

Factsheet



COOK ISLANDS
CHAMBER OF COMMERCE
PUNANGA KIMI PUAPINGA O TE KUKI AIRANI

An overview of key provisions in the Employment Relations Act (2012) (ERA)



Employment Agreements

Written employment agreements are not mandatory under this Act. If an employee does not have an employment agreement then the employment of the employee is taken to be subject to the minimum terms and conditions of the Act. Terms and conditions must not be less favourable than the minimum, but may be more favourable to the employee.

While the above is correct at the time of writing this fact sheet, **best practice** is to always have a written employment agreement. Not doing so has been a major cause of employment disputes as terms and conditions that may have been agreed verbally are subject to hearsay. It should also be noted that if you are employing an international worker, **the application process requires a written job offer with terms and conditions** must be provided.

Employment Types

An **employee** means a person engaged to work under an agreement or contract of service. This includes:

- A person paid by the number of units the person produces and a person intending to work, but Does not include
- An independent contractor engaged under a contract for service

Full-time Employee

A **full-time employee** means an employee, other than a casual employee, who:

- Is employed by an employer for at least 35 hours a week; and
- Has regular hours of work each week; and
- Has a reasonable expectation that he or she will continue to be employed by the employer for at least 35 hours per week

Part-time Employee

A **part-time employee** means an employee, other than a casual employee, who:

- Is employed by an employer for less than 35 hours per week; and
- Has regular hours of work each week; and
- Has a reasonable expectation that he or she will continue to be employed by the employer for those hours each week

Casual Employee

A **casual employee** means an employee with irregular working hours;

or
who works intermittently;
or
who is employed for short term work only.



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Rest & Meal Breaks

During each three hour working periods, an employee is entitled to take a rest period of not less than 10 minutes.

In addition, an employee who works more than 5 hours is entitled to a rest and meal break of at least 30 minutes after 5 hours work.

It is normal for rest periods to be paid breaks and meal breaks unpaid.

Wage Rates

Ordinary rate of pay, means the rate of pay an employee is entitled to, under the employee's agreement, for the employee's normal hours of work.

Overtime rate of pay at the rate of one and a half times the employee's ordinary rate of pay must be paid for each hour worked in the week in excess of 40 hours.

Public holidays - An employee, other than a casual employee is entitled to a holiday with pay at the employee's ordinary rate of pay, if a public holiday falls on a day which would normally be a working day for the employee. If the employee is required to work on a public holiday, then, the employee is entitled to:

- Be paid an hourly rate for work on the public holiday, as agreed between the employer and the employee but not less than:
 - For casual employees, double the hourly rate the employee was paid in the working day (other than a public holiday) preceding the public holiday; or
 - For full or part time employees, double the employee's ordinary rate of pay;

Or

- Have an extra day added to the employee's leave entitlement, or
- Receive time off in lieu for the time worked on the public holiday, or
- Another reasonable arrangement that is not less than favourable to the employee, and as agreed between the employer and the employee

Young Workers

You may not employ a person who is under 13 years of age and unless you have the approval of the Secretary of the Ministry of Internal Affairs, may not employ a school-aged person;

- During normal school hours
- or more than 10 hours per week outside of school hours; or
- For work other than light work



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Employees are entitled to annual leave, public holidays, sick leave, maternity leave (with payment provisions), and paternity leave. These entitlements are part of the minimum employment conditions outlined in the Act, ensuring fair and consistent treatment across workplaces.

Leave Entitlements

Annual Leave

A **full-time employee** is entitled to 10 working days annual leave, paid at the employee's ordinary rate of pay, for each 12 month period which the employee is working or on paid leave. It is acceptable for an employer to require a minimum period of service for new workers before they are entitled to take leave, but that minimum period should not exceed six months. Employers and employees should discuss and agree when the leave can be taken.

A **part-time employee** is entitled to a number of annual leave day's proportional to 10 working days for the number of hours worked for each 12 month period during which the employee is working or on paid leave. As an example: if the annual leave entitlement in their employment contract is 10 days for a full-time workers based on their 40 hours per week, then a part-time employee who has worked an average of 20 hours per week in the previous 12 months, then the part-time employee entitlement would be 5 working days per annum. Remembering, that these are the minimum entitlements.

Sick Leave

A **full-time employee** is entitled to a minimum of 5 days of paid sick leave for every 12 months of continuous service. A **part-time employee** is entitled to sick leave proportional to 5 working days for the number of hours worked for each 12 month period. As an example, a part-time employee who has worked an average of 20 hours per week in the previous 12 months, then the part-time employee sick leave entitlement would be 2.5 working days per annum. An employer may require an employee to work for a minimum period, not exceeding six months before the employee takes sick leave for the first time after commencing their employment. The employer may require a written certificate, certifying the employee's inability to work and stating why the employee is unable to work. This must be signed by a qualified medical practitioner, or, where a qualified medical practitioner is unavailable, is an island in the Cook Islands other than Rarotonga, a qualified nurse.



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Leave Entitlements

Maternity Leave

All eligible working women, including international workers, in the Cook Islands who give birth are entitled to maternity leave of 6 weeks. A casual employee is not eligible for maternity leave. The employee must not commence the leave earlier than 2 weeks before the expected delivery date, and must commence the leave no later than the date of the birth. If the employee returns to work at the expiry of the maternity leave or within 6 weeks of the birth, the employee is entitled to return to the position usually held by her prior to taking maternity leave, or, to an equivalent position and on conditions equivalent to those which would have applied to her had she not taken maternity leave. The employer can request a written medical certificate from a qualified medical practitioner confirming the pregnancy and the expected date of delivery.

Payment of maternity leave

An eligible employee on maternity leave is entitled to be paid by the Crown, at the minimum rate of pay, based on a 40 hour working week. **If** the employee's employment agreement provides for the payment of maternity leave by the employer then the employer must make the payment in accordance with that agreement; and, the payment by the employer is **additional** to any payment by the Crown to which the employee is entitled.

Note: In the case of **Crown payments** for maternity leave, an international worker is **not** an eligible employee. In the case of international workers, **the employer must pay for the maternity leave at not less than the minimum wage**. An employee employed within the Public Service have their own entitlements specified in the Public Service Act 2009.

Paternity Leave

An employee who is the spouse of a person who gives birth is entitled to 2 working days paid leave, paid at the employee's ordinary rate of pay, and 3 working days unpaid leave, in the 6 weeks following birth. This does not apply to casual workers.



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Termination & Redundancy

An employee who wishes to terminate their employment, must give the employer at least one week's notice of the termination.

An employer who wishes to terminate the employment of an employee may only do so for one or more of the reasons listed below:

- Due to the employee's capacity to carry out the duties required by the employment agreement;
- The employee's conduct
- A restructure of the employee's business, for genuine reasons, that creates a redundancy of an employee position.

If any of the above three reasons are triggered, then the employer must either give the employee not less than 7 days notice before the termination, or, pay the employee not less than one week's pay (at the employee's ordinary rate of pay) in lieu of notice.

This does not apply to a casual employee. In the case of termination due to serious misconduct, then an employer may terminate the employment without notice.

In the case of termination due to redundancy, the employer must either give the employee 2 weeks notice of the termination (not included any period during which the employee is on annual leave), or, pay the employee not less than 2 week's pay (at the employee's ordinary rate of pay) in lieu of notice.

An employer must give the employee a reason for the termination of their employment and before issuing a notice of termination (due to capacity or conduct) the employer must tell the employee, in writing, of the reasons for the termination; and give the employee a reasonable opportunity to respond and make submissions to the employer about why the employee's employment should not be terminated.

Upon termination of employment, the employer must, as soon as practicable, pay the employee for any accrued annual leave not taken at the time of the termination and any outstanding pay or other entitlements owing to the employee at the date of the termination.

Casual Employees - For casual employees, the above does not apply as the Act does not require employees and employers to give formal notice before ending employment. Because casual roles are typically short-term or intermittent, the employment relationship can end at any time, provided it's not done in a harsh, discriminatory, or unfair manner.

For more information

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