

Contract of Employment Explanation Summary

We are often asked ‘what should be included in a Contract of Employment?’, or ‘Why are good Contracts of Employment so long?’

The below explanation of the sections of a reliable Contract of Employment are designed to assist employers understand what should be included and why each element is important.

Core Elements

Section	Overview and Importance	
Position	Clarifies that Position Descriptions are not an exhaustive list and can be changed over time.	<input type="checkbox"/>
Remuneration	<p>Clarifies:</p> <ul style="list-style-type: none"> ✓ The remuneration structure (e.g. hourly rate plus overtime; all up hourly rate; or salary) ✓ The Award classification level ✓ How overtime and penalty rates will be treated <p>Reassures the employee of the business’s obligation to make sure that they continue to pay in line with or better than the minimum terms set out in the relevant legislation which is either the modern award and/or the Fair Work Act.</p>	<input type="checkbox"/>
Allowances	Clarifies which allowances may apply to the role and whether they are paid in addition or included in the remuneration rate.	<input type="checkbox"/>
Superannuation	Clarifies Superannuation obligations and processes.	<input type="checkbox"/>
Hours of Work and Overtime/Penalty Rates	<p>Clarifies:</p> <ul style="list-style-type: none"> ✓ Ordinary hours of work ✓ Expected hours of work/availability ✓ Expectations of reasonable overtime ✓ How overtime and penalty rates are paid <p>This is an important element together with the Remuneration section to clarify what is covered by an employee’s pay.</p>	<input type="checkbox"/>
Breaks and Records	<p>Puts the onus on the employee to take breaks as per legislated entitlements and to seek permission from management if this is not practical.</p> <p>Sets time recording obligations and expectations and consequences of failure.</p>	<input type="checkbox"/>
Offset	Includes the offset clause where the business can offset amounts paid against amount owed. This is a crucial element combined with the Remuneration and Hours of Work section.	<input type="checkbox"/>
Probation and Qualifying Period	Stipulates the minimum employment (qualifying) period and the probation period (these can be different) and introduces the right to extend within the legislated qualifying period.	<input type="checkbox"/>
Legislation	References the relevant legislation without making it part of the Contract (this should be avoided as the legislation may change).	<input type="checkbox"/>

Overpayment, Incorrect Payments and Deductions	Outlines what may happen if there are incorrect payments made to the employee. This clause lays the groundwork for recovery of overpayment of wages as well as incorrect use of company funds.	<input type="checkbox"/>
Leave	A brief outline of leave entitlements and any requirements specific to the business (e.g. shut-down periods). This section only needs to be brief – anything detailed in relation to notice periods etc should be contained in a policy statement.	<input type="checkbox"/>
Duty of Care	Informing the employee of their obligation to: <ul style="list-style-type: none"> ✓ Perform their role to the best of their ability ✓ Act in the best interest of the business while working for you ✓ Follow lawful, reasonable management directions This clause is often used during disciplinary processes when an employee is refusing to perform their role or acting outside the best interests of the employer.	<input type="checkbox"/>
Policies and Procedures	Lets the employee know that there are policies and procedures in place that they are expected to follow, however, importantly, they don't form part of the Contract (this should be avoided to give the flexibility to change policies and procedures).	<input type="checkbox"/>
Equipment	Clarifying any equipment the employee will be provided, or is expected to provide, and the terms around this (including what happens if they don't return your equipment!).	<input type="checkbox"/>
Presentation and Clothing	Clarifying the standard of presentation expected.	<input type="checkbox"/>
Recovery of Monies and Goods	This section protects the business from someone doing the wrong thing (for example not returning property or IP or incurring costs on a company account for personal purposes). The employee acknowledges that they are liable for those costs and agrees to repay them (it lays the groundwork for the business to take action to recover).	<input type="checkbox"/>
Termination of Employment	Clarifying: <ul style="list-style-type: none"> ✓ Notice required to be given on resignation ✓ What happens if insufficient notice is not provided ✓ Allows the employer to pay in lieu ✓ When summary dismissal (without notice) may occur This is an important element and often comes into play when an employee provides insufficient notice of termination or when an employer is seeking to dismiss on serious misconduct grounds.	<input type="checkbox"/>
Actions on termination	Sets the obligations on the employee of actions required when they leave your employment.	<input type="checkbox"/>
Truth of Application and Further warranties	Asks the employee to verify the truthfulness of their application and lets them know what types of changes they may have to advise the business of (e.g., changes to visa status, physical ability to perform the role, or relevant accreditations/licenses).	<input type="checkbox"/>
Conflict of Interest	This section protects the business by requiring employees to let you know if they engage in other activities outside of the business that	<input type="checkbox"/>

	might be a conflict of interest. It further sets out what happens if a genuine conflict of interest exists.	
Direction not to attend work	Allows the employer to direct an employee not to attend work. This is used most often during investigations into grievances, suspected misconduct, fraud etc.	<input type="checkbox"/>
Use of vehicles	This section sets the expectations of employees if they use a business owned vehicle (regardless of whether they have full access or occasional use) and sets the terms of use.	<input type="checkbox"/>
License	By specifying licenses required, this clause enables the business to seek confirmation of licenses held and the ability to review employment in the instance that a license is lost resulting in the employee not being able to fulfil the requirements of the role.	<input type="checkbox"/>
Fitness for Work	Clarifies the employee's responsibilities in making sure they are fit for work. Safety is a joint responsibility and employees need to be clear on what is expected of them and what they are required to advise management of.	<input type="checkbox"/>
Drugs and Alcohol	<p>Clarifying:</p> <ul style="list-style-type: none"> ✓ Requirements to disclose use of prescription medications that may impact how they perform their role ✓ Guidelines for drug and alcohol use and limits ✓ Drug and alcohol testing ✓ Consequences of breaches <p>By having these terms clearly set in the Contract, the groundwork is laid if there are later issues.</p>	<input type="checkbox"/>
WHS	Setting out the core WHS obligations and entitlements. NOTE: It is important that this is complemented by solid WHS policies and practices.	<input type="checkbox"/>
General Legal Clauses	<p>There are a number of general legal clauses to close the Contract including:</p> <ul style="list-style-type: none"> ✓ Further assurance (that both parties have done what is needed to understand the Contract) ✓ Continuing Obligations (advises which clauses continue to apply after employment ends) ✓ Waiver (applies if clauses are not consistently applied) ✓ Severability (allows single clauses to be struck out rather than voiding the whole Contract) ✓ Entire Agreement (confirms this is the full T&Cs of employment – no other verbal agreements apply) ✓ No Extra Claim (no claims can be brought outside of the Contract) ✓ Confirmation (that the employee has had an opportunity to seek independent advice on the Contract) 	<input type="checkbox"/>

Additional Elements

<p>Confidentiality and Intellectual Property Deed</p>	<p>This deed is a particularly important document and is a protection for the business. Confidential information and IP are highly valuable and hence worth protecting.</p> <p>The deed covers:</p> <ul style="list-style-type: none"> ✓ What is Confidential Information ✓ What is Intellectual Property ✓ Who owns these ✓ The obligations on employees to protect (and not misuse) these ✓ What happens when employment ends ✓ The consequences of breaches
<p>Restraint of Trade</p>	<p>A Restraint of Trade is an important, yet fickle part of employee engagement. ‘Fickle’ because they are particularly hard to uphold (legal action is required) with favour often being given to the employee being able to earn a living over protecting the business’s rights.</p> <p>Despite this, having a carefully considered Restraint of Trade clause is important as it is the foundation for being able to successfully enforce the restraint should the circumstances warrant it.</p> <p>Restraint agreements cover:</p> <ul style="list-style-type: none"> ✓ What the restraint is for ✓ The period of time ✓ The geographic region ✓ The consequences of breaches
<p>Tax Costs and Other Charges</p>	<p>This is a rarely used clause and is applied selectively if an employee’s benefits may attract Fringe Benefits Tax (FBT).</p>

Please note that this is not legal advice, rather a general explanation of the possible clauses.

If you would like assistance in drafting thorough Contracts of Employment, please talk with your Focus HR Consultant or email info@focushr.com.au.