

WE KNOW

HUMAN RESOURCES

TYPES OF EMPLOYMENT

QUICK GUIDE

This guide provides summarised information on different types of employment – permanent, fixed term and casual.

INTRODUCTION

When offering employment to an employee (or amending existing terms of employment) it is important to clearly identify which type of employment relationship is being established. This not only ensures that the employer and employee are clear about the employee's working patterns and the permanence of employment, but also enables employers to operate under the different legal requirements/entitlements that exist for different types of employment relationships (including how and when employment will end, holiday and leave entitlements, and automatic enrolment rules for KiwiSaver).

Essentially there are three different types of employment – permanent, fixed term and casual. As you will read in this quick guide, legally the key distinction is whether the employee is permanent or not.

Regardless of the type of employment, all employment relationships must be covered by a written employment agreement.

For more detailed information and advice on different types of employment, or to obtain sample employment agreements, contact an adviser at the The' Chamber.

PERMANENT EMPLOYMENT

This is the most common type of employment relationship. Permanent employment is employment that is ongoing in nature. There is no fixed end date to the employment. It will only end when either the employee or employer terminates the relationship.

Permanent employment can be offered on either a full-time or part-time basis. The employee could be paid a wage (e.g. paid by the hour/day/week) or paid an annual salary (covering full performance of duties, i.e. no overtime is payable). In recent years the distinction between these two payment arrangements has become less clear and they may overlap.

Within the context of a permanent employment relationship it is possible to have a probationary/trial period. For further information on this please see our quick guide to probationary periods.

For a sample permanent individual employment agreement please contact The Chamber.

FIXED TERM EMPLOYMENT

The Employment Relations Act 2000 allows an employer and employee to agree that employment will end;

- at the close of a specified date or period,

- on the occurrence of a specified event, or
- at the conclusion of a specified project.

To have a fixed term employment relationship, the law requires an employer to have genuine reasons based on reasonable grounds that justify why employment can only be provided for a finite period.

The employer must advise the employee in writing of when or how employment will end and the reasons why employment is ending in that way.

There are any number of reasons that could qualify as genuine reasons based on reasonable grounds. Examples include;

- seasonal work,
- covering for another employee who is absent from work on parental leave or for other reasons, and
- a temporary additional workload due to the organisation securing a new contract.

The law states that genuine reasons do not include assessing the suitability of an employee for permanent employment, meaning that you cannot use fixed term employment as a probationary/trial period. Fixed term employment must not be used to limit an employee's rights under the Employment Relations Act 2000. It is also unlikely that the pre-empting of a possible future redundancy will be viewed as genuine reason for a fixed term relationship. Prior to entering into a fixed term employment relationship we recommend that you contact an adviser at the Employer's Chamber to confirm that you have an acceptable reason for doing so.

To be valid, both the way employment will end (the date, event or project) and the reason for ending the employment in that way (the genuine reasons based on reasonable grounds) must be stated in the written employment agreement. If either of these aspects are not present in the written agreement the employee can elect to treat the fixed term as ineffective – meaning for all intents and purposes the employee must be treated as a permanent employee.

Provided fixed term relationships are established in accordance with the rules set out above, there is no limit to the length of time a fixed term employment relationship can be set up for. There is also nothing preventing a series of two or more successive fixed term employment agreements – again provided that the above criteria are met (including, at the outset of each of the fixed term engagements, the existence and recording of genuine reasons why employment can only be provided for the specified period). Where there are two or more successive fixed term employment agreements, employers should carefully monitor the situation to determine if the employee is in reality a permanent employee, and if in doubt, seek advice.

Employers must ensure that employment ceases as specified in the employment agreement. If the employee continues working beyond the specified end of the fixed term then, unless something is documented to the contrary, they are likely to be viewed as a permanent employee. It is also worth noting that most fixed term employment agreements will allow for termination of employment by either party prior to the expiry of the fixed term.

For a sample fixed term employment agreement please contact The Chamber.

CASUAL EMPLOYMENT

There is no legal definition of casual employment (within an employment agreement context), but it is an accepted type of employment relationship. While there are no strict rules on what constitutes casual employment, the following information is a useful guide.

A casual employment relationship is one where there is no expectation of ongoing employment. Employment is provided on an as and when required basis, where the employer has no obligation to offer work to the employee at any time, and the employee has no obligation to accept work that is offered by the employer.

For example, an employer may offer the employee two days of work and the employee works those days. Then, the employee is not engaged again until two weeks later when they are offered a further five days of work. Following each of these agreed periods of engagement there is no guarantee of further employment.

Many employees who are labeled casual are, in reality, permanent employees who have varying hours of work. The key issue is not how many hours the employee works but whether employment is ongoing or not. For example, an employee who may work different days and hours each week but still works regularly every (or most) week(s) of the year is most likely a permanent part-time employee.

There is no legal formula setting out how many hours or how frequently an employee must work to be considered permanent. As an employer you need to monitor your casual employees and if you believe that employment has become regular or ongoing you should enter into a permanent employment agreement with the employee. If you are unsure, seek advice.

To avoid additional paperwork, it is permissible to have one overarching casual employment agreement that covers each agreed period of engagement. For a sample casual employment agreement please contact the Employers' Chamber, email es@cecc.org.nz.

Note that if there is a discrepancy between the nature of employment outlined in the employment agreement and the actual working patterns, it is likely that the actual working patterns will prevail over what is written in the employment agreement. For example, if the employment agreement states that the employee is casual, but they have been working regular hours for a significant period of time, the employee is likely to be deemed to be a permanent employee.

SUMMARY

PERMANENT EMPLOYMENT

Ongoing employment with no set conclusion.

FIXED TERM EMPLOYMENT

Employment for a finite period based on genuine reasons.

CASUAL EMPLOYMENT

Engagements on an as and when required basis with no expectation of ongoing employment.

For further information regarding types of employment or other aspects of Employment Relations/Human Resources, please contact the Chamber email info@cecc.org.nz or phone 03 366 5096.

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