



# HOW TO HIRE MY FIRST EMPLOYEE IN AUSTRALIA

## MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

To hire a first employee, an entity needs to:

- Harmonise employment contracts from head office to Australian law. If no contract exists then have a contract prepared by a suitably qualified legal representative.
- Ascertain the employee's (tax) residency status.
- Determine appropriate visa category.
- Ascertain whether there are specific registered agreements, awards or legislation applicable to the particular occupation or trade of the employee.
- The employer must select a SuperStream provider.
- The employer must collect a Tax File Number (TFN) and superannuation details.
- The employer should consider requesting an employee to provide National Police Certificate, particularly if the employee is to be employed in a position of trust.
- Conduct thorough check of employee's previous employment references.
- Determine if a bilateral social security agreement exists with Australia and head office jurisdiction.
- Ensure there is private health insurance coverage.

There are three types of employees:

1. Full-time
2. Part-time
3. Casual

Part-time employees work a set number of hours and/ or days per week. Casual employees are employed on an at-call basis. If they continually work for more than 19 hours per week, they may be deemed to be a part-time employee and therefore eligible for entitlements.

## DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

The employment contract should contain the following:

- Duties statement outlining the duties that will be, but not limited to, those outlined in the job description and will include all other reasonable tasks as requested.
- Probationary Period statement that stipulates the appointment may be subject to a probationary period of up to six (6) months from the commencement date.
- Disclosure of Pre-Existing Injury or Disease for WorkCover Claim which may affect an employee's right to claim compensation for any recurrence or aggravation of that injury or disease under state or territory legislation. For example, in the state of Victoria the relevant legislation is the Accident Compensation Act 1985.
- Hours of Work including for example, office opening hours over a week's period.
- Principal and/or and non-principal Location of Work.
- Continuity statement which provides for reasonable variations for the position.
- Remuneration statement which must specify the basis of the salary package. In some specific registered agreements, awards or legislation, there may be a 17.5% leave loading applicable to annual leave entitlements. This entitlement, if applicable, must be disclosed in the overall salary calculations within the contract otherwise an entity may be held liable.



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- Performance and Salary Review statement indicates when reviews would be expected to occur.
- Superannuation contributions by the employer are currently set at 9.5% of ordinary remuneration. The employer must nominate a default superannuation fund but the employee has the right by law to nominate their own superannuation fund. Check to see if bilateral social security agreements with host country will provide relief.
- Leave Entitlements must include:
  - Annual Leave. It is a statutory requirement to pay four weeks annual leave. In some registered agreements, awards or legislation, this entitlement may exceed four weeks. For part-time employees, this entitlement is calculated on a pro-rata basis.
  - Personal Leave. Employees are entitled to two weeks (10 business days) leave for illness or injury, or to provide care or support to a member in an employee's immediate family or household.
  - Compassionate Leave. Employees are entitled to a total of two days paid leave on the death or life-threatening illness of or injury to a member of the employee's household or immediate family.
  - Parental Leave. Despite Australia's equal employment opportunity and anti-discrimination legislation, there is separate legislation relating to maternity/paternity leave.
  - Long Service Leave. Employees are eligible for 13 weeks leave after 15 years of tenure. This entitlement can be taken after seven years of service on a pro-rata basis.
  - Termination. There are strict rules and regulations on the unfair dismissal of employees. The contract must clearly state the grounds of the basis of the dismissal and notice periods required.

Other clauses to protect the entity and its entitlements may be required.

Overriding Clause. The employment contract cannot override the legislative requirements under Fair Work Act 2009 and the ten minimum entitlements of National Employment Standards (set out in Part 2-2 of the Fair Work Act 2009).

The 10 minimum entitlements of the NES are:

- Maximum weekly hours
- Requests for flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal careers leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Fair Work Information Statement

### CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

We limit our response to contractors and sub-contractors. If an entity is doing business with another entity that regularly trades with a number of other entities simultaneously, then there is no implied employee relationship.

Sub-contractors may be deemed to be an employee where they act in the same manner as an employee for example, working standard hours within a reporting structure.

For a sub-contractor to be bona fide, a specific assignment must be undertaken and under their own supervision. The sub-contractor must be registered with an Australian Business Register (ABN) number, must invoice the entity and in most cases, will be required to collect GST. Extreme care needs to be taken to ensure that your sub-contractors are not deemed to be employees under other legislation. If so, Superannuation, Payroll Tax and WorkCover responsibilities will apply.