

BANKS

GROUP

The Right Approach to Employment Contracts



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The Right Approach to Employment Contracts

Welcome to the Right Approach to Employment Contracts. This guide has been designed to help you formulate written employment contracts for your staff.

Employment contracts are generally a good idea for both employer and employee. An employment contract is a written agreement which spells out the conditions of employment including wages, hours and type of work.

Expenses, benefits and future considerations can be set out in writing so it is clear to both employer and employee from the start.

Employment contracts should incorporate (but not limited to) the following:

- Employee's Duties
- Job Performance
- Duration of Employment
- Compensation and Reimbursement
- Employee's Loyalty to Employer's Interests
- Nondisclosure of Business Information
- Confidentiality and Non-compete
- Conflicting Employment or products
- Intellectual Property Rights
- Solicitation of Employees
- Return of Company Material & Documents
- Conviction of a Criminal Offence by Employee
- Disability of Employee
- Options and Reasons to terminate Employment

Employment contract process

Purpose

The purpose of employment contracts is to provide guidelines and procedures for Employers and Employees. A contract of employment is an agreement entered into by an employer and an employee under which they have certain mutual obligations.

The person responsible for this process is:	Director /Manager responsible for Human Resources duties
This process is necessary:	When a new employee joins the firm Existing employee's duties change
Other relevant documents	§ Job Descriptions § Human Resource Templates

Preparing and presenting a contract

	The contract should be prepared in plain English so that an employee is capable of understanding its contents.
	An employer must check the provisions of any applicable awards and collective agreements. The employment contract must provide the minimum terms.
	The contract should be prepared and provided to the employee before the employment commences. The contract must be finalised before commencement. If this does not occur, the agreement may be unenforceable.
	The employer should not rely upon pro forma agreements but should adjust any agreement to ensure it is consistent with the level and status of the employee.
	The employee should be provided with sufficient time to review the contract and if necessary obtain independent legal advice.
	In order to avoid any misunderstandings and subsequent disputes, the employer should discuss "difficult issues" with the employee. For example, if the agreement contains restrictive covenants, these should be explained to the employee and the employee should be provided with the opportunity to negotiate these terms.
	The employer must not misrepresent the terms of the Contract to the employee. The Employer should properly explain to the Employee any post employment restrictions or any other important and unusual obligations under the agreement.

	<p>If there is a Human Resources Policy in place, this Policy should be provided to the Employee prior to commencement of employment and the Employee should sign an acknowledgement that he/she has read and agrees to comply with the policy.</p> <p>It is important that such policies are enforced consistently otherwise an employee may be able to claim unfairness.</p>
	<p>Employers should review their contracts regularly to ensure that they are up to date, particularly in circumstances where the employee is promoted or other terms and conditions change.</p>

Draft Employment Contracts

Attached are 2 versions that can be used.

VERSION 1

Version 1 is a very thorough document for your more professional senior staff who have regular client contact. This contract would be used to ensure that your team members do not take your clients if/when they leave your employ.

VERSION 2

This simple to use employment contract is ideal for employees who do not require the need for a detailed contract i.e. Receptionists, Junior Staff.

VERSION 1 –

Professional Employment Contract (includes Restrictive Covenant after Termination of Agreement)

TERMS and CONDITIONS

(May insert logo)

NAME: XXXXXX
ADDRESS: XXXXXX
JOB TITLE: XXXXXX
RESPONSIBLE TO: XXXXXX

Commencement Date:

XXXXX

Employer

You will be an employee of (Professional Services Firm).

Location of Employment

To be based in the xxxxxxx.

Travel

You may be required to travel in the execution of your responsibilities, travel and accommodation arrangements will be in accordance with the company's policy as determined from time to time.

Hours of Work

Your usual hours of work will be Monday to Friday, 8.30am to 5.00pm (37.5 hours), however you may be required to work in excess of these hours to fulfil your responsibilities, payment for which has been included in your salary.

Job Specification

Refer Attachment 1

Remuneration / Salary Package

Your salary will be \$ xxxxxx gross per annum, inclusive of annual leave loading and superannuation guarantee.

Pay periods are weekly, ending on Fridays. Net pays are deposited into your nominated bank account (to be provided by you).

Probation

You will commence your employment on a 3-month probation period as from the Commencement Date. The Company will review your employment during this period and the Company will determine your continued employment after the probation period, at that date. During the probation period your employment may be terminated at the instigation of either party for any reason.

Bonus

(If company has a bonus system, requirements can be stipulated here).

Performance Appraisal

You will be required to attend regular performance appraisals and answer all questions honestly and fully. Performance standards will be set annually and reviewed continually.

Termination

The employee and the employer agree that if either of them wishes to terminate this agreement then they shall give notice in writing to the other and:

- i) during the probation period, the period of notice shall be one week or more;
- ii) during the six months after the expiry of the probation period, the period of notice shall be two weeks or more;
- iii) thereafter, the period of notice shall be one month or more.

Restrictive Covenant after Termination of Employment

The clients you will deal with in your role belong to [company name]. During your employment, you represent [company name]. At no time, neither during employment nor on or after termination will you purposely approach, contact, encourage or coerce a client of [company name] to leave [company name].

We take our responsibilities to our clients very seriously and will take appropriate action, where necessary, to protect our business.

In the event that employment is terminated, without prior written consent of the employer from the date of termination, the employee shall not:-

- (i) solicit or entice away from the employer any Director, manager or servant of the employer whether or not such person would commit any breach of his or her contract of employment by reason of leaving the service of the employer;
- (ii) solicit or entice instructions from any person, firm or corporation, who or which is, at the date of termination, or was during the twelve months prior to the date of termination, a client of the employer;
- (iii) accept instructions from any person, firm or corporation, who or which is at the date of termination, or was during the twelve months prior to the date of termination, a client of the employer.

Grounds for Summary Dismissal

The Company may choose to, by notice in writing, terminate summarily the engagement of you as an employee if you:

- a) Engage in any act or omission constituting misconduct in respect of your duties;
- b) In the reasonable opinion of the Company, fail to perform in a satisfactory manner any duty to be performed under this agreement;
- c) Commit a serious or persistent breach of any of the provisions of this agreement;
- d) Are guilty of any misconduct, which in the reasonable opinion of the Company may tend to injure the reputation or the business of the Company.
- e) Refuse or neglect to comply with any lawful or reasonable order given to you by the Company;
- f) Are convicted of any serious criminal offence;
- g) In the reasonable opinion of the Company, you are found to be intoxicated or under the influence of non-prescribed drugs during the working hours of your employment;
- h) Are caught in any act of theft of money or property of the Company or the Company's other employees;
- i) Become bankrupt or make any arrangement or composition with creditors;
- j) Assault a member of the public, staff or management or abandon your Employment;
- k) Being absent from work for a continuous period of more than 3 days on which you were due to work, without the consent of the Company and / or without notification to the Company (provided that you are not able to establish to the satisfaction of the Company that the absence was for a reasonable cause).
- l) Become of unsound mind.

Where your performance, capacity or conduct would otherwise warrant termination, the company may with your agreement place you in another position within the company that may have lesser responsibilities and remuneration.

When adverse economic conditions are experienced by the Company in its operation, and to avoid termination of your employment, the Company may with your agreement, place you in a position within the company that may have lesser responsibilities and remuneration until in the opinion of the directors that the financial position of the Company is sufficient to restore you to your former position.

Term of Employment

Subject to the paragraphs relating to summary dismissal, your employment with the Company shall continue until the expiration of the minimum period of notice required as outlined in the following paragraphs.

Mobile Phone and Other Work Related Expenses

Work related mobile phone calls and other expenses incurred as part of your role, will be reimbursed on presentation of claim form.

Confidential Information

The employee will not at any time either during the continuance of his employment hereunder or after the termination of employment for any reason divulge any of the affairs or secrets of the employer or the clients of the employer to any other company, person or persons without the previous consent in writing of the employer, or the client, as the case may be, nor use or attempt to use any information relating to the employer or to clients of the employer, not use or attempt to use any information which may acquire in the course of employment in any manner which may injure or cause loss or be calculated to injure or cause loss to the employer or any client of the employer.

Intellectual Property

The employer and the employee agree that the employer is the owner of all intellectual property rights in any work or other thing created by the employee during the course of the employee's employment by the employer, whether or not such work was undertaken by the employee as part of the employee's duties.

In the event that the employee is the author of such a work, the employee hereby waives entirely the employee's moral rights in respect of such a work.

Annual Leave

Refer to attachment 2

Sickness / Accident

Under the Act all eligible employees are entitled to be paid: for each period of employment of less than a year - at least one ordinary working day sick leave for each completed 6 weeks of employment; or at least eight ordinary working days (or the equivalent number of working hours) sick leave for each completed year of employment.

An employee must promptly notify their employer of the illness or incapacity and of the estimated duration of the absence. Where the absence extends more than two days, the employee is required to give the employer a doctor's certificate outlining the nature of the illness and the approximate period of absence.

Failure to comply with these conditions can jeopardise an employee's entitlement to sick leave

Study Leave

The employee shall, from the date of commencement be entitled to study and exam leave in accordance with the employer's current policy on Study and Exam leave. Refer to Attachment 3 for the employer's current policy on study and exam leave.

Superannuation Scheme

The Company will make payments in respect of Superannuation in accordance with legal requirements.

Long Service Leave

In accordance with the relevant State act.

Further Covenants

You must faithfully and diligently perform your duties and use your best endeavors to promote the best interests of the Company and refrain from doing any act or thing, which will or may adversely affect the present or future interests of the Company. You must obey all reasonable and lawful directions of the Company or its Management and you must observe and comply with the rules expressed and implied from time to time by the Company to ensure the effective and safe operation of the business.

Restriction on Other Business Activity

You will devote the whole of your time and attention during business hours to your duties as an employee of the Company. You will not at any time, whilst in the employment of the Company, take on other employment or engage in any other business activity which may reasonably be considered likely to be in competition or adverse to the usual business activities of the Company, whether for gain or not.

Dress Code

Refer Attachment 4

E-mail and Internet Policy

Refer Attachment 5

Information is Accurate

You hereby agree that all information supplied to the Company in respect to your employment is accurate in all respects and that you have not misled or deceived the Company in any way in relation to the information supplied. Further you have not omitted or failed to disclose any information from the Company, which it may reasonably consider to be relevant to your employment with the Company.

(Director)

I have read and accept this offer of employment on the Terms and Conditions specified in this letter.

Date signed: -----

Signed by: -----

Attachment 1 - Job Specification

Position: [Position]

Reporting To: [Names]

Purpose: [Example: To ensure that clients receive prompt, courteous and friendly service and that accounting work is completed accurately and timely, and in accordance with clients' best interests at all times.]

Responsibilities: [Example: Receive financial records and information from clients and process to produce financial statements and income tax returns, including liaison with client when necessary.]

[Auditing of client records, assisting clients with the preparation of Business and/or Instalment Activity Statements and advising on GST matters and general tax and matters etc.]

Authority: [Example: Refer queries (initially) and unusual or difficult accounting issues to a Director. Liaise with clients at a Director's discretion.]

Accountabilities: [Example: Ensure financial statements, tax returns and other documents prepared or advice given are accurate in all respects and are prepared within the constraints of current and proposed legislation.]

[Ensure prompt, courteous and friendly service to clients.]

[Extend these same courtesies to fellow staff members and external organisations.]

[Ensure compliance with procedures within the firm.]

Attachment 2 – Annual Leave

Purpose

The purpose of this policy is to outline appropriate procedures and timelines for annual leave.

Overview & Procedure

- Annual leave must be applied for on the appropriate leave application form.
- Some periods of the year are more suitable than others due to seasonal fluctuations including lodgement deadlines, tax planning, and exams for staff who are studying.
- Not everyone can take holidays at the same time, except if the office closes for Christmas.
- Recreation leave applications will be allocated on a “first come first served” basis and the Directors will reply to leave applications within two weeks of receipt of same.

Month		Suitability for Annual Leave
JULY	*	Not suitable for holidays
AUGUST		Suitable
SEPTEMBER		Suitable
OCTOBER	*	Not suitable for holidays
NOVEMBER	*	Not suitable for holidays
DECEMBER		Suitable
JANUARY	*	Not suitable for holidays
FEBRUARY	*	Not suitable for holidays
MARCH		Suitable
APRIL	*	Not suitable for holidays
MAY		Suitable
JUNE		Suitable
<p>* Exceptions are made for Exam and Study Leave. Recreation Leave is at the discretion of the Directors with consideration given to the employee's workload, and the workload of the rest of the office. A maximum of two consecutive work days is generally considered reasonable.</p>		

Attachment 3 – Study & Exam Leave

Under Graduates

Those studying with educational institutions with a view to acquiring graduate qualifications in accounting. We would anticipate that students would sit for two subjects per semester (a total of four subjects for the year).

Study Leave

One day with pay per subject will be allowed per semester.

Post Graduates

Those studying to obtain their professional year or some other post graduate qualifications in accounting or closely related field subject to Director approval. The cost of application and enrolment fees will be reimbursed by the firm upon successful completion of the unit of study.

Study Leave

One day with pay per subject or module will be allowed.

Exam Leave for both Under Graduates and post Graduates

If the examination is held in the morning, paid exam leave will be allowed until 1pm on the exam day. If the exam is in the afternoon, paid leave will be allowed for the full day. For exams which require excessive travel, paid leave for the full day will be allowed.

Additional leave by way of Annual Leave or Special Leave without pay may be considered depending on current work priorities.

Conclusion

We believe that the policy outlined above is a significant incentive to staff in undertaking studies and obtaining qualifications which will further their professional careers.

We would expect that staff would make their contribution by studying conscientiously and thereby achieving a high success rate. Future leave will be reviewed upon failure to pass a subject or a consistent failure in achieving individual productivity targets.

Attachment 4 – Dress Code

Appropriate Dress and Grooming Standards (Company)

Description	<p><u>Male</u></p> <ol style="list-style-type: none"> 1. Business standard of attire, which is compatible with a professional office and environment. 2. Your overall appearance and attire should enhance the relationship with clients and fellow team members, communicating a feeling of trust, respect and reliability. <p><u>Specifics</u></p> <ul style="list-style-type: none"> • Long sleeve business shirt in tasteful colours • Tasteful tie • Socks to blend in with colour of suit • Two piece business suit in dark colours – must wear a belt • Polished dark shoes • Well groomed hair and facial hair • Ensure excellent personal hygiene <p><u>Prohibited</u></p> <ul style="list-style-type: none"> • Earrings and facial piercing • Untidy and excessive facial hair • Casual wear i.e. jeans, trainers etc • Unnatural hair colours • Head gear • Exposed tattoos <p><u>Female</u></p> <ol style="list-style-type: none"> 1. Business standard of attire which is compatible with a professional office and environment 2. Your overall appearance and attire should enhance the relationship with clients and fellow team members, communicating a feeling of trust, respect and reliability. <p><u>Specifics</u></p> <ul style="list-style-type: none"> • Blouses and tops in tasteful colours – minimum cleavage exposure • Skirts or dresses – suitable length above the knee • Tailored trouser suits – belt must be worn if applicable • Stockings in excellent condition (if stockings are a requirement) • Polished dress shoes • Well groomed hair • Light make-up <p><u>Prohibited</u></p> <ul style="list-style-type: none"> • Tee shirts or other casual wear i.e. jeans, sandals etc
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	<ul style="list-style-type: none">• Nose rings, tongue rings, other facial piercing• Micro mini skirts• Unnatural hair colours• Head gear and bandanas• Exposed tattoos• Excessive use of make up
	<p><u>Mufti</u></p> <p>Mufti or free dress day is fun and something that all staff members look forward to.</p> <p><i>Certain rules however should still be set. Casual dress should be smart casual. No runners, tracksuits, unkept or ironed clothes.</i></p> <p>Team members should not wear mufti if visiting or expecting clients.</p>

Attachment 5 - E-mail and Internet Services Policy

In the context of this policy, the term “E-mail” refers to the use of (company) electronic messaging services to send or receive electronic messages via the practice network or via connections to the Internet. E-mail includes both the message and any enclosures or attachments to a message.

The term “Internet services” refers to the range of services for information exchange that are supported on the Internet. Commonly accessed services include, but are not limited to, Web browsing and Newsgroups.

E-mail services are available to all the (company) team for the timely transmission of business information both within and external to the group (company) goal in providing this service is to facilitate resource sharing, innovation and communication.

Internet services are available to the (company) team requiring access to those services to better perform their business activities. Access to some Internet services is restricted or barred on security grounds.

(Company) will make all reasonable effort to protect staff from misuse or abuse resulting from their appropriate use of these services. Each user must avoid inappropriate or illegal interaction when using E-mail and Internet services.

Statement of Policy of Software Use

Transmitting or accessing material, which is subject to copyright, threatening or obscene material, or trade secrets, is prohibited. This includes, but is not limited to, the display or transmission of sexually explicit images, messages, and cartoons, as well as the use of any ethnic slurs or communication that may be construed as harassment or disparagement of others. Rules of ethical conduct and non-discriminatory behavior also apply to Internet usage. Use of the Internet to send offensive or improper messages (such as racial or sexual slurs), or to leak confidential information to outsiders or for personal, political or religious causes is prohibited. Because all possible actions cannot be contemplated, the list is necessarily incomplete. Thus, disciplinary action may occur after other actions when the circumstance warrants.

(Company) reserves the right to access business records, including E-mail messages, created by its Directors and staff. Searches of E-mail may be conducted without advance notice in order to ensure that the purpose of E-mail is to facilitate transmittal of business related information, is being used exclusively for such purpose. To protect other users, access to the Internet may be withdrawn from staff that breach (Company) E-mail and Internet Services Policy.

- The Internet is not to be used in association with any for profit outside business activity.
- It is prohibited to download any share ware or unauthorized software.
- Inappropriate use of E-mail or Internet services may constitute a violation of local, state and federal laws and will result in disciplinary action and/or prosecution.

Responsibilities

(Company) team is required to comply with the policy, as outlined below:

- When using E-mail and Internet services, the team may use assigned accounts only to support business and research needs to meet (Company) goals and objectives. The team is personally responsible for observing this provision at all times when using the E-mail and Internet services.
- The team must not use E-mail or Internet services for unauthorized disclosure of (Company) data.
- When using another organisation's network or computing resources, the team will comply with that network's rules.

Summary of Policy

(Company) policies regarding software use are as follows:

- The (Company) team must be thoroughly familiar with the following Statement of Policy on Software Use and on commencement of employment with (company), and annually thereafter complete the declaration of compliance.
- The (company) team must abide by the terms of all licensing agreements to which we are a party. Software should not be used if it is suspected or known to be in violation of the licensing agreement.
- Software used on machines at home should be separately licensed unless covered by (company) corporate agreement.
- (company) proprietary software and related documentation should not be provided to third parties prior to the execution of an approved licensing agreement.
- The (company) team must be aware of the risks of computer viruses and be vigilant to protect (company) against the threat of virus infection.

Breach of this policy

Any staff member who abuses the privilege of (company) facilitated access to E-mail or the Internet will be subject to disciplinary action up to and including termination of employment. If necessary, (company) also reserves the right to advise appropriate legal authorities of any violations of the law.

I confirm that I have read and understood (company)E-mail and Internet Services Policy and I agree to act within the established guidelines at all times. I further understand that a violation of this policy may be grounds for disciplinary action, up to and including termination of employment.

Name:.....

Signature:

Title:

Date:

THIS AGREEMENT is made on the [date] of [year].

Version 2 – Short Form employment contract

[date]

[name]

[address]

Dear [Name],

The purpose of this letter is to confirm your employment with us commencing on [Day & Date] as a [Position Title] for [Your Company Name].

Probation

Employment will be subject to an initial probationary period of 3 months with a base package of [amount in \$] per annum, including 9% superannuation.

Following this 3-month probationary period, we will set a review date for your salary based on your performance. Salaries are paid [weekly, fortnightly, monthly] and your first payment is due [Day & Date] and thereafter on the [date/day of each week/fortnight/year].

Salaries are paid *weekly/fortnightly/monthly* direct to your bank account.

Your role

Refer to attachment 1

Salary reviews

It is our company's policy to make salary reviews at the discretion of the Directors. This will be at least annually. In terms of profit share arrangements a qualifying period is required of at least 12 months full time employment. [You can expand on profit share/ or delete this section if you want to].

Sick leave

Under the Act all eligible employees are entitled to be paid for each period of employment of less than a year - at least one ordinary working day sick leave for each completed 6 weeks of employment; or at least eight ordinary working days (or the equivalent number of working hours) sick leave for each completed year of employment.

An employee must promptly notify their employer of the illness or incapacity and of the estimated duration of the absence. Where the absence extends more than two days, the employee is required to give the employer a doctor's certificate outlining the nature of the illness and the approximate period of absence.

Failure to comply with these conditions can jeopardise an employee's entitlement to sick leave

Annual leave

You will be entitled to four weeks paid annual leave each year. Please note that the office will be closed over the Christmas period and this will be deducted from your annual leave entitlement. A maximum of eight weeks annual leave may be accrued. Any leave over this must be taken as soon as possible or payment will be made in lieu.

Study or other leave

Study and examination leave is available to those staff studying toward their accounting degree or PY. One and a half days per subject per semester is available.

Other approved leave such as jury duty is available.

Termination of employment

Should you wish to resign from the Company, you must provide written notice of at least 2 weeks in advance of termination.

The employer shall not terminate this contract without justifiable reasons. However the employer may terminate this agreement at any time without prior notice if the employee shall:-

- (a) become bankrupt or make any arrangement or composition with creditors;
- (b) become of unsound mind;
- (c) be convicted of any criminal offence other than an offence which in the reasonable opinion of the employer does not adversely affect position as an employee of the employer;
- (d) become permanently incapacitated by reason of accident or illness and, for the purpose of this clause, incapacity in excess of ninety (90) days in any period of twelve (12) months, shall be deemed to be permanent incapacity.

Office hours

Office hours are Monday to Friday from 9am to 5.30pm with one hour for lunch. Annual leave entitlement is 4 weeks per annum plus statutory holidays. You may be required to work weekends and in this regard we have a system of recording days off in lieu for such work.

Overtime will be required from time to time.

All hours of work must be completed on a timesheet and you will be required to hand in your completed timesheet at the end of each day.

Corporate structure

Our Corporate Structure, Range of Services, Mission Statement, Performance Standards and Dress Codes are attached. (Company to insert own policies)

Policy and procedures manuals

Our business has detailed policy and procedures manuals covering all aspects of our business. You are required to comply with these manuals at all times. On commencing employment, you will be required to familiarise yourself with the content of these manuals.

The manuals are the confidential property of our business.

Anti competition provisions

The clients you will deal with in your role belong to [company name]. During your employment, you represent [company name]. At no time, neither during employment nor on or after termination will you purposely approach, contact, encourage or coerce a client of [company name] to leave [company name].

We take our responsibilities to our clients very seriously and will take appropriate action, where necessary, to protect our business.

By signing this letter of offer, you agree to be bound by these provisions.

We know that 200x/0x will be another year of exciting growth and look forward to you joining us.

Kind Regards,

[NAME]
Chief Executive Officer

Attachment 1 - Job Specification

Position: [Position]

Reporting To: [Names]

Purpose: [Example: To ensure that clients receive prompt, courteous and friendly service and that accounting work is completed accurately and timely, and in accordance with clients' best interests at all times.]

Responsibilities: [Example: Receive financial records and information from clients and process to produce financial statements and income tax returns, including liaison with client when necessary.]

[Auditing of client records, assisting clients with the preparation of Business and/or Instalment Activity Statements and advising on GST matters and general tax and matters etc.]

Authority: [Example: Refer queries (initially) and unusual or difficult accounting issues to a Director. Liaise with clients at a Director's discretion.]

Accountabilities: [Example: Ensure financial statements, tax returns and other documents prepared or advice given are accurate in all respects and are prepared within the constraints of current and proposed legislation.]

[Ensure prompt, courteous and friendly service to clients.]

[Extend these same courtesies to fellow staff members and external organisations.]

[Ensure compliance with procedures within the firm.]