



DYHRBERG DRAYTON
EMPLOYMENT LAW

From Go to Whoa:
Private Sector Employer Guidelines for
Hiring and Managing Staff

Contents

Introduction	2
Understanding the nature of the engagement.....	2
Hiring staff	2
Trial Period.....	4
Probation Period	4
Induction Process	4
Health & Safety	5
Managing new staff.....	5
Fairness and Good Faith	5
Changes during employment.....	5
Managing poor Performance.....	6
When Good Workers Go Bad – Misconduct	7
Serious Misconduct	7
Keeping Notes	9
Resolving problems	9
Golden Rules	9
Different types of worker engagements	10



Introduction

Being an employer is challenging. There are many legal obligations you take on when you decide to hire staff. It can feel like a major risk, and one that employers sometimes feel they can never get right. There are some basic steps all employers need to take to hire and manage staff properly.

As a manager/supervisor of staff, you are the direct contact between the company and the staff. It is important that you are clear in your instructions to staff, fair in your treatment of them and that you are watching and listening to staff interactions to prevent problems and deal with any issues.

This set of guidelines is designed for sole charge employers, or the direct day-to-day supervisor, team leader or manager of staff. All businesses are subject to the same legal requirements for hiring and managing staff, regardless of size or resources. Dismissal processes must be fair and reasonable in all of the circumstances.

Supervisors/team leaders are usually not authorised to make disciplinary decisions, and so must escalate issues to the employer or a manager. In larger organisations, managers may need to involve HR or a more senior manager before making decisions. Sometimes only senior managers or the chief executive have hiring and firing authority. Each organisation will have different rules, so make sure you know what your organisation's rules are, and follow them.

These guidelines are intended as general, practical guidance, consistent with the legal requirements for fair due process. If your business has performance and disciplinary policies and procedures, follow those, using this document to cross reference and double-check. If you don't have basic legal documents in place or they are out-of-date, it is worth the investment to put good documentation and processes in place.

Employment law is not static. Parliament makes changes to employee entitlements reasonably regularly. Further, the law evolves through decisions of the courts. Most legislative changes are well publicised and any enhanced entitlements will apply regardless of whether they are recorded in employment agreements. We publish articles regarding any changes or interesting developments on our [website](#) in order to keep our clients informed and these are publicly accessible.

Specific employment situations will require specific advice. If in doubt about any employment issue, seek advice from an HR practitioner, legal advisor, the Ministry of Business Innovation and Employment's (MBIE) Mediation Service or MBIE's free general advice line: 0800 20 90 20.

Understanding the nature of the engagement

Before hiring staff, it is important to understand the requirements of the role you are looking to fill as this will determine the nature of the engagement. An employer's obligations can be very different depending on the type of engagement and it is important to understand the specific legal requirements.

There are significant risks with getting it wrong. An employee engaged on invalid fixed term, or a casual employee whose work becomes regular, may be found to be a permanent employee. In this situation they may be owed additional entitlements and may challenge any dismissal made in reliance on the ending of the fixed term or any failure to provide ongoing work. The Employment Relations Authority (ERA) may also award penalties against the employer. Similarly, if an independent contractor is a contractor in name only, the organisation engaging the contractor may later be liable for extra costs such as unpaid PAYE and back paid employee entitlements such as sick leave and annual leave. The ERA or Inland Revenue may also award penalties.

A table setting out the general distinctions and requirements of each type of engagement is included at the end of these guidelines.

Hiring staff

It is essential to try to get the best employees available, as you need the best skills, reliable staff and high productivity. This means employers need to do 2 things:

- run a good recruitment process; and
- think about what good staff want and need so you can attract the best.

Performance issues, personal grievances and serious problems like theft and fraud often may have been avoided with solid recruitment practices. There are legal requirements and common-sense rules for advertising for new staff and appointing staff correctly:



- Advertise the job correctly – the type of work, hours or term if not permanent full-time.
- Only advertise for, ask about and appoint based on the lawful requirements for the position. The Human Rights Act prohibits discrimination because of:
 - Sex/gender including pregnancy
 - Age
 - Disability
 - Family or marital status
 - Sexual orientation
 - Political belief
 - Religious or ethical belief
 - Employment status
 - Race, colour, nationality
- Check qualifications for the job, and if in doubt about whether they are real, follow up.
- Interview carefully – prepare questions focusing on the genuine requirements for the job, the person’s past work history and how you think they will work as part of a team.
- Check references from a recent past employer / manager (the would-be employee must consent to the reference check as this will involve disclosure of their personal information). Failure to check references is often disastrous.
- The person must be legally able to work in New Zealand (and able to provide proof if required).

There are exceptions for some positions (e.g. it is lawful to consider a candidate’s sex, race, ethnic or national origins, or sexual orientation when recruiting a counsellor who will work with highly personal matters such as sexual matters and the prevention of violence), and fair ways to seek relevant information, depending on the job.

An employer can make vaccination against COVID-19 a condition of employment for new employees if this is reasonably required for health and safety reasons. However, prospective employees may have legitimate reasons for not being vaccinated and these could include various prohibited grounds of discrimination. Refusing to employ someone who is unvaccinated due to a prohibited ground of discrimination could be unlawful (although there may be exceptions on health and safety grounds). Broad policies (e.g. ‘no jab, no job’) have the potential for direct or indirect discrimination and it is better to assess each situation on its own merits. If, but for being unvaccinated, a prospective employee would have progressed in the application process, then before disqualifying the prospective employee, the employer should seek to understand:

- the reasons the individual is unvaccinated; and
- whether the role really requires vaccination or if other health and safety measures would suffice.

- Comply with the Clean Slate Act when asking about any criminal convictions.
- Offer a written employment agreement that complies with all legal requirements. If using a trial period, or it is fixed term, casual or part-time employment, or independent contracting (not employment), make sure the written agreement records that and get advice about the legal requirements.
- If there is a collective employment agreement in the workplace, follow the correct procedure: the collective terms apply for the first 30 days of employment and the employee’s contact details must be given to the union (unless the employee opts out). If the employee belongs to or joins the union, they will be employed on the collective agreement.
- People offered employment have the right to obtain independent advice before signing an agreement, and if they request changes, these must be considered and responded to.
- Make sure no employee starts without a signed employment agreement, and that you obtain copies of any essential documents (trade certificates, licences, visa etc). The signed agreement should be kept on the employee’s file.
- Make sure you are paying at least the minimum wage (currently \$21.20 per hour for adult employees), and keep accurate records of hours worked, annual leave accrued and taken, pay etc. If employees are low paid and



working extra hours, check they are receiving at least the minimum wage for all hours worked, per fortnight. If not, you need to pay a top up.

Trial Period

Under the Employment Relations Act 2000, an employment agreement may contain a provision for a trial period of up to 90 days if the employer has fewer than 20 employees, and the employee is new (i.e. they have never been employed by the organisation before).

To be valid, a trial period MUST be in writing and signed by the employee before ANY work is performed.

During the trial period the employer can dismiss the employee, and the employee cannot bring a personal grievance for unjustified dismissal. The dismissal still has to be carried out in good faith, and the employee cannot be dismissed for a discriminatory reason such as their sex or race.

Dismissal under the trial period is on notice, which must be given before the 90th day of the trial.

If trial periods are not used correctly, documented properly, or acted on (i.e. at the end of the period, nothing is formalised, and employment runs on) the trial period will be invalid. The employee can successfully claim to be a permanent employee, and any dismissal based on the trial period will be unjustified. Employers should seek advice about using trial periods if unsure.

Probation Period

Probation periods allow an employer to assess an employee's skills and ability to do a role before confirming them in the position permanently. There is a general right to put a probation period in an employment agreement. This can be used for any employee at the beginning of their employment. A probation period must be recorded in writing in the agreement, and a fair process must be followed.

A probation period can be of any length (often three or six months). If a new employee is not up to standard about halfway through the probation period, the employer needs to talk to them about it, and remind them that if they do not reach a reasonable standard within the probation period, they will not be confirmed in employment. Make

sure that they understand that they are getting a fair opportunity to come up to scratch. Write a brief note of this conversation and date it.

Continue to help, monitor and encourage the employee through the rest of the probation period. Be clear with them, and make sure they understand any areas where they need to improve.

At the end of the probation period, meet with the employee to discuss their performance over the period and whether they have improved. If they are still not quite up to scratch, but have made a significant improvement, the manager may decide to extend the probation period. Performance monitoring should be continued for the extended probation period.

If the employee has not significantly improved or come up to standard, dismissal on notice can be considered. This must be discussed with the employee and a decision should only be made after considering any feedback the employee gives. An employee has the right to raise a personal grievance for unjustified dismissal if they believe they have been fired unfairly.

Induction Process

Follow a standard induction checklist, covering the position, expectations, employment terms, health & safety procedures etc. Be thorough and clear – use simple language and short sentences.

Repeat important points and summarise at the end. Make sure that you go through any written material including the employment agreement and any house rules, policy, code of conduct or handbook. Avoid just handing over written material, as some workers will not be able to read it or just will not bother.

Make sure that you explain the standard of work and behaviour you expect. Use the job description and set annual objectives. The standard must be reasonably achievable by the particular employee, with their training and experience. If they are not highly skilled, work out how you will develop their skills.



Health & Safety

Every employer and senior manager has an obligation to take all reasonably practicable steps to prevent harm to anyone in the workplace. This means you need to develop a culture where the safe way is the only way “we do things around here”. Supervisors must make sure people follow correct processes and use their safety equipment. People will tend to do things the easy way, rather than the correct way or the safe way, so training is not enough: good supervision and monitoring is required.

Staff are much more likely to do what you show them, and they see other staff doing, than what you tell them or what the rules say. Most people learn by doing things rather than watching or listening. People often don't really listen to what they are being told, especially the word “don't”.

Have an experienced worker who fully understands the processes and safety rules show new staff the correct way to do things. This needs to be repeated and new staff watched and guided until they really know what they are doing.

Check on new staff from time to time, less frequently after the first few days, but make sure that you still check on them from time to time.

When you are explaining what staff need to do, particularly the rules of the company, explain the reasons why things have to be done that way. Explain to workers what happens if they break the rules: what could happen to them, to their co-workers, to the company, the customer or the person using the company's services. If people understand the reasons for rules and possible consequences of breaking them, they are more likely to follow them.

Managing new staff

If after a couple of weeks or months a new worker is below the standard you would expect them to be at, you should have a conversation with them about how they are going and what they need to improve. Remind them that you as their manager/supervisor are there to help. Show them again how things are supposed to be done. Ask questions to see if there is any reason why they don't understand what is needed or why they cannot do it.

Fairness and Good Faith

Always give good, clear instructions to staff and check for their understanding of your instructions. You will not be able to tell a worker off later if they can say they were never told how to do something properly.

Treat all people the same, and treat people as you would like to be treated. Make sure you are not treating people differently because they are your mates, or because of their race, culture or sex. Be respectful of other cultures, and avoid sexual or racial comments or actions and ensure all staff do the same. If employers or their staff sexually or racially harass other staff or customers, there can be serious legal consequences. Ensure staff know what is expected of them.

Make sure that any workers with disabilities (e.g. hearing impairment) are safe at work and that you find good ways to communicate with them.

Be patient but be firm: take steps to raise the issue appropriately the first time an employee breaks the rules. Explain what they have done wrong and the right way to do it.

Always set a good example and follow the rules yourself: you will be a role model of the way that you want staff to act. Pull people up for breaking the rules even if they are good workers or your mates.

If you find yourself getting worked up, or the employee starts yelling or swearing, DO NOT shout or swear, or even worse, push or hit. It is far better to end the conversation, go away and calm down, and have a sit-down discussion later that day or even the next day. Remember, you are supposed to be setting a good example.

Changes during employment

From time to time, things at work change: new machinery reduces the need for staff or changes the nature of jobs; you sell part or all of the business. Whenever there is any major change happening, good faith requires the employer to talk with the employee (and any union representing workers) about the impact this may have on them. This is part of consultation: discuss any proposed change and get feedback from employees before making a change. Act fairly and reasonably when making any change which will affect people – how would you want to be treated if it were you? If these changes are major you may want to get advice before



proceeding, as it is easy to get it wrong if you don't know what you are doing.

Employment agreements cannot just be changed by one party: if you think changes to an employment agreement are needed, or you want to change a job significantly, you must consult with the employee and get their written agreement to the change. If there is any union representing employees, you must consult with the union(s) too.

Employment policies can usually be changed by the employer. However, consulting with employees on any significant policy changes is good practice and allowing employees to have input increases buy-in. Where a policy may have a detrimental impact on an employee's ongoing employment, the employer must consult with employees (for example, consultation is required in relation to drug testing policies).

There are specific legal obligations on both employer and employee in areas such as parental leave. Information for both employer and employee is freely available, so you will be expected to get it right.

If restructuring/redundancy is a possibility you have to consult with the people affected before making that decision. Full discussion with all staff and any unions involved in the workplace must take place. Any staff who may be directly affected must be consulted with and you have to consider their feedback, and any alternatives, before a decision is reached. If a decision is made to disestablish a position, notice must be given and further engagement must occur regarding whether the employee can (and agrees to) perform any other vacant roles within the company. An employee whose role is disestablished during a restructuring process must be offered any vacant roles which they have the skills to perform (or would have the skills to perform with reasonable training) before the role is advertised for internal or external recruitment. If more than one employee is eligible for redeployment to a single position, a fair internal contestable process must be followed. Where there are no suitable alternative positions, any contractual compensation must be paid.

Managing poor Performance

If a worker's performance of their job begins to slip below the expected standard, raise it with them straight away; it never gets any better if you ignore

the problem. Tell them what you have noticed and why it does not meet the required standard. Ask them if there is any reason that they know of for their poor performance, and listen carefully to any explanation. Talk about ways that they can improve and that you can help them. Give a reasonable time frame for improvement – usually at least 3-6 weeks.

If things don't improve, warn them that if their performance doesn't improve to an acceptable standard, this may put their job at risk and a formal process will have to take place. Keep a note of this discussion and date it. Monitor and assist the worker over the next couple of weeks.

If after a couple of weeks there has been no real improvement or the performance has got worse, raise it formally if you have authority to do this, or take the issue to your manager if you do not. This will usually result in a formal performance improvement process. There are rules about how to do this fairly – get some advice.

If a formal performance improvement process is commenced, you must continue to train, assist and monitor the employee over the course of the process. They need to be told the aim is to improve their performance, but if it doesn't work, they may face dismissal on notice.

During any formal performance process there must be regular meetings with the employee, including formal review meetings to assess the employee's progress. The number of formal reviews will depend on the length of the process (but there should be at least two formal reviews before the end of the process). If the formal review determines the employee's performance has not improved, the employee should be given a first warning (and subsequently a final warning) that a failure to improve is likely to result in dismissal. If the required standard is not met within the time frame specified in the performance improvement plan, there will need to be a formal meeting which may result in dismissal on notice. It is important that this is handled fairly, and the employee has the right to involve a support person or representative (e.g. union delegate, friend, lawyer). With the risk of personal grievances and the cost of getting it wrong, it is sensible to get some advice before running a formal process, and certainly if dismissal is looking likely.



Although poor performance may result in dismissal, it is not misconduct and should not be referred to as misconduct or a disciplinary matter.

When Good Workers Go Bad – Misconduct

There are types of behaviour which are commonly regarded as unacceptable at work. They include:

- refusal to obey lawful instructions;
- deliberately damaging or wasting company property;
- bringing the company into disrepute with the public or customers;
- possessing drugs or alcohol at work, or reporting for work under the influence of drugs or alcohol;
- theft, dishonesty, possessing company property without permission;
- breaching health and safety rules;
- assault or sexual harassment of another person at work;
- deliberately falsifying company records;
- disclosure or misuse of confidential company information;
- persistent lateness, absence or walking off the job without permission;
- misusing company computer equipment, other than for work purposes, including breaching an internet or email policy;
- verbal abuse or swearing at any other employee or customer or visitor;
- sleeping during working hours;
- failure to comply with smoking policy/smoking in non-smoking areas;
- failing to disclose a conflict of interest;
- taking or asking for bribes or kickbacks.

These actions are often listed in an employment agreement, a policy, code of conduct or house rules. Even if the types of misconduct are not written down, the law recognises that employees must not behave in these ways. Managers and supervisors must keep their eyes and ears open to pick up on any poor attitude, sloppy work or bad behaviour. It is

really important to pick up on these things early and address them. If there is friction between a couple of employees, step in early, so that the situation does not get out of hand or dangerous. Make it clear that the organisation takes a dim view of people breaching its rules. Role model acceptable behaviour at all times.

If an employee is starting to slack off or behave badly, raise it immediately so that you can correct the problem in a low-key way. Explain the required standard of behaviour and ask for an explanation. Talk about why the behaviour causes problems and what you expect. Check for the employee's understanding by asking questions.

If the behaviour is low level but repeated, raise it and explain what you have observed and why it is unacceptable. Ask the employee for an explanation. Make sure that they understand that they are being given a verbal warning, and that you will keep a note of it. Tell them that, if they repeat the behaviour again, they will be looking at a disciplinary process which could result in a formal written warning or even a dismissal. Get an undertaking from them that they will not do it again. Keep a note of this. Put a note of the discussion and the verbal warning on the employee's file, or inform your manager (or HR if you have HR).

This approach is appropriate for low level bad behaviour (e.g. tardiness, not following work rules), and first offences. If an employee is on a final warning and re-offends, you still need to run a fair process before you can consider whether you should dismiss. Because of the risks and costs of personal grievances, you should get advice before running a formal process and certainly before dismissing an employee.

The most serious types of bad behaviour are likely to go straight to a formal disciplinary process. Refer to the next section on serious misconduct.

Serious Misconduct

Serious misconduct is the behaviour at the extreme end of the scale. It involves very serious incidents which usually put staff or property at risk. Serious misconduct can result in instant dismissal or a final written warning but a fair process must be followed before making the decision. If a worker has already been verbally warned or given a written warning about a particular type of behaviour, and repeats the



behaviour, a second offence will often be viewed as serious misconduct.

If you witness or hear about any incident which may be serious, make enquiries to find out what happened. Take an accurate note of what happened and the names of any witnesses and date it. If you are a manager, consider carefully whether you have reasonable grounds to conduct a disciplinary process. You may take into account any file notes you have kept of past discussions or verbal warnings with this staff member about the same sort of behaviour. If you are a supervisor, raise the issue with your manager. Give all relevant information to your manager.

You must follow the company's written disciplinary policy or procedure documents (if you have them). Running a fair process requires these steps:

1. Tell the employee what the allegation is, and ask them to attend a meeting. Tell them they can bring a support person. If it is really serious, make sure the employee understands this and tell them that their job may be on the line;
2. Give the employee all information about the allegations, including copies of written statements and (unless there are exceptional circumstances) the names of any complainants or witnesses.
3. Give the employee/their representative a fair opportunity to answer the allegations, and explain their conduct.
4. Take time to consider whether the allegation had been shown to be more likely to be true than not – are you fairly sure it happened?
5. Tell the employee what you have decided, and the penalty you are considering.
6. Give the employee/representative the opportunity to make submissions about the penalty.
7. Consider any feedback carefully then advise the employee of your decision.

If the employee raises a personal grievance, the Employment Relations Authority will review your decision, both the process you followed and the fairness of the outcome. Even if you are successful, the cost of defending the case will usually exceed anything the employee is ordered to pay you. If you

lose, the cost can be very high, and the employee may even be reinstated to the job. Ask yourself the following questions if you are considering dismissing an employee:

- Am I fairly sure that this incident happened?
- Why did the employee do it?
- Did the employee know that what they were doing was wrong?
- How has this person been trained and supervised?
- Has the employee showed any willingness to address the behaviour or take responsibility for it?
- Is what happened really so serious that this person should lose their job and their livelihood?
- What will be the implications for this particular employee and this workplace if I dismiss this person, or, alternatively, if I do not?
- Is there any other practical alternative to dismissal and what would that look like?
- If I must dismiss, how should I go about that, to allow them to leave with some dignity?
- Can I put my hand on my heart and say that I have treated this person absolutely fairly, as I would want to be treated?

If the answers to any of these questions raise real doubts or you think the situation doesn't quite justify dismissal, consider this: if the employee is a bad egg, they will do it again. It is often wiser and safer to give them a final warning and provide some close monitoring, or formal performance management. If the employee really is someone who should not be in this workplace or in this job, they will re-offend, and you will be in a far stronger legal position to justify dismissal. The message to the employee and other staff is that you are being firm, but fair.

In some situations, it may not be appropriate for an employee to remain in the workplace while an investigation and disciplinary process is conducted (e.g. if an employee's presence poses a health and safety risk). Before reaching a decision to suspend an employee, an employer must consult with the employee and consider their feedback along with any possible alternatives to suspension (e.g. working from home). Suspension must be on pay unless there



are intervening circumstances that mean the process becomes protracted.

Keeping Notes

It is very important that you keep brief but accurate dated notes about discussions with workers about poor performance or misconduct.

If you have had to speak to a worker about a problem, write a short note setting out:

- What happened
- What was said
- The employee's explanation
- The outcome
- Make sure the note is dated

If a disciplinary process or performance improvement process has to take place either then or later, these notes will be very important to show that you have acted fairly. It also stops workers saying that they had never been told that what they were doing was unacceptable. If a personal grievance is raised, these documents will help defend the employer's actions.

It is not essential to ask workers to sign off on file notes, but copies should be given to the employee if they ask for them or it is a formal process. Copies of the notes should be placed on the worker's file. All employees have rights to access and request correction of personal information under the Privacy Act 2020.

Resolving problems

If staff tell you about problems affecting them at work, be supportive and try to work with them to resolve the problem. Don't ignore a complaint or problem – that is the worst thing you can do.

If staff raise serious issues like stress, major illness or bullying/harassment, employers must act fairly, reasonably and supportively. Employers have an obligation to take all reasonably practicable steps to eliminate (or mitigate where elimination is not possible) risks of harm, including psychological harm. These are tricky issues, and it is wise to seek proper advice early on about how to deal with it.

If an employee says they have a major issue with a decision you have made, try to sort it out promptly.

If sensible discussion cannot resolve it, get advice or approach the MBIE Mediation Service. Be very careful not to try to pressure the employee to resign, or suggest an exit package would fix things: the employee may resign but may take a personal grievance for constructive dismissal.

Note: An employee (or ex-employee) must raise a personal grievance within 90 days of the event complained of. If an employee raises an issue over 90 days later, the company should **not** accept this. Any response to an out-of-time personal grievance should note it is late, and say the company does **not** consent to this.

Golden Rules

Whenever you are talking to a worker about an issue:

- Be clear
- Be fair
- Keep your cool
- Ask questions and listen to the answers
- Treat people as you would want to be treated
- Treat all people with the same high standard of respect, regardless of background

Different types of worker engagements

It is important to understand whether a worker should be engaged as an employee, and if so what type, or a contractor. The responsibilities owed and legal requirements vary. This table summarises the most common arrangements. It does not deal with secondments or triangular employment relationships.

Engagement type	Permanent Employment (full or part-time)	Fixed Term Employment (full or part-time)	Casual Employment	Independent Contractor
Definition (legislative / common law tests)	<p>This is the most common type of employment.</p> <p>Permanent employees are afforded all employment entitlements and responsibilities (noting some entitlements are dependent on length of service e.g. sick leave or annual leave).</p>	<p>Fixed term employees are engaged for a set period with the engagement ending on a specified date or the occurrence of a specific event. Common examples include parental leave cover or an employee who is engaged to carry out a specific project.</p> <p>There must be a genuine reason and reasonable grounds for engaging the employee on a fixed term and the employee must be informed of the reason. Using a fixed term as a trial in order to see whether the employee can perform the role is not a lawful reason, this is what trial periods and probationary periods are for.</p> <p>Fixed term employees are afforded all usual employment law protections although their jobs have a set end date. Their entitlements will vary depending on the length of the fixed term.</p>	<p>Casual employees are engaged <i>'as and when needed'</i> for short periods and for specific purposes. Each time the employee accepts an offer of work is treated as a new period of employment.</p> <p>The courts have established the following requirements:</p> <ul style="list-style-type: none"> • there must not be a regular work pattern (scheduling casual employees on a roster has been considered to indicate that the relationship is not truly casual); • there cannot be an expectation of ongoing work; • the employee must be free to decline any engagements offered; • the employee must only be engaged for the specified term of the engagement. <p>Employment responsibilities and protections apply during each engagement. Entitlements such as sick leave or annual leave vary as set out in greater detail below.</p>	<p>Independent contractors are in business on their own. They are not covered by most employment related laws.</p> <p>The courts use four tests to determine whether an individual is truly an independent contractor:</p> <ol style="list-style-type: none"> 1. Intention test: This looks at the intention of the parties when entering the relationship. For this reason, it is best practice The wording of any agreement does not, by itself, determine the nature of the relationship. Other relevant factors include the contractor's experience and understanding of contracting relationships. 2. Control / independence test: This considers the level of freedom afforded to the contractor. Factors that will be considered include the flexibility to determine hours, location, who performs the work (i.e. whether they can subcontract), and the method adopted to perform the work. The greater the freedom afforded to

				<p>the individual, the more likely they are a contractor.</p> <p>3. Integration test: This looks at whether the worker is essential to the functioning of the businesses or an accessory to the business. It also looks at whether the contractor presents as a unified part of the business (for example wearing a uniform, attending events, using company equipment) and whether they are paid based on results or in an arrangement that is more similar to payment of salary or wages.</p> <p>4. Fundamental / economic reality test: This test involves examining the relationship as a whole to determine whether the contractor is really in business on their own account. Factors include how the contractor is paid, responsibility for payments that arise as a result of performing work, whether the contractor can determine the amount of profit they receive from their work (along with the financial risk they take on), and whether the contractor is able to perform work for other companies.</p>
--	--	--	--	---

<p>Type of agreement and specific requirements for agreement</p>	<p>Employment Agreement/ Contract of Service.</p> <p>The minimum legal requirements are that it is in writing and includes:</p> <ul style="list-style-type: none"> • the names of the employee and the employer; • a description of the work the employee will perform; • an indication of where the employee will work; • the agreed hours of work or the arrangements relating to the times the employee will work; • the wages or salary payable; • a plain language explanation of the services available for resolving employment relationship problems, including a reference to the 90 day period in s 114 of the Employment Relations Act 2000 within which a personal grievance must be raised. 	<p>Employment Agreement/ Contract of Service.</p> <p>The minimum legal requirements for a permanent employment agreement also apply to a fixed term employment agreement. In addition, the agreement must state:</p> <ul style="list-style-type: none"> • the way in which the employment will end; and • the reasons for ending the employment in that way. 	<p>Employment Agreement/ Contract of Service.</p> <p>The minimum legal requirements for a permanent employment agreement also apply to a casual employment agreement. The agreement should also clearly state that:</p> <ul style="list-style-type: none"> • the terms are intended to cover each casual engagement; • the nature of the relationship is casual <i>'as and when required'</i>; • the employer will engage the employee from time to time for a specified period; • each time the employee agrees to perform work will be treated as a separate engagement; • the employee has no expectation of regular and ongoing work, work is not guaranteed, and the employer is under no obligation to provide it; and • the employee is not obliged. to accept any work offered. 	<p>Independent Contractor Agreement / Contract for Services.</p> <p>Independent contractor agreements do not have to be in writing. However, best practice is to have a written agreement stating the:</p> <ul style="list-style-type: none"> • relationship will not be construed as a contract of employment, partnership or joint venture or agency; • Principal will not be liable to pay the Contractor any wages, salary, sickness pay, holiday allowances, redundancy compensation, annual leave, or superannuation or any other kind of payment except as provided in the contract; • Contractor will be personally responsible for paying tax and any ACC levies due under the contract; and • arrangements relating to subcontracting, assigning the contract to any other party, indemnity and insurance cover, invoicing and payment of invoices.
<p>Payment for work</p>	<p>Paid salary or wages as set out in employment agreement.</p>	<p>Paid salary or wages as set out in employment agreement.</p>	<p>Paid salary or wages as set out in employment agreement.</p>	<p>Paid based on invoices to the company /organisation they provide services to.</p> <p>Responsible for payments including:</p> <ul style="list-style-type: none"> • tax payments to Inland Revenue; • ACC levies; • any KiwiSaver payment; • registering for Goods and Services Tax (GST) if earn over \$60,000 per year; and • insurance.

<p>Leave entitlements</p>	<p>Entitled to payment for public holidays that fall on days the employee would ordinarily work.</p> <p>Entitled to 4 weeks' annual leave after 12 months' service.</p> <p>Entitled to 10 days' sick leave after 6 months' service.</p> <p>Entitled to bereavement and family violence leave after 6 months' service.</p>	<p>Entitled to payment for public holidays that fall on days the employee would ordinarily work.</p> <p>If the fixed term is for 12 months or more, entitled to 4 weeks' annual leave after 12 months' service. If fixed term is for less than 1 year, entitled to holiday pay at 8 % of earnings paid with the employee's normal salary payments and recorded as a distinct component on the employee's payslip (note this will be changing under the amendments to the Holidays Act 2003).</p> <p>Entitled to sick leave, bereavement leave, and family violence leave after 6 months' service.</p>	<p>Entitled to payment for public holidays that occur during an agreed engagement.</p> <p>Entitled to holiday pay at 8 % of earnings paid with the employee's normal salary payments and recorded as a distinct component on the employee's payslip.</p> <p>No entitlement to sick leave, bereavement leave, or family violence leave unless, over a period of 6 months, hours worked average at least 10 hours a week, and no less than 1 hour in every week, or no less than 40 hours in every month.</p>	<p>No entitlement to paid leave unless stated in contract.</p>
<p>Key legislative protections</p>	<p>Employment Relations Act 2000, Holidays Act 2003, Minimum Wage Act 1983, Wages Protection Act 1983, Parental Leave and Employment Protections Act 1987, Health and Safety at Work Act 2015, Human Rights Act 1993, Privacy Act 2020.</p>	<p>Employment Relations Act 2000, Holidays Act 2003, Minimum Wage Act 1983, Wages Protection Act 1983, Parental Leave and Employment Protections Act 1987, Health and Safety at Work Act 2015, Human Rights Act 1993, Privacy Act 2020.</p>	<p>Employment Relations Act 2000, Holidays Act 2003, Minimum Wage Act 1983, Wages Protection Act 1983, Parental Leave and Employment Protections Act 1987, Health and Safety at Work Act 2015, Human Rights Act 1993, Privacy Act 2020.</p>	<p>Health and Safety at Work Act 2015, Human Rights Act 1993, Privacy Act 2020.</p>
<p>Terminating the relationship</p>	<p>As set out in agreement:</p> <ul style="list-style-type: none"> Employee may give notice that they wish to end the employment relationship. Employer may end employment relationship after following a fair process in situations such as redundancy, sale of the business, poor performance (following a performance management process), or dismissal for misconduct or serious misconduct. 	<p>Employment automatically ends on the date / expiry of event specified in the employment agreement. If either party wishes to terminate the relationship prior to the expiry of the fixed term, the process for permanent employees must be followed.</p> <p><i>Note:</i> If a fixed term employee works even a day over the expiry of their fixed term without an appropriate variation, they will be deemed a permanent employee.</p>	<p>Employer's obligations to the employee end on the conclusion of an engagement and resume on the commencement of another engagement. If either party wishes to terminate employment during an engagement, the process for permanent employees must be followed.</p> <p>There is no obligation to offer further work and no obligation to accept any further work offered.</p>	<p>As set out in contract, can be on a specific date or the completion of a specific piece of work. Usually the contract will also contain a provision regarding the notice either party must give if they wish to terminate the contract prior to the specified date or completion of the specified piece of work.</p>

