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## 6 myth busters about Employment Agreements

Whether you are employing a new person, or adjusting your employment agreements to build greater flexibility into your workforce, “Which contract should I use?” is probably the most common question I'm asked.

**And here are a few Myth busters:**

### **1. Zero hours contracts are illegal.**

In 2016 there were a lot of headlines about Zero-hours contracts. At the time the Employment Relations Amendment Act 2016 was introduced and this made it a requirement for employers to:

1. Include an availability provision, i.e. when you need them to be available to you.
2. Have genuine business reasons for including that availability provision.
3. Give the ability for the employee to refuse work – i.e. you can't require the employee to be available 24/7 in case you have a shift for them, so, in return they must have the right to refuse offered work without penalty.
4. Include details about the compensation for that availability, i.e. how much they will be paid for cancelled shifts, how much notice will be given for cancelled shifts etc.

Provided you have genuine business reasons (seasonal variations, weather impact etc) and you give reasonable notice of cancellation of shifts or pay them a minimum level if you don't meet those notice requirements, then you can set the guaranteed number of hours as low as you need.

### **2. I have a written Independent Contractor agreement, so they can't claim they are an employee!**

When the question of whether someone is an employee or a (Genuine) contractor is reviewed by the courts, the courts look at the tests of justification. This includes what is in writing, however, it is a far broader review than that.

The good news is that the courts don't like people trying to take a punt each way and get the benefits of being a contractor, when it suits, and an employee when it suits. So the tests of justification are designed to ascertain the genuine understanding of both parties.

### **3. There is a set number of hours that defines someone as part-time**

There is no defined cut-off between when someone is part-time or full-time, and all benefits are as specified in legislation.

#### **4. Sick leave is pro-rata for Part-timers!**

No, sick leave and bereavement leave are a fixed number of days, irrespective of how many days per week someone works. So, if someone works 2 regular days each week then they are entitled to 10 days sick leave (or in effect 5 weeks) sick leave per annum.

#### **5. People on salary aren't entitled to paid overtime**

Generally, people on salaries get paid a set amount each week, and if they do a few more hours one week this will get made up with a bit of flexibility in time later (i.e. an informal time in lieu arrangement). Some contracts may also specify that you can pay for hours over and above "reasonable additional time". However, salaried staff may become entitled to payment for extra hours of work if the hours they are required to work to get the job done mean that their effective hourly rate is less than minimum wage. I.e. someone on a salary of \$52K per annum for a 40-hour week is getting paid \$25 per hour. However, if they work more than 43.2 hours in a week then they are slipping below minimum wage ( $\$1,000 / \$23.15 = 43.2$  hours). So, you would have to top up their pay to meet minimum wage.

#### **6. Casuals don't get paid holidays**

The Holidays Act states that, if an employee "works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks' annual holidays" then you can pay them the 8% uplift with their pay. However, it then goes on to state that "If an employer has incorrectly paid annual holiday pay with an employee's pay in circumstances where subsection (1) does not apply and the employee's employment has continued for 12 months or more, then, despite those payments, the employee becomes entitled to annual holidays".

I.e. they can double dip, and get 4 weeks paid time off as annual leave irrespective of what you have already paid them (yikes!).



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