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How to guide – completing the contract templates – for ORIC corporations covered by the federal industrial relations system

RETAIL RELATED WORK

Permanent, Part-time Employment

Tasmania / New South Wales / South Australia / Queensland

April 2012

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

STEP 1

The template only works effectively for corporations employing employees **in Tasmania, New South Wales, South Australia or Queensland**. Make sure the employment is in one of these locations. The template will almost certainly produce the wrong legal outcomes for anywhere other than these jurisdictions so do not use it for employment in any other locations.

STEP 2

The template assumes that the employment is permanent—that is, 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

There are different templates for **full-time** and **part-time** employment. Make sure you are using the right one.

STEP 4

The template assumes that your corporation does not have an **enterprise agreement under the Fair Work Act or an old industrial agreement** under the federal **Workplace Relations Act** (for example, a certified agreement or a collective agreement). If one of those agreements is currently operating in the corporation, and if it applies to the job you are filling, the terms and conditions of employment for the new employee will have to be consistent with the terms of that agreement, and this template will almost certainly be wrong.

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. (Our research has indicated that only a very small number of ORIC corporations have their own federal award.)

STEP 5

This guide—and the template contract—assumes that the employment is covered by the **General Retail Industry Award 2010**. You may need to check – ideally, before you fill the position – whether this is the correct **modern award** that applies to this work in the employment of your corporation.

One way to do this is to contact Fair Work Online on 13 13 94 and give them the details of the employment, and see what their advice is about which 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 Online on the internet. Substantial help is available for employers at:

http://www.fairwork.gov.au/Pay-leave-and-conditions/Awards/Pages/Modern-awards.aspx?role=employers

The template employment documentation for this position has been drafted on the basis that the General Retail Industry Award 2010 applies to the employment.

If the employment is not covered by this award, you should get legal advice on how to adapt the template material.

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, in various places and signed and dated by both the employer and the new employee.

The **second part** is Attachment 1 to the contact – the job description. The corporation will need to fill in 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, together with a summary of the main terms and conditions set out in the General Retail Industry Award 2010.

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.

Filling in the contract template

Clause 1 of the contract: you need to fill in the name of your corporation. This is then defined in the contract as 'the corporation' so you don't need to use the specific name of your corporation again until you reach 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 Attachment 1 as setting out the job description. This describes what the employee will be doing. As noted above, the job description should be completed 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 template sets the period at three months. But it can be a longer or a shorter, depending on the

corporation's needs. Generally speaking, the more senior and the more responsible the job, the longer the period of probation. Corporations may want to have a period of six months or even 12 months but any longer than this is quite unusual.

- Once you have decided on a period of probation (for example, three months) put into the contract the date that is the end date of the probation (that is, the date of commencement plus three months, minus one day). So if three months of probation began on 20 August 2012, it would end at the end of 19 November 2012.
- 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, 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 the employee's conduct or work performance are not satisfactory. The corporation may wish to specify additional grounds in the contract.

Clause 5.1 of the contract specifies the General Retail Industry Award 2010 as the modern award that covers the employment.

You need to have a copy of the relevant award available in the employee's workplace.

Clause 5.1 includes a link to the web page that lists all of the modern awards under the Fair Work Act, as well as a link to the Fair Work Online website that has information about the National Employment Standards.

Clause 5.2 of the contract is likely to be the most difficult for the corporation to deal with. For this clause, you will need to work out the classification of the employee, in terms of the modern award that applies to the employee. You will need to check the classification clause of the award, and see which classification most closely matches the duties and responsibilities of the position. Then you will need to specify that classification in the contract.

As noted above there is significant help available to work out the right classification at the Fair Work Online website. The best place to look is at

http://www.fairwork.gov.au/Pay-leave-and-conditions/Awards/Pages/Modern-awards.aspx?role=employers

Having worked out the classification, you will next need to specify in the contract the correct rate of pay for that classification.

Up until 1 July 2014, the corporation will need to seek legal advice through LawHelp to determine the correct rate of pay to be used in this clause. This is because the award contains transitional provisions which may apply to the corporation. The transitional provisions cease operation from the beginning of the first full pay period on or after 1 July 2014 after which time the normal rates in the award will apply.

Up until 1 July 2014, the corporation should also seek legal advice through LawHelp to determine the correct loadings, penalty rates and allowances to pay to the employee as the transitional provisions in the award may also apply here.

You should get the pay rate figure from an up-to-date version of the modern award—if you use the electronic link in the contract, below, it should always take you to the latest version of the award.

You should be aware that the award rate is the minimum rate you can pay, and that the rate is likely to increase once every 12 months. The corporation will need to monitor movements in the award pay rates to make sure it is paying the right amount to employees who are working on the award rate.

As an alternative, the corporation may choose to pay the new employee at a rate which is above the award rate. In order to do that, the corporation will need to specify a higher amount than the award rate. For that purpose, the corporation will still need to know what the relevant award pay rate is for the employee's classification. And the corporation will need to keep an eye on what happens to the wage rate for that classification, over time, to make sure that the pay rate under the contract stays at or above the relevant award rate.

If the corporation is paying at the award rate, there is no need for a salary increase clause—this is taken care of by the award, although it will still be up to the corporation to make sure it is paying the right rate. But if the corporation chooses to pay a rate above the award rate, it would make sense to include a pay increase clause in the contract, such as 'The corporation will review the employee's rate of pay on *[insert date]* each year, and may increase it from the first pay period after that date.'

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

The part-time arrangements need to be set down in this clause, in detail.

In this clause, you will need to specify the total number of ordinary hours per week to be worked by the part-time employee. You will also need to specify the full part-time work pattern of the employee—setting out which days of the week they will be working, and what their start time, finish time, and meal break times and durations will be on each day they are working. The total number of working hours in a week must be less than 38 hours. And you cannot specify less than three hours of work on any day.

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—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.

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

http://www.fairwork.gov.au/Pay-leave-and-conditions/Conditions-of-employment/Pages/Fair-Work-Information-Statement.aspx?role=employees

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: the Common Seal of the Corporation needs to be affixed 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 needs to 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 General Retail Industry Award 2010 and 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'.