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How to guide—completing the contract templates—for Aboriginal and Torres Strait Islander corporations covered by the federal industrial relations system

Award-Free

Permanent, Part-time/Full-time employment

Federal Industrial Relations System – Award-Free

JULY 2024

Before you start to fill in the contract template check these five steps:

STEP 1

The contract template assumes that the workplace is covered by the federal industrial relations system established by the *Fair Work Act 2009* (the Fair Work Act). See 'The federal industrial relations system: A guide for aboriginal and Torres Strait Islander corporations and their employees' for more information.

The template will almost certainly produce the wrong legal outcomes for any employment relationship that is not part of the federal system. So, do not try to use this template unless you are covered by the federal industrial relations system.

STEP 2

The template assumes that the employment is permanent— that is, that the employment is not for a fixed period but is meant to continue indefinitely as long as things are going well. If the employment is meant to be for a fixed period, a slightly different template will be needed.

STEP 3

The template covers both **full-time** and **part-time** employees. However, the corporation will need to select the relevant clauses that apply to either **full-time** or **part-time** employees, and delete the clauses that don't apply.

STEP 4

The template assumes that your corporation does not have an **enterprise agreement under the Fair Work Act**. If an enterprise agreement is currently operating in the corporation, and if it applies to the job you are filling, then the terms and conditions of employment for the new employee will have to be consistent with terms of the agreement.

The template also assumes that your corporation is not subject to what is known as an **enterprise award**—that is, a federal award that applies only to your corporation (you can check the list of enterprise awards at: <https://www.fairwork.gov.au/employment-conditions/awards/list-of-awards/enterprise-and-public-sector-awards>)

STEP 5

This guide (and the template contract) assumes that the employment will be award-free – that is, it is not covered by a modern award. If you are in doubt about this you should seek legal advice.

You need to check – ideally, before you fill the position – if a modern award applies to this work.

One way to do this is to contact the Fair Work Ombudsman on 13 13 94 and give them the details of your employment and see if a modern award applies. Generally, they should be able to advise you on this.

Another way to do this is to use the tools at Fair Work Ombudsman's website. Substantial help is available for employers at:

<https://www.fairwork.gov.au/employment-conditions/awards#find-my-award>

You also need to check if you are meeting the minimum employment entitlements under the National Employment Standards (NES). You can check this at <https://www.fairwork.gov.au/employment-conditions/national-employment-standards>.

What is in the template?

The template consists of four parts.

The **first part** is the template contract of employment. The first part—the contract of employment—needs to be filled in at various places and signed and dated by both the employer and the new employee.

The **second part** is Attachment 1 to the contract—the Job Description. The corporation will need to create Attachment 1. The description of the job should be set out in this attachment. What goes into this is something for the corporation to work out.

The **third part** is Attachment 2 to the contract—a summary of the National Employment Standards set out in the Fair Work Act.

The **fourth part** is Attachment 3 to the contract - the Fair Work Information Statement. This does not require any input from the corporation. It is a standard document issued by the Fair Work Ombudsman that employers must provide to employees when they start employment.

Filling in the template

Clause 1 of the contract: you need to fill in the name of your corporation. This then gets defined in the contract as ‘the corporation’, so you don’t need to repeat the specific name of your corporation until you get to the signing page.

The document is just an offer, and not a contract, until it is signed.

Clause 2 of the contract: you need to fill in the commencement date for the employment. This is the date that you expect the employee to begin work.

Clause 3 of the contract refers to the employee’s position. You will need to fill out the role of the employee here. It also refers to Attachment 1 as setting out the Job Description for the job the employee will be doing. As noted above, the Job Description should be created by the corporation.

Attachment 1 needs to be labelled ‘Attachment 1’.

Clause 4 of the contract deals with the period of probation. There are a few issues to consider here.

The first is the *period* of the probation. The length of a probation period is dependent on what the corporation needs. Generally speaking, the more senior and the more responsible the job, the longer the period of probation should be. Corporations may want to have a period of six months or even 12 months. Any longer than 12 months is quite unusual.

Once you have decided on the probation period, put this into the contract and also include the end date of the probation period (this will be the date of commencement plus the probation period, minus one day) So if three months of probation began on 20 August 2024, it would end at the end of 19 November 2024.

Note that if you make the period of probation 12 months, and you terminate the employee’s employment on the very last day of that period, then you would need to give the employee two weeks’ notice of termination, not one week’s notice, as is specified in the template. If the employee’s employment is terminated with *less* than one year of service, they only need to be given one week’s notice of termination.

The grounds set out in the contract for ending the employment for failing to ‘pass’ probation are the usual ones—that either the employee’s conduct or work performance is not satisfactory. The corporation may wish to specify additional grounds in the contract.

Clause 5.1 notes that the employee’s conditions are set by the contract, the National Employment Standards (NES) and legislation. This clause includes a link to the NES.

Clause 5.2 is where you need to specify the employee's annual salary. This template assumes that the employee will be receiving a salary (not an hourly rate). If the employee is part-time employee, specify the actual annual rate of pay – that is, the rate based on the part-time hours the employee will be working.

The salary must not be less than the National Minimum Wage (see <https://www.fairwork.gov.au/pay-and-wages/minimum-wages> for more information).

The second sentence of this clause refers to additional entitlements the employee may receive, such as a company vehicle or mobile phone. This is optional for the corporation to provide. If it does not suit the corporation to provide these items, this sentence should be deleted from the contract, or it can alternatively, include other entitlements that it is offering the employee.

Clause 5.3 of the contract says that the employment is permanent—that is, it does not have any specified end date.

The clause has two separate options depending on whether the employee is part-time or full-time. The corporation should delete the option that does not apply.

Clause 5.4 is where you will specify the employee's ordinary hours of work per week. This should be 38 hours per week for a full-time employee, or less than 38 hours per week for a part-time employee.

The clause has two separate options depending on whether the employee is part-time or full-time. The corporation should delete the option that does not apply.

You will also need to set out in this clause the pattern of work – that is, say what days of the week the employee will normally work, their start and finish times, and when they will take meal breaks.

The hours of work and the pattern of work can only be varied by making an arrangement in writing with the employee. If the corporation wants to be able to vary the pattern of work in some other way (eg by giving notice to the employee), you will need to make changes to this clause.

Clause 5.5 of the contract sets out the annual leave entitlements of the employee. The corporation should consider whether it wishes to provide the employee with the minimum annual leave entitlement under the National Employment Standards (4 weeks), or provide a higher amount of annual leave.

Clause 5.6 of the contract states that employees must have an agreement in writing with their employer, if they are to complete work for another employer.

Clause 5.7 spells out the grounds of termination for an employer.

The corporation should consider if there are any other relevant grounds specific to its industry that it would like to include in the contract, such as holding a particular qualification.

This clause sets out how much notice the corporation will give the employee if the corporation decides to terminate the employment after the end of the probation period (for reasons other than serious misconduct). The corporation will need to give, at a minimum, the notice that is required by the National Employment Standards. However, the corporation could choose to offer a longer period of notice, if it wants to do so.

This clause also deals with resignation by the employee. The corporation should consider how much notice it requires from the employee if they resign from their employment, and insert the notice period required.

Clause 5.8 states that the employee will not misuse or release the employer's confidential information.

Clause 5.9 is an optional clause that gives the corporation the right to require the employee to attend a medical examination for the purpose of deciding whether the employee is able to do their job or continue doing their job. A medical examination might be required either before the employee starts work, or after the employee starts work if the corporation has concerns about their fitness to perform their role.

Clause 5.10 states that the employee agrees that the employee's intellectual property rights in the products they produce belong to the employer.

Clause 5.11 states that the employee must comply with the corporation's relevant policies.

Clause 6 of the contract spells out which jurisdiction governs the contract. You will need to specify the relevant jurisdiction that the contract is made in—Victoria, Western Australia, Northern Territory, Australian Capital Territory, Tasmania, New South Wales, South Australia or Queensland—by omitting the ones that do not apply. This will not affect the application of federal legislation. Generally speaking, you would choose the jurisdiction where the corporation is based or where the employee will be performing their duties.

Clause 7 states that the contract spells out the entire agreement between both parties excluding contractual terms implied by the law.

Clause 8 of the contract refers to the Fair Work Information Statement (the FWIS) being at Attachment 3. You can download the FWIS by going to:

<https://www.fairwork.gov.au/employment-conditions/information-statements/fair-work-information-statement>

Every new employee must be given a copy of the FWIS when they commence their employment. Giving it to them with the contract helps to make sure this happens.

The signing page of the contract: Affix the Common Seal of the Corporation to the contract in the presence of two authorised officers of the corporation who will sign the contract. If the corporation does not have a Common Seal—some do not—you can use the second form of words supplied in the template. Either way, one of the two forms of words must be deleted.

The contract needs to be signed by the new employee and by a witness to the employee's signature. This does not all have to happen at the same time —each side can do its part separately.

Attachment 1 to the contract is the Job Description. This is discussed above in the notes to clause 3.

The Attachment should be labelled 'Attachment 1'.

Attachment 2 to the contract is the summary of the National Employment Standards.

The Attachment should be labelled 'Attachment 2'.

Attachment 3 to the contract is the Fair Work Information Statement, discussed above in the notes to clause 8.

The Attachment should be labelled 'Attachment 3'.