

Practice Manager Agreement

Explanatory notes

EXPLANATORY NOTES

Certain obligations are placed on an employer where a new employee (or prospective employee) is employed to perform work that is not covered by a Collective Employment Agreement (CEA). In other words, the employee will be employed on an Individual Employment Agreement (IEA).

The NZMA has developed a sample IEA for employing a Practice Manager, which may 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 under the Employment Relations Act (ERA).

The ERA sets down 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 the enclosed sample.

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

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.

Job Description

The job description attached (Schedule B) is a broad outline of a Practice Manager’s duties. Employers will need to change this job description to better suit the position and the required duties the Practice Manager will need to perform.

Interpretation - Practice Managers Individual Employment Agreement

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

TRIAL PERIOD (Clause 2)

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.

WORK DUTIES AND LOCATION (Clause 3)

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.

REMUNERATION (Clause 4)

Under the ERA IEAs must have included wages or salary payable to the employee. Note the instalments stipulated in 4.1 will need to be adjusted to reflect individual arrangements. The sample agreement has payment option for both salary and wages – one needs to be deleted.

Clause 4.3 places an obligation on an employer to conduct an annual review, which in any case 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.

Clause 5.3 raises the issue of additional hours worked in excess of the stipulated/agreed ordinary hours. It suggests that time in lieu may be an appropriate entitlement in recognition of those hours. Alternatively, an overtime rate may be negotiated and agreed to as a more appealing entitlement.

It is not compulsory to provide entitlement around this matter but an incentive of some kind is often necessary to encourage employees to work any extra hours, particularly if you require the employee to work after hours in an emergency or similar situation. You will need to make adjustments to this part of the Practice Managers IEA as appropriate.

LEAVE PROVISIONS (Clause 8)

Annual Leave , Sick Leave, Bereavement Leave and Public Holidays

The 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

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.

HEALTH AND SAFETY (Clause 9)

This is also a standard provision to have in an IEA. The Member Advisory Service has developed guidelines on the Health and Safety in Employment Act to ensure our members' compliance. It will be sent to you upon request.

PERSONAL GRIEVANCES AND DISPUTES PROCEDURES (Clause 12)

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 Practice Managers IEA.

NOTICE/TERMINATION PERIOD (Clause 13)

The notice period stipulated in this Practice Managers IEA is four 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.

REDUNDANCY (Clause 15)

The Act requires that employers act in good faith. This will mean that employees are 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. If making positions redundant is something you may be considering please contact your Member Advisory Service for a copy of our member resource on this matter.

ACKNOWLEDGEMENT (Clause 17)

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.

Updated May 2019

Need more help?

Contact the NZMA:

Phone | 0800 65 61 61

Email | Robyn Fell: robyn@nzma.org.nz