

The very first step in determining whether a relationship exists in a contract of employment is to determine whether the parties have a contract. According to law, a “contract” is, generally speaking, a legally binding bargain between parties, where there has been offer, acceptance and consideration. There are a number of requirements that have to be fulfilled before it can be said that the parties have a legally binding contract. The main requirements that have to be considered in the case of “employment” are that there must be an intention to enter into a legal relationship; there must be offer, acceptance and consideration. An employment contract outlines the conditions of employment such as wages, hours and the type of work expected to be performed by the new employee. Any item not covered in the original employment contract falls under common-law rights. An employment contract can be entered into both verbally and in written form, where there is no written or verbal agreement between the parties, the Courts will imply certain responsibilities between an employer and employee into the contract of employment. The implied terms of an employment contract will not be implied if the employer and employee have specifically agreed otherwise.

The rights and obligations, which are created by the contract in question, are that the employee follows the obligations of employment as listed in *figure 1*. These rights and obligations apply to both employees and employers alike, although the obligations of employers and employees are different, there are obligations for both parties to abide by.

This contract for employment is not different for a minor, although this is only a contract for **casual** employment; there are different contracts for **permanent** employment. In common law, the main difference between a permanent and a casual worker is that a permanent employee has an ongoing contract of employment of unspecified duration while a casual employee has not.

The characteristics of casual employment are usually:

- Limited entitlements to benefits that are generally associated with the continuity of employment, such as paid annual and sick leave, and
- Little or no security of employment.

Terminating employment contracts means termination of employment. There are different requirements that first must be fulfilled before an employee can be terminated. Notice is usually needed to be given to the other party, depending on who is terminating the contract and for what reason. There are different reasons for the termination of an employment contract, such as, misconduct (justifying instant dismissal), redundancy or resignation. Payment owing is required on termination of employment.

The amount of notice that must be given to a **permanent** employee is shown in *figure 2*. The employer requires the same amount of notice if the employee decides to terminate the contract. If an employer decides to pay the employee instead of giving them the correct amount of notice, the amount of pay must be equal to or exceed the amount the employee would have received had the employee continued to work. This does not apply if the employee is terminated for serious and wilful misconduct.

On the other hand, a **casual** employee can be terminated without notice. “The Workplace Relations Act 1996 gives **casual** employees certain rights with respect to termination of employment. If an employer terminates a casual employee, and that employee does not wish to be terminated, the Delegate should report the matter to their Organiser immediately.” ([http://www.sdansw.asn.au/Favourites/Workplace/termination\\_of\\_employment.htm](http://www.sdansw.asn.au/Favourites/Workplace/termination_of_employment.htm)) “A **casual** employee will be entitled to notice if the casual employee is engaged on a regular and systematic basis for a sequence of periods of employment during a period of at least six months;” (<http://www.osiris.gov.au/tml/awards/9/I0295/0/IA000210.htm>) and “the **casual** employee has, or but for a decision by the employer to terminate the employment, would have had, a reasonable expectation of continuing employment with the employer.” (<http://www.osiris.gov.au/html/awards/9/I0295/0/IA000210.htm>)

An employer will not terminate the employee whilst they are on approved leave.

There is no formal requirement for entering into an employment contract, it may be verbal or in writing. A letter of offer, an employment handbook, and/or human resources policies may form a written contract. A verbal agreement may be formed by a discussion between the employer

and the employee prior to the start of employment. A contract of employment cannot be involuntarily entered into.

The contract in question is fair and balanced for all of the involved parties. If there was no contract that needed to be entered into for the purposes of employment there would be no basis for unfair dismissal, discriminative dismissal and so on. These reasons for termination are in no way fair and if a contract was not present there would be no fairness in the workplace with both employer-employee and employee-employee.

This contract of employment outlines the conditions of employment such as wages, hours and the type of work expected to be performed by the new employee. If no such contract existed there would be no structure for the standard of what hours employees are meant to work and what the employees are meant to get paid. The type of work that the employee is expected to perform is that of **casual** employment, if this was not present the employer could work the employee more than the legal limit of a **casual** employee. The contract is signed by both parties stating that they both agree to the specified terms and condition of employment, and if any dispute arises reference to the contract of employment would be needed to clarify the terms and conditions of employment.

The dismissal provisions of the Industrial Relations Act 1999, apply to employees whether or not they are covered by any award or agreement. "The Act requires that employees are treated fairly in accordance with the principles of natural justice and procedural fairness balanced against the right of employers to dismiss an employee for legitimate reasons." ([http://www.wageline.qld.gov.au/conditionsemployment/termination\\_other.html](http://www.wageline.qld.gov.au/conditionsemployment/termination_other.html)) An employer may dismiss or discontinue the employment of an employee instantly, if the employee believes that the conduct of the employee was serious enough that it was unreasonable to continue the employment. "The Industrial Relations Act 1999 defines misconduct as including theft, assault and fraud. However, dismissal without notice or pay in lieu is only permissible if the misconduct is of a serious nature." ([http://www.wageline.qld.gov.au/conditionsemployment/termination\\_other.html](http://www.wageline.qld.gov.au/conditionsemployment/termination_other.html))

## APPENDIX:

Figure 1 (<http://www.cftech.com/BrainBank/BUSINESSLAW/EmployContract.html>)

- The employee must comply with lawful and reasonable directions of the employer.
- The employee must act in good faith. That is the employee must act honestly and in the best interests of the employer.
- The employee must protect the business and property of the employer.
- The employee must answer all questions relating to the employment truthfully
- The employee must protect the health and safety of his/her fellow employees.
- The employee must not accept bribes or secret commissions.
- The employee must not use or disclose the confidential information for the employer unless that employer is authorised to do so.
- Inventions made by the employee during the course of the employment are the property of the employer.
- The employer may summarily dismiss the employee in the event of gross misconduct.
- Either party may terminate the employment by giving reasonable notice.

Figure 2

([http://www.sdansw.asn.au/Favourites/Workplace/termination\\_of\\_employment.htm](http://www.sdansw.asn.au/Favourites/Workplace/termination_of_employment.htm))

Employee's period of continuous service with the employer	Period of notice
More than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

The amount of notice shall be increased by one week if the employee:

- Is over 45 years old, and;

- Has completed at least two years of continuous service with the employer.