



Employment Contracts

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WHAT IS AN EMPLOYMENT CONTRACT

An employment contract is a legal agreement between you and your employer. It contains the terms and conditions that you have agreed will apply to your employment relationship. Sometimes your employer's workplace policies and even common workplace practices in your industry can form part of your employment contract.

This factsheet explains:

- what an employment contract is
- how to know if you have an employment contract
- when and how an employment contract can be changed
- common questions about employment contracts
- what you can do if your employer has breached your employment contract.

Every employment contract is different. If you still have questions about your employment contract after reading this factsheet, you should seek legal advice from a lawyer.

This factsheet only applies to employees. It does not apply to independent contractors. If you are not sure about whether you are an employee or independent contractor, see our factsheet *Employee or Independent Contractor: which one are you?*

Some of the information in this factsheet is different for national system employees and state system (Queensland public service) employees. Generally in Queensland, national system employees are all employees except state and local government employees. State and local government employees are state system employees.

WHAT IS AN EMPLOYMENT CONTRACT

An employment contract (also called a 'contract of employment', 'contract of service' or 'employment agreement') is a legal agreement between you and your employer. It contains the terms and conditions that you have agreed will apply to your employment relationship. Examples of common terms in an employment contract are:

- how much you will be paid
- your ordinary hours of work
- whether you will receive overtime pay (and at what rate)
- the notice you must give your employer if you want to resign from your job, or that the employer must give you if they terminate your employment.

The terms and conditions of an employment contract can be agreed:

- in a written document (sometimes even if it is not signed)
- in a verbal discussion
- by the actions or behaviour of both you and your employer
- by any combination of the above.

Sometimes your employer's workplace policies and even common workplace practices in your



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industry can form part of your employment contract.

The law also requires all employment contracts to contain certain key terms, even if you and your employer have not specifically talked about them or agreed on them. For example, even if nothing is said in your employment contract, your employer must pay you (at least) the minimum wage and you must not work in competition with your employer or misuse your employer's confidential information.

HOW DO YOU KNOW IF YOU HAVE AN EMPLOYMENT CONTRACT?

Generally, if you agree to work for someone in return for payment of wages, it is likely that an employment contract exists between you and your employer. However, sometimes it is not clear whether an employment contract has been created yet.

There are three main steps that must be completed for an employment contract to exist:

(1) The employer makes an offer of employment to you. This can be done by sending you a letter of offer, making you a verbal offer of employment (e.g. at an interview or over the telephone), sending you an email asking you to start work or through any other communication that could reasonably be considered an offer of employment.

(2) You accept the offer of employment and communicate your acceptance to the employer. You can communicate your acceptance by signing and sending the letter of offer, replying to an offer by email or by verbally accepting an offer. You could also accept an offer by your actions if the employer is aware of those actions (e.g. attending for work on an agreed start date).

(3) You and your employer must agree on the most essential terms of your employment. These generally include wages and hours of work.

Remember that the terms do not need to be written down or even signed. Terms can be agreed verbally, by the actions of both parties or by a combination of all of the above. However, if there is a dispute about the terms of the employment, the written agreement is most likely to be relied on to resolve the dispute.

This is a complex legal area, so you should seek legal advice if you are not sure about whether you have an employment contract.

WHEN AND HOW AN EMPLOYMENT CONTRACT CAN BE CHANGED

If you agree with the proposed change

An employment contract can be changed by agreement if both parties agree to the proposed change.

Before agreeing to any change, make sure that you understand what the proposed change is and how it will affect your employment. To ensure the change is clear to both parties, you should always record any changes in writing (e.g. on your employment contract, in an email chain or in a letter).

If you do not agree to the proposed change, can your employer change your employment contract anyway?

When one party (usually the employer) tries to change the employment contract without the other party's agreement, this is called a 'unilateral variation' or 'unilateral change'. Usually, this is not allowed, and it may amount to a breach of contract. If you continue to



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work without protesting the change, this can be seen as evidence that you have agreed to the unilateral change. If you disagree with a change your employer wants to make to your employment contract, you should tell your employer that you disagree. It is best to do this in writing (e.g. in a letter or email). You should keep a copy of all letters and emails where you tell your employer you disagree with the changes to your employment contract.

If you do not agree to the proposed change, your employer may be able to change your contract without your agreement in limited circumstances (e.g. if the terms of the original contract allowed it). Many industrial instruments require employers to consult with employees before going ahead with a major change that will significantly affect the employee's employment. Therefore, even if your employer has the power to make unilateral changes to your work arrangements, they may still be in breach if they do not consult you first.

Your employer may make reasonable changes to your working arrangements as part of their power to give lawful and reasonable instructions to employees. These instructions are unlikely to amount to a change to your employment contract.

If you have any concerns about a change your employer is proposing, you should seek legal advice.

What if the proposed change leaves you with no other option but to resign?

If you resign because you believe that a unilateral change to your employment contract leaves you with no other option, you may be able to make a claim for unfair dismissal or some other termination-based claim. This is a complex area of law and you should seek legal advice before you resign.

If you resign and want to make a termination-based claim, you should be aware that some applications, such as unfair dismissal and general protections, must be filed within 21 days from when your employment ended. For more information on unfair dismissal see our [*Have You Lost Your Job?* factsheet](#).

You believe your employer has changed your employment contract because of a discriminatory or other prohibited reason

If you believe that your employer changed your contract because of one or more discriminatory reasons, you may be able to make a claim for workplace discrimination.

Changing your contract for a discriminatory reason includes changing your employment contract because of your race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, social origin or gender history. For more information, see our [*'Human Rights Law in Queensland'* chapter in the *Queensland Law Handbook*](#).

If you believe your employer has changed your employment contract because of a prohibited reason, you might be able to make a general protections claim against your employer. Some examples of prohibited reasons include:

- discriminatory reason such as those listed above
- you exercising a workplace right, such as taking sick leave or any other entitlement under a workplace law, industrial award or industrial agreement
- you making a complaint or enquiry
- you engaging in industrial activity including union activity
- you not engaging in industrial activity including union activity.



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There are other prohibited reasons that are not listed here.

COMMON QUESTIONS ABOUT EMPLOYMENT CONTRACTS

Do you have an employment contract as a volunteer?

Generally, no. For an employment contract to exist, you must be paid wages or receive some sort of consideration (e.g. accommodation and utilities) in exchange for your work or labour. If it is determined you are a volunteer, you will not be working under an employment contract.

It is possible, however, you will still be required to sign a document that says you will conduct yourself in accordance with the organisation's various workplace policies.

Do you have an employment contract if you are helping out a friend or family member?

It depends. For an employment contract to exist, the parties must intend to enter into a legally binding contract. When you do work for a friend or family member, it can sometimes be unclear whether the parties intended to enter into a legally binding contract.

If you agree that you will be paid wages in exchange for the work, it is more likely that an employment contract exists. It is best to make sure both parties agree on this before you do the work to avoid any misunderstandings.

If you have the impression you are entering into some form of employment relationship with a friend or family member, you should record your agreement in writing and keep a copy.

It is also best to clarify the agreement at the outset, rather than later on in the relationship when an argument or disagreement might arise.

Do you have an employment contract if your contract is for a fixed period of time or for a specific project?

Yes, but these types of employment contracts can mean that you have different legal rights. An employment contract that is for a fixed period of time or a specific project will automatically end when the time period ends or the specific project is finished. These are called 'fixed-term' contracts.

Sometimes an employment contract is for a fixed period of time or a specific project, but it can also be terminated early by either party giving the required notice. These are not fixed-term contracts and are instead called 'maximum-term' or 'max-term' contracts.

One of the key differences between fixed or maximum-term contracts and permanent contracts is that if you have a max or fixed-term contract, you cannot make a claim for unfair dismissal if the contract simply ends on the agreed end date or at the end of the agreed project. Having said that, if your employer terminates your max or fixed-term contract early (i.e. before the agreed end date), you might be able to make a claim for unfair dismissal or breach of contract.

You are not getting any work so you are not getting paid. What can you do?

If you are a permanent employee, your employer is obliged to pay you in accordance with your employment contract.

If you are not being paid, you may be able to:

- approach the Fair Work Ombudsman to make an unpaid wages claim
- lodge an unfair dismissal claim on the basis of constructive dismissal
- make a breach-of-contract claim.



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Short-term and long-term casual employees will have different legal rights to permanent employees.

If you do not have an employment contract, you cannot make a breach of contract claim.

However, if your potential employer misled you about the availability or nature of work, you may also be able to make a claim under the Australian Consumer Law for misleading or deceptive conduct. These claims are quite complex and can be costly. If you think you have such a claim you should seek legal advice.

Your employer is not paying you your minimum entitlements under the law—is this allowed?

Generally, this is not allowed and terms in an employment contract that are below your minimum entitlements under the law will probably be invalid. Usually, your employer must pay you (at least) your minimum entitlements in any applicable legislation, industrial award or industrial agreement.

One exception to this general rule is that your employer can trade off certain penalty rates or allowances in an award or enterprise agreement in return for paying you a higher wage. These are known as set-off clauses. For example, your employer might ask you to sign a contract where you are not paid extra for working overtime in accordance with an award entitlement but, instead, you receive a higher hourly rate for all the work you perform.

To be legally effective, set-off clauses have to be drafted in a particular way. For example, they must specify the award entitlement that is not being specifically paid. The set-off clause cannot result in the employer paying you less on an overall basis than what you should have earned under the industrial instrument.

If you think you have been put in a worse position because of a set-off clause, you should seek legal advice.

WHAT YOU CAN DO IF YOUR EMPLOYER HAS BREACHED YOUR EMPLOYMENT CONTRACT

If your employer has breached your employment contract, you might want to first try resolving the issue with them directly. It is a good idea to do this in writing or to keep a written record of any verbal discussions. For example, you can write an email or letter to your employer setting out your concerns.

If your employer acknowledges your concerns and you reach an agreement about your employment, it is important to record this agreement in writing.

If you cannot reach an agreement with your employer, you may consider making a legal claim. There are two main claims you can make, depending upon the way in which you think your employer has breached your contract.

Fair Work Act small claim

If your claim relates to unpaid entitlements, you may be able to lodge a claim under s 548 of the *Fair Work Act 2009 (Cth)* (Fair Work Act) to recover your employment entitlements.

You can make an application in the Magistrates Court of Queensland or the Federal Circuit and Family Court of Australia for small claims up to \$20 000 (where that claim arises under your employment contract, the Fair Work Act, a modern award or an enterprise agreement).

For more information on small claims, see [the Fair Work Ombudsman's Small Claims Guide](#) or call the Fair Work Ombudsman.



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Breach of contract claim

For breaches of contracts generally, including employment contracts, you can make a breach-of-contract claim to the Magistrates, District or Supreme Court of Queensland, depending upon the amount of your claim.

You should obtain legal advice before commencing a breach-of-contract claim.

Contact Caxton Community Legal Centre if you require further assistance.

Fair Work Commission

Level 14, Central Plaza 2
66 Eagle Street
Brisbane Qld 4000

P 1300 799 675 or 3000 0399

E brisbane@fwc.gov.au

W fwc.gov.au

Fair Work Ombudsman

P 13 13 94

W www.fairwork.gov.au

Queensland Industrial Relations Commission

W www.qirc.qld.gov.au

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CAXTON COMMUNITY LEGAL CENTRE

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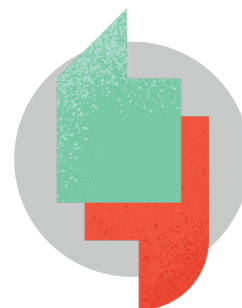
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This information is current at November 2022.



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