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FICA webinar on employment agreements – what should be in them and why

Presented by Louise Foley

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What we'll cover today

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- ▶ A bit about me
- ▶ Casual vs permanent employees
- ▶ Why you need employment agreements
- ▶ What IEA's must contain
- ▶ What an IEA can include
- ▶ Process of getting an IEA signed for new and existing staff

Casual vs Permanent



Intermittent & Irregular

- Each period of engagement separate
- Can pay holiday out each period
- Less employment rights i.e. Do not get to six months employment to trigger sick / bereavement leave; less risk of PG

Permanent

- Full or part time
- Fixed term



Why need one?

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- ▶ Individual employment agreements must be in writing – can be penalised if it is not.
 - Contractual rights better than default provisions in legislation or case law.

IEA must contain:

1. Name of Employer and Employee
2. Job Description
3. Where work to be performed
4. Hours/days
5. Wages or salary
6. Plain language explanation of services available to resolve employment relationship problems – 90 day period PG
7. Employee protection provision
8. Provision time and a half work on public holidays
9. Trial period must state if no PG can be raised (90 days not 3 months) starting from first day of work
10. If there is guaranteed hours or requirement to be available
11. Genuine reason on reasonable grounds for a fidelity clause

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IEA can contain:

1. Deduction clauses (consult)
2. Termination period – what happens on termination, return of company property
3. Arrangements in a crisis/ emergency (“Covid” clause)
4. Abandonment of employment
5. Medical incapacity
6. The right to drug and alcohol testing
7. Confidential information
8. Proprietary rights
9. Representations regarding qualifications, experience and medical history
10. Examples of misconduct
11. Right to suspend
12. Court appearance

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Process of getting Employment Agreement signed



- ▶ Obligation of good faith
- ▶ Employees are entitled to a reasonable opportunity to seek advice
- ▶ Cover letter setting out offer and conditions i.e. pre-employment drug test



New Employees



1. Offer before they start work
2. Make a job offer conditional on an employment agreement being signed
3. Trial periods not binding if existing employee so.....
4. Send them away if not signed



Existing Employees

1. Speak to people individually or during a staff meeting
2. Explain the reasons for the change
3. Point out changes from the old Agreement
4. Give reasonable time to seek advice – 2 to 3 days
5. Follow it up and negotiate
6. Cannot demand take it or leave it
7. Keep records and notes of discussions
8. If cannot enter into a written agreement employee is on oral terms or partly written, partly oral terms.
9. Cannot terminate just because do not have a written Employment Agreement.
10. Situation normally resolves itself at pay rise time.

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Special offer for FICA members
Review your employment agreement (permanent and casual) for \$650 plus GST and onboarding charges, if any (usually \$850–\$1000 plus GST)



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Any questions?

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