



Advice from Alan

Employment agreement mistakes

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Employment agreements are the basis of any relationship between employer and employee.

one-off project, or absences like sickness or parental care leave (maternity leave), not to provide 'disposable' workers when there is ongoing work on a succession of projects.

From my experience, the seven most common mistakes employers make are:

1. Failing to have an employment agreement. A written employment agreement is compulsory for every employment relationship, including casual.
2. Failing to sign the agreement before the employee commences work. If an employee begins working before an agreement is signed, they automatically become a permanent employee, fixed terms do not apply, and 90-day trial periods do not apply.
3. Failing to keep copies of agreements. Employers are obliged to keep a copy of every signed employment agreement and every draft agreement given to an employee to consider.
4. Failing to sign the correct type of agreement. Is the employee permanent (full time or part time), fixed term, or casual? Treating someone as casual when they have regular hours, or on a fixed term when there is no good reason for a fixed term, is unlawful. True fixed terms are for covering a

5. Are they an employee or a contractor?

There are many steps to deciding if a worker is really a contractor or an employee in disguise. What was the intention of both parties? Are they integrated into the business or are they truly running their own business? Can they work for others? Do they control their own hours etc?

6. Failing to consult before making changes. Employment agreements cannot be unilaterally altered as employee consent is needed after consultation.

7. Failing to have the necessary clauses.

You cannot rely on a clause that is not in an agreement, and you cannot try to impose one afterwards. There are also lots of clauses that are mandatory in employment agreements. Some have a particular required wording and will not be valid if that wording is not used.

The importance of having well-written employment agreements, and a reliable process for signing them and retaining copies, cannot be overstated.