

Types of employment contract (1)

The employment contract

When you begin your first job, both you and your employer have entered into an **employment contract**. This is a legally binding, formal agreement between an employee and an employer.

Every employer and employee is bound by a contract of employment. There are three important elements to these contracts: *offer*, *acceptance* and *consideration*.

A business can place a job advertisement in a newspaper, on the internet, put up a sign in the window or approach you personally and offer you a job. If you decide to apply for the position and your application is successful, you will be asked to attend a job interview. During the interview you are informed about the terms and conditions that apply to the job. This is the offer. If you agree to these terms and conditions you make the acceptance. That is, you agree to take the job.

The consideration, from the company's point of view, is that it has to supply the wage and other conditions offered. In return, the employee's consideration is to supply the labour. Consideration refers to the benefits that both parties will receive.

A contract does not have to be written. It can be a verbal (or spoken) contract. It is generally safer to have a written contract, especially if one of the parties to the contract does not fulfil their side of the contract. There is an old saying, 'verbal contracts are not worth the paper they're written on!'

At the beginning of your employment there is normally a good relationship between you and your employer. It is what happens from there that determines how the relationship develops. If both parties to the contract fulfil their obligations, a positive relationship will be maintained. Sometimes, though, this working relationship can sour. You may feel your employer is not fulfilling all of her or his obligations. Of course, the employer may feel the same about you. When these situations arise, you may need the help of someone from outside the business. This person can help determine who is liable under the terms of the contract.

Comfact

Read the employment contract thoroughly before you sign it. If there is something you do not understand then seek advice from a family member or a solicitor. Remember, once you have signed the contract you must abide by all its conditions.



A job offer can be made in several ways.

There are three different types of employment contract:

- award
- enterprise agreement
- common law contract.

Award

All jobs have set minimum terms and conditions, which make up the **award** covering that particular job. The award outlines the minimum conditions on such issues as: pay rates; holidays; sick, long service and maternity leave; overtime rates; allowances for tools or uniforms; and hours of work. Some employers will provide above-award payments, especially if they wish to attract more workers to their business or if they want to hold on to their existing staff. Awards have the following advantages and disadvantages.

Awards	
Advantages	Disadvantages
<ul style="list-style-type: none"> • Set a minimum for pay and conditions • Cover all employees performing a similar job • Protect employees from exploitation 	<ul style="list-style-type: none"> • Inflexible — may not suit all employees • Prevent recognition of individual initiative

Comfact

Both state and federal governments have passed laws covering working conditions such as workers' compensation, superannuation, occupational health and safety, and discrimination.

Workplaces that act to protect the rights and best interests of employees are usually enjoyable places to work.



Glossary

award a document that outlines an employee's minimum pay and conditions

employment contract a legally binding, formal agreement between an employee and an employer

Activities

Understand

1 Write the following statements into your notebook and then match them up with the correct terms.

Terms

- acceptance
- offer
- consideration
- employment contract
- contract
- written contract

Statements

- An agreement that is enforceable by law _____
 - The terms and conditions that apply to an employment contract _____
 - When you agree to the terms and conditions of a contract _____
 - The benefits both parties will receive from a contract _____
 - This type of contract is safer than a verbal contract _____
 - A legally binding, formal agreement between an employee and an employer _____
- 2 Examine the job advertisements shown on page 120 and then answer the following questions.
- List what is being offered in each advertisement.
 - Which of the three job advertisements provides more detail about the offer? Give reasons for your answer.
 - Which of the contracts would be easier to enforce in a court of law? Why?
- 3 List the benefits (consideration) that the employer and employee receive under an employment contract.
- 4 What should you do:
- before you sign an employment contract? Why?
 - if the employment contract contains something you do not understand?
- 5 What is an award? List four issues outlined in an award.
- 6 Under what circumstances may an employer offer above-award conditions?

Think

- Explain what is meant by the saying 'A verbal employment contract is not worth the paper it is written on'.
- Which one of the three advantages of awards do you consider to be the most important? Why?

eBookplus

- Investigate workplace relations issues for young people by using the **Young people at work** and **NSW Office of Industrial Relations** weblinks in your eBookPLUS. Select a topic that interests you and prepare a brief report on what you learned.

Types of employment contract (2)

Enterprise agreement

Imagine all the students in your Commerce class sitting down with your teacher and negotiating a set of conditions for your class. Apart from the essential conditions such as completing all the work and respecting each other's opinions, you might negotiate a homework-free month in return for one extra assessment task. You have just entered into an **enterprise agreement**.

An enterprise agreement is a negotiated arrangement between an employer and a union or a group of employees. The agreement deals with the pay and conditions of people employed in that workplace.

Enterprise agreements:

- can either replace an award or act as an 'add-on agreement' to awards
- must comply with all NSW laws regarding employment rights and entitlements
- must be in writing and signed by each party
- are usually for a fixed term; however, they remain in force after that term until rescinded.

Enterprise agreements have the following advantages and disadvantages.

Enterprise agreements	
Advantages	Disadvantages
<ul style="list-style-type: none"> • Consultation with and involvement of employees • Possibility of improved pay and conditions • Access to training • Greater flexibility 	<ul style="list-style-type: none"> • Possibility of undermining of award standards, with some employees working longer hours • Possibility of job losses • Greater inequity in wage rates between employees

Common law contract

Imagine if your Commerce teacher and you came to an agreement about your conditions of work for this subject. These conditions would apply only to you. The new contract would do away with the classroom conditions agreed to in the award or enterprise agreement. For example, the new agreement may offer you a 'classroom (employment) package' that includes more homework in return for the right to attend only two Commerce lessons each week. You have just entered into a common law contract.

Common law (employment) contracts cover those employees who are not under any award or enterprise agreements. They are more common among professional and managerial employees. Such contracts are signed individually and are secret; that is, not open to public scrutiny.

Common law contracts have the following advantages and disadvantages.

Common law contracts	
Advantages	Disadvantages
<ul style="list-style-type: none"> • Right to sue for compensation if the employment conditions are not met • Flexibility to suit the varied needs of individuals • Individual initiative rewarded 	<ul style="list-style-type: none"> • No union representation • Possible exploitation of employees due to unfair bargaining positions • Expense of any court case if either party sues for compensation

Rights and entitlements of employees

There are a number of minimum conditions to which all casual, part-time and full-time employees have access — their rights and entitlements. Casual employees have the same rights as part-time and full-time employees. However, they usually do not have access to any entitlements such as long service or sick leave.

Employees' rights	Employees' entitlements
<ul style="list-style-type: none"> • Wages — set by an award or agreements • A safe and healthy workplace • A discrimination-free workplace • A pay slip showing the total amount and how the pay was calculated • No requirement to undertake illegal activities 	<ul style="list-style-type: none"> • Annual leave — minimum 4 weeks paid holiday leave • Sick leave — up to 5–10 days when proof of sickness is provided • Paid public holidays if the business closes (does not apply to part-time employees) • Long service leave — usually after 10 years of continuous employment • Other leave provisions such as parental leave, bereavement leave
<p>These rights apply to casual, part-time and full-time employees.</p>	<p>Casual employees do not have access to these entitlements.</p>

Rights and entitlements of employees

There are many different aspects to consider when determining the most suitable employment contract.



Activities

Understand

- 1 Explain the difference between an *enterprise agreement* and a *common law contract*.
- 2 Which NSW laws must enterprise agreements comply with?
- 3 What type of employee is usually covered by a common law contract?
- 4 Outline the right a party has if the conditions of a common law contract are not fulfilled.
- 5 List the range of entitlements of a full-time or part-time employee.
- 6 Determine whether the following statements are *True* or *False*.
 - (a) Part-time employees cannot access entitlements offered to full-time employees.
 - (b) Full-time employees are required to work a specified number of hours.
 - (c) Casual employees are often given up to 20 per cent loading in awards to compensate for their lack of entitlements.
 - (d) Casual employees are usually paid by the hour.

Think

- 7 Which employment contract would you prefer to:
 - (a) accept as an employee
 - (b) offer as an employer?
 Give reasons for your answer.

Communicate

- 8 Draw a series of cartoons to show the rights to which all employees are entitled. Display your cartoons around the classroom.
- 9 In small groups, decide which type of employment contract you would prefer if you were a:
 - (a) casual sales assistant
 - (b) full-time clerk
 - (c) full-time senior manager.
 Justify your choice and then share your answer with the rest of the class.

eBook plus

- 10 Use the **Australian Council of Trade Unions** weblink in your eBookPLUS and access the student section of the site. Go to 'Job Union Match' and select a job. Record the award conditions for this particular job. Note such aspects as training required, starting wage, name of the award, hours worked and representative trade union.

Glossary

common law (employment) contract when employers and employees have the right to sue for compensation if either party does not fulfil their part of the contract

enterprise agreement agreement about pay and conditions made at an enterprise/workplace level