

Fixed Term Individual Employment Agreement

Explanatory notes

Preamble

Under the Employment Relations Act 2000 (ERA) every employee employed after 1 October 2000 is required to have a written employment agreement, containing at least certain key terms and conditions. Where the work is not covered by a Collective Employment Agreement (CEA), or where the employee is not a union member, the agreement will be an Individual Employment Agreement (IEA)

The NZMA has developed the a sample Fixed Term IEA which may be changed to suit the needs of members, e.g. all reference to “employee” may be replaced with “you” or the “applicant’s name”. Terms and conditions can also be amended or added.

Care needs to be taken if changes are contemplated. No change should be made where that would result in less than the statutory minima being provided, or the removal of compliance issues as per the ERA.

The ERA includes a number of requirements for employment agreements but does not specify a particular format. These requirements are explained below and have been incorporated into the sample agreement.

IEA's must not contain anything that is contrary to law or inconsistent with the Act. Neither party is permitted to contract out of the ERA or any of the other Acts that may apply to the employment relationship.

Fixed Term Appointments

Fixed Term employment can only be offered to an employee if there are genuine reasons for the fixed term. Genuine reasons would include seasonal work, project work or where the employee is filling in for a permanent employee on leave. You must not use a fixed term agreement to establish the suitability of an employee for a position. In this situation, a permanent agreement with a trial period could be used.

The reason for the fixed term must be in writing in the IEA. The wording will have to include how or when the employment will end. Examples of this could be:

- *The nature of this agreement is fixed term to cover a period of sick leave for an existing staff member. The fixed term will end when the employee on sick leave returns to work. This is expected to be xxxxx; or*
- *The nature of this agreement is fixed term to assist in the ‘xyz’ project. The fixed term will end when the project is completed.*
- *The nature of this agreement is fixed term to assist staff during the busy Christmas period. The fixed term will end on xxxx (date)*

Offers of Employment, Negotiating an IEA and "Good faith".

Employers must be prepared to consider and respond to 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 but remember, if you cannot agree on terms for an agreement you do not have to proceed with the offer of the position if that offer was made conditional upon agreeing terms of employment.

Negotiations must be carried out in "good faith" – being active, constructive, responsive and communicative. An employer must demonstrate through their behaviour and words that any change requested by the employee has been seriously considered to avoid a potential claim of a breach of good faith. Think through the implications and provide an explanation for the decision where a requested change is rejected.

The NZMA has member resources explaining obligations and entitlements under the Act and on the "good faith" concept. They are available to members on request.

We recommend that any offer of employment is made conditional upon the parties concluding and signing an agreement. A reasonable timeframe as to when the offer of employment will expire should be provided. If a satisfactory agreement cannot be reached despite meaningful negotiation, the offer can then be withdrawn.

This should be both advised of verbally and written into a letter of offer that accompanies the proposed IEA. A sample letter of offer is attached ([Appendix A](#)).

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

INTERPRETATION OF CASUAL IEA MEMBER RESOURCE

Most of the clauses in the sample IEA are self-explanatory. Comment is included below to explain the law and the reasons for particular provisions. Members are welcome to call the NZMA Member Advisory Service for further advice.

Names of Parties

The ERA requires the agreement to record the name of the employee and the employer. The employer's name should be the legal employer of the employee, not a trading name.

Work Duties and Location

IEAs must include a description of the employee's work or job title and where the work is to be performed.

Remuneration

Under the ERA IEAs must have included wages or salary payable to the employee.

Hours and Days Of Work

An indication of the arrangements relating to the time the employee is to work must be included in an IEA. Provision is made for rostered or fixed hours as appropriate.

Information on Services Available for the Resolution of Employment Relation Problems

All employment agreements must 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. A suitable format is attached as Schedule A of the sample IEA.

Employment relationship problems include 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. It does not include any problem with fixing new terms and conditions of employment.

Vulnerable Children Act 2014

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.

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APPENDIX A

Sample letter to a prospective employee when there is no relevant collective agreement.

Date

[name]

[address]

Dear [name]

Offer of Employment

I confirm that I am offering you the fixed term position of ... starting on ... (*date*) at ... (*time*). The reason for the fixed term is and will end(*reason or date*).

This offer is conditional upon us reaching agreement on the proposed terms of employment as outlined in the attached draft agreement. Please confirm acceptance of the offer as soon as possible.

You are entitled to seek independent advice on the proposed agreement and may wish to discuss it with your family, a union, a lawyer, or someone else you can trust. If you want information on your employment rights you can contact the Employment Relations Service's free Infoline on phone 0800 800 863 or visit their website at www.ers.dol.govt.nz.

If you wish to clarify anything in the proposal or discuss the terms offered please ring me as soon as possible.

If you accept the proposed terms, please ring me to confirm this before ... (*time*) on ... (*date*). Also, please bring the agreement with you on your first day. We will sign two copies of the agreement so that each of us has a copy.

I look forward to working with you.

Yours sincerely

[Employer]

APPENDIX B

Sample second letter to a prospective employee following further negotiations.

Date

[name]

[address]

Dear [name]

POSITION

Enclosed are the final terms and conditions of the employment offer. Changes reflect our discussions and subsequent agreements.

As advised in my first letter, you are entitled to take independent advice before accepting this employment offer.

This offer will remain open until ... [date]. If we have not heard back from you by this date the offer will be withdrawn.

If there is anything further you wish to clarify in the proposal, please ring me to discuss.

If you accept the proposed terms, please ring me to confirm this before ... (*time*) on ... (*date*).

Please bring the agreement with you on your first day. We will sign two copies of the agreement so that each of us has a copy.

I look forward to working with you.

Yours sincerely

[Employer]