



I've got a new job. What should I be looking out for in my employment contract?

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Starting a new job can be a daunting and exciting experience and it is easy to get caught up in the prospect of starting rather than focusing on your employment entitlements which underpin an employee's employment. Understanding your employment contract is critical, before signing it.

In some cases, employees are covered by collective agreements and Awards which set out their employment rights. If they are in a more senior role it is unlikely that they would be covered by a collective industrial instrument. Having said that, their employment would still be covered by the National Employment Standards (the minimum obligations of an employer) in the *Fair Work Act*.

Negotiations can be important when starting a new job if you are seeking a higher salary or flexible working arrangements, but it is also important that you actually know what is included in, and understand your employment contract before you start work. This will help to minimise any future workplace disputes that might arise during the employment.

Important clauses you should keep an eye out for include:

Probation and notice periods

Most employment contracts will include a probationary period which refers to a period of time that an employer can terminate the employment relationship with limited or no notice and without reason.

If this was to occur there may be no legal recourse for the employee and could lead to significant financial consequences. The shorter the probationary period the sooner an employee can start permanent and secure employment. The courts have generally accepted that a reasonable probationary period is between 3 to 6 months.

It is generally once the probationary period is over that any notice period contained within your contract will kick in. There are some legitimate reasons where an employee can terminate the employment where no notice is required. This is generally where a finding of serious misconduct is found against the employee.

However, if the termination reason is not for serious misconduct the employer will have to give the employee a prescribed period of notice or pay the employee out for the relevant period of time. It is important to check how much notice an employee **and** the employer must give.

Salary packages

What an employee is to be paid for work they undertake may seem clear cut, however, it is important to really understand what is included in your salary. Some contracts will set out the salary as a whole package which includes not only your annual base rate of pay but also your superannuation and all other entitlements such as overtime.

The employment contract should clearly stipulate what is included in the salary package. If the contract does include a salary package an employee should not only ask the question but try and negotiate for it to be clearly stated in the contract.

Restrictive clauses

Restrictive clauses are clauses that take effect after the termination of employment and are generally known as a restraint of trade clause. This clause can restrict an employee from soliciting clients and/or working with clients of your employer in your new employment; usually for a specified period of time.

The main function of this clause is to protect the employer's business, employees and its clients and not to punish the employee. Generally, the courts do not allow a restraint clause that will prevent the employee from making a living in their usual occupation in which they hold their experience and qualifications.

The question the courts will consider will be whether the clause is reasonable dependent on the individual circumstances of each case. Reasonableness will depend on the length of the restraint clause and the size of the geographical area it covers.

Given the legal complexity of these types of clauses, if your employment contract does include a restrictive clause it is important that you seek legal advice from a lawyer experienced in employment law, to understand your legal obligations.

All employers are different and employment contracts are generally tailored to the individual. Because of this, it is important that you seek legal advice on any terms of the agreement that you are unsure about. This will not only give you the upper hand in any negotiations but will ensure you understand your legal obligations for the entirety of your employment.

Get help from an employment lawyer

If you need advice or assistance in relation to your employment contract or any other employment issue, you can get in touch with the Hall Payne employment law team in your state.

Contacting Hall Payne Lawyers

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

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