



FACT SHEET

Letters of Appointment

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When employing a new employee, it is advisable to document the employment terms, conditions, and other requirements and arrangements. In many instances, Awards require certain arrangements to be documented and a Letter of Appointment can address those requirements as well as wider employment arrangements and expectations.

A Letter of Appointment is a written document that formally and clearly outlines the conditions governing the employment relationship between an employee and employer.

Where an Award or other industrial instrument requires other matters to be documented, such as the employment status, the minimum employment period that applies, or the weekly hours of work, this must be documented, otherwise, it is likely to be viewed as a breach of the terms of the instrument. This information can be confirmed in the Letter of Appointment.

The QHA recommends that a Letter of Appointment is drafted and implemented for all employees, including casual employees.

Please note that the term 'letter of appointment' is interchangeable with 'contract', 'employment contract', and 'common law contract'.

CONTENTS OF A LETTER OF APPOINTMENT

1. EMPLOYMENT STATUS

Employees can be employed on a casual, permanent, fixed-term or pieceworker basis and a letter of appointment should reflect the employment status that applies. Each is described below in more detail:

Casual Employee

A casual employee is an employee who is employed by the hour or day, as required, and is not engaged on a regular or systematic basis for an indefinite period.

Permanent Employee

A permanent employee is an employee who is employed to work hours on a regular and systematic basis for an indefinite period of time, and may be employed on a full-time or part-time basis.

Fixed-Term Employee

A fixed term employee is usually a full-time or part-time employee employed to work for a fixed period of time, or specified task, with a specific start and end of the contract (and therefore employment).

Pieceworker Employee

A pieceworker is an employee employed in an occupation who works on piecework rates. Piecework rates is a system of work in which an employee is paid according to output, for example, payment for each item produced.

2. GENERAL CONDITIONS

Award Covered Employees

A Letter of Appointment for an employee whose employment conditions are governed by an Award or industrial instrument should make reference to the relevant industrial instrument, stating the name of such an instrument and the employee's position classification.

Non-Award Employees

Where an employee is not covered by an Award or industrial instrument, minimum conditions as prescribed in the National Employment Standards (as enshrined in the *Fair Work Act 2009*) and Federal Minimum Wage should apply. A Letter of Appointment should refer to those as minimum entitlements and conditions for the position.

Please note that in determining whether a position is covered by an Award or other industrial instrument such as an Enterprise Agreement (EA), or the position is award-free, an employer must have regard to the coverage clauses of relevant Awards / EAs as well as the position classifications contained in those instruments.

Where an Award / EA applies to an employer, and to an employee due to the employee's position classification falling within the scope of the Award / EA, the Award / EA will apply to that employee. This means that the terms and conditions employment in that Award / EA apply as the minimum conditions for the employee, and must be met – regardless of whether the employee is paid more than the Award / EA rate of pay.

As most positions are covered by an Award, an employer cannot deem a position to be 'award-free' or a 'common law' employee because it better suits the employer.

Refer: QHA's Classifications Under the HIGA Fact Sheet

3. OTHER CONTRACT CLAUSES

A Letter of Appointment should contain, but is not limited to, the following clauses and arrangements:

- Date (of the contract)
- Name and address of employee
- Employer details including job location/s
- Commencement Date
- Position Title
- Employment Status
- Award (or otherwise) application
- Hours of Work
- Minimum Employment Period
- Remuneration and Conditions
- Superannuation
- Duties Statement
- Confidentiality Requirements
- Pay Arrangements including frequency
- Non Attendance Arrangements
- Termination of Employment

The employer may also refer to HR policies and procedures an employee is expected to comply with.

The Letter of Appointment must be signed by the employer and the employee, with a copy placed in the employee's personnel record, and the original given to the employee.

Pro-forma letters of appointment for permanent and casual staff are available at a nominal cost from QHA. The pro-forma letters are designed for Award covered employees. The templates can take the hassle out of drafting a Letter of Appointment by ensuring the confirmation of terms and conditions that apply to an employee's employment.

Pro-forma letters of appointment for non-award staff are also available at a nominal cost and QHA will assist in ensuring key conditions of employment are covered.

Please contact the Employment Relations Department to discuss the templates or drafting a contract for a non-Award employee.

ENTERPRISE AGREEMENTS AND INDIVIDUAL FLEXIBILITY AGREEMENTS

Employers have the ability to seek more flexible arrangements through EAs and Individual Flexibility Arrangements (IFA's). IFAs can be made with individual employees either via a modern award or an EA mechanism (where provided).

Employers may enter into an EA with employees in their workplace. An EA is a written agreement with employees that sets out terms and conditions of employment. An EA, once operative and where stated, overrides the applicable Award/s and becomes the primary source of employee terms and conditions.

EAs must be approved by the Fair Work Commission in order to have any legal effect. Prior to approval, a **better off overall** test ('BOOT') is applied to ensure no employee is disadvantaged, and certain documentary and process requirements must be met.

Where an EA applies to an employee, the Letter of Appointment should refer to the EA as being the applicable industrial instrument rather than an Award.

Refer: QHA's Enterprise Agreement Fact Sheet

An IFA can only be entered into after employment has commenced, therefore a Letter of Appointment still refers to the relevant Award (or EA) as the industrial instrument governing employment conditions. Where an IFA is entered into, the IFA will operate in conjunction with the Letter of Appointment, and will apply to the extent of any inconsistency with the Letter of Appointment as it refers to Award (or EA) terms.

Refer: QHA's Individual Flexibility Arrangements Fact Sheet

Further Assistance

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Fact Sheet, or to discuss any queries relating to specific workplace matters.

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