

General Practitioner Individual Employment Agreement

Explanatory notes

The NZMA has developed this sample Individual Employment Agreement (IEA) for use when employing a General Practitioner as a permanent employee. It should be changed to suit the needs of members, e.g. all wording in italics and underlined needs to be replaced and reference to “employee” may be replaced with “you” or the applicant’s name. Care needs to be taken if changes are contemplated. No change should be made where the change would result in less than the statutory minima being provided, or the removal of compliance issues as specified in the Employment Relations Act (The Act).

The Act sets out minimum requirements for the form and content of employment agreements that are entered into while the Act is in force. A key requirement is that they must be in writing. Other requirements have been explained and incorporated into this sample agreement.

Parties may not contract out of the Act, and IEAs must not contain anything that is contrary to law or inconsistent with the Act.

The NZMA also has some Locum IEAs and Contracts available. These Locum agreements can be used if you are employing a Locum on a fixed term. This General Practitioner IEA is more relevant for permanent employment of a General Practitioner.

Offers of Employment and Negotiating an IEA under the ERA

Employers must be prepared to consider changes requested by prospective employees to the terms of the IEA that they have offered. As in any negotiation, there will be trade-offs, no-go areas and limits. To avoid potential claims of a “take it or leave it” attitude, which does not comply with the Act’s concept of “good faith”, employers must demonstrate through their behaviour and words that the employee’s requested changes are being seriously considered. Employers should be thinking through the implications of requests and providing explanations on their decision, particularly where a change is rejected.

You must provide the prospective employer with a copy of the IEA and give them a reasonable opportunity to seek independent advice before they sign it.

Job Description

A job description should be developed and attached as Schedule B. The job description should be a broad outline of a General Practitioner’s duties.

Interpretation – General Practitioners Individual Employment Agreement

Many of the clauses in the enclosed General Practitioners IEA are self-explanatory. Explanations have been provided where required. Contact the NZMA Member Advisory Service if you need further advice.

Work Duties and Location (Clause 2)

IEAs must include a description of the employee’s work and where the work is to be performed. It is highly desirable that a job description be developed for this purpose and attached to the IEA. A job description ensures that job and performance expectations are clearly defined.

Trial Period (Clause 3)

Sample One

From 6 May 2019, only an employer with 19 or fewer employees (at the beginning of the day on which the employment agreement is entered into) may employ a new employee on a trial period for the first 90 calendar days of their employment. Employees employed under a trial period cannot take a claim of unjustified dismissal against the employer if they are dismissed in this time.

To legally implement a trial period for a new employee, the following rules must be met:

- The employee must agree to the trial period.
- The trial period must be in writing and signed by the employee before they commence employment.
- The trial period must not be inconsistent with the terms and conditions of any applicable collective agreement.
- A trial period cannot be offered to an employee who has worked for the employer in the past.

If the employee has a trial period in their employment agreement, they are not able to take a personal grievance for unjustified dismissal if notice of dismissal is given during this period, even though actual dismissal may not be effective until after the period ends. This does not however prevent the employee for taking a personal grievance for discrimination, harassment, disadvantage, or a claim for unpaid wages or holiday pay. The Department of Labour's Mediation Service is still available to these employees during this trial period.

The trial period must be included in the individual employment agreement (IEA). When providing an IEA to a prospective employee, the employer must be prepared to consider and respond to changes requested by prospective employees to the terms of the IEA that they have offered. The employer cannot proceed with the inclusion of the trial period if the employee does not agree with it. However you do not have to proceed with the offer of the position if that offer was made conditional upon agreeing terms of employment.

The employee is entitled to seek independent advice before agreeing to the trial period and signing the IEA, and should be allowed reasonable time to do this. Do not ask an employee to sign the agreement immediately.

You are not legally required to follow a fair process if you are considering dismissing the employee during their trial period. This means you do not need to advise the employee in advance that you are considering dismissal, nor are you required to give reasons for the dismissal.

Case law has highlighted 2 key points in relation to 90 day no fault trial periods.

Firstly, the trial period must be correctly drafted (see wording below), in writing, and signed by the employee prior to starting work. In a recent case, a trial period was found invalid because the employment agreement was signed on the second day of work, and had therefore the employee was not able to be employed on a trial period as they had worked for the employer prior to signing the agreement.

Secondly, whilst the employer is not required to follow the usual processes, the employer must act in good faith towards the employee. At a minimum, this means telling them why they have been dismissed. The employer must also provide the notice specified in the employment agreement.

Sample Two

If your employee does not agree to this no-recourse trial period, or you chose not to use it, you may still wish to include a trial period in the IEA. However, you would be required to follow a fair process if you decide to terminate their employment, as they would legally be able to make a claim

for unjustified dismissal against the employer. If the employee on trial is failing to meet job standards, employers must have followed a fair process that provided the employee with the opportunity to improve before dismissal can apply. A process which the employee regards as broadly fair is likely to reduce the odds of a personal grievance on the grounds of disadvantage. A resource has been developed for members on managing performance, and can be requested via the Member Advisory Service.

Remuneration (Clause 4)

Under the Act, IEAs must have included wages or salary payable to the employee. This sample agreement has three possible remuneration models that can be used. Delete the models that are not relevant, or delete all three and insert a different remuneration model.

Clause 4.2 places an obligation on an employer to conduct an annual review, which, while not essential, is a highly desirable component to any employment relationship and includes evaluating job performance, employee's behaviour, and their potential for development. Feedback on an employee's performance should also be done on a regular and more informal basis.

Hours and Days of Work (Clause 5)

An indication of the arrangements relating to the time the employee is to work must be included in an IEA.

Leave Provisions (Clause 10-13)

Annual Leave, Sick Leave, Bereavement Leave and Public Holidays

This sample IEA reflects the minimum leave entitlements provided in the Holidays Act 2003. More favourable leave entitlements can be offered as part of the negotiation process and/or approved in advance of the entitlement date.

Many employers find enhanced leave entitlements a cost-effective way of making the employment offer more appealing.

A member resource on the Holidays Act 2003 is available through the NZMA Member Advisory Service. It includes the legal pay calculations needed for calculating pay during periods of leave.

Parental Leave (Clause 14)

This is a standard provision to have in an IEA. Contact the Member Advisory Service if you receive an application for parental leave and are unsure of both parties' rights. A member resource and standard templates have been developed to ensure you do comply with this piece of legislation.

Notice/Termination Period (Clause 15)

The notice period stipulated in this General Practitioner's IEA is six weeks. You will need to decide whether this reflects the needs of yourself, the prospective employee and your business, and may need to change accordingly. Please note employers must always have a good cause to terminate an employee's employment. Employees on the other hand, can terminate the relationship at their discretion by giving the prescribed notice.

Vulnerable Children Act 2014 (Clause 16)

This clause allows employers to conduct a safety check, under the Vulnerable Children Act 2014, for employees who will have contact with children. Refer the NZMA advisory on the Vulnerable Children Act 2014.

Restraint of Trade (Clause 18)

There is no requirement for an employment agreement to have a restraint of trade clause, so this can be removed. Any restraint of trade clause would need to be very carefully drafted, be as non-restrictive as possible and must identify a real need for a restraint in the particular circumstances. No guarantee can ever be given as to the eventual legal enforceability of any restraint of trade clause

The NZMA has a separate resource available through our Member Advisory Service on Restraint of Trade clauses which includes more sample clauses.

Redundancy (Clause 19)

The Act requires that employers act in good faith. This means that employees must be informed about issues affecting them and that neither party will do anything to mislead or deceive the other. Employees need to be consulted and a fair process needs to be followed. This sample clause does not allow for any redundancy compensation, but you may wish to include such a provision.

If making positions redundant is something you may be considering please contact our **Member Advisory Service** for a copy of our member resource on this matter.

Personal Grievances and Disputes Procedures (Clause 21)

Employers are required to have a plain language explanation of the services available for the resolution of employment relationship problems, including reference to a 90-day period for raising a personal grievance, written into all employment agreements.

An employment relationship problem includes a personal grievance, a dispute about the interpretation, application or operation of any employment agreement, and any other problem relating to or arising out of an employment relationship, but does not include any problem with fixing new terms and conditions of employment. IEAs may include such terms and conditions as the employer and employee see fit.

A sample of a plain language explanation of services available for problem resolution has been written and attached as Schedule A to the General Practitioners IEA.

Acknowledgement (Clause 22)

This clause has also been included as a safety guard and helps mitigate the risk of employees making accusations about being induced to enter into the final agreement.

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Need more help?

Contact the NZMA:

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