4 Termination due to restructuring**

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

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

12.4.3 The Employer shall provide a notice termination and give reasonable time to the Employee to respond before making a final decision. It is recommended to provide a written letter to record the final decision.

**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 in the course of the employement, regarding this Contract or the interpretation of any clause herein contained or contemplated, both parties should attempt to find a resolution internally, by following the Company’s policy and staff manual.

13.2 Should this fail, the parties shall continue through the formal process as prescribed by the ERA 2012 and refer the dispute to mediation and arbitration for final resolution.

13.3 At any time, the parties can contact the Labour and Consumer Services of the Ministry of Internal Affairs for support and advice as well as their respective lawyers.

**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: