

## Can They Do That? A look at contracts

### **It's time to bust some myths about your Employment Agreement.**

Let's look at some common pitfalls that come up in many tech contracts. Just because they're common, does not mean they're enforceable.

#### **Workers' break time**

**YES.** You get a tea break.

All workers get rest breaks that reflect the amount of time they've worked on that particular shift. Your workplace pays for your time during your short rest breaks. For example: in an 8 hour day, you'd get one unpaid lunch break and two ten minute paid rest breaks.

From May 2019, both break lengths and break timing are mandated by employment law. Break times need to be set and mutually agreed (the old law left room for employers to set 'take it or leave it' break times). MBIE has a good summary online.

**YES.** If you're on a service desk or working onsite, you are entitled to breaks.

Your workplace should pre-arrange staggered rest breaks so teams get some time away from the phones. Your employer has the ultimate responsibility to get their rosters right and manage staffing levels. You should know what you've negotiated - whether it's a rotating roster or a standard break time - and this agreement should be recorded in writing.

If workflow, meetings or call volumes mean that you consistently aren't able to go for your tea break, discuss the problem with your employer - under law, they have to work with you 'in good faith'. You have the power to call in mediation if you think you're not being given a fair chance to rest.

**YES.** You get a lunch break.

Working for four hours or more on any given shift? You're entitled by law to an unpaid 30 minute meal break. Health and safety law (and probably your work's safety policy) says you need to take this break so you don't burn out at work. In fact, most workplace

mediators and union reps would advise you to take at least a half hour break in the middle of your shift, instead of skipping it so you can finish your shift early.

**YES.** You get meal and tea breaks during overtime or after hours shifts. The law follows the hours you've worked, not standard office hours.

NZ employment law says this about your breaks:

*Employees are entitled to paid rest and unpaid meal breaks that:*

- *give them a reasonable chance during work periods to rest, refresh and take care of personal matters*
- *are appropriate for the length of their working day with the employer.*

Statutory minimum break times are now set by law. Go to [MBIE's website](#) for more info.

## **IP ownership**

**NO.** If you work on IP on your own time or for personal purposes, your work can't take that from you

**NO.** Your employer does not own your brain, just because you work with them

**NO.** You are not expected to withhold information about the generic aspects of your work: e.g. things that are not currently commercially sensitive, or not Secret. If you are speaking with a person who has security clearance to hear about your work, you should be at liberty to discuss it in broad terms. Withholding information on a past project should not hamper your chances at a job interview.

## **Restraint of trade**

There are two types of restraint of trade clause: "non-compete" and "non-solicit".

- Non-compete is stricter and is about where you can work next.
- Non-solicit roughly translates to: don't steal your old workplace's clients for your own gain.

Your employer has very little say over where you go next in your career. These clauses are about protecting the IP of products in development, not about punishing you for

leaving a workplace.

**NO.** A non-solicit clause shouldn't cover suppliers, or vendors that are common to the broader tech industry. A specific and narrow set of customers or contacts is more reasonable. Anything too broad won't hold up in court.

**NO.** A non-compete clause cannot be so broad that it excludes you from working in your chosen field.

A non-compete clause won't hold up longer than 3 months. A non-solicit clause should also have a short duration, or it won't be enforceable.

## **Salary discussion**

**YES.** You must, by law, have a regular performance and salary review. This should happen at least once a year; but you do not have to wait till your end of year review to discuss salaries or potential increases.

**YES.** If you take on higher duties (e.g. becoming Acting Manager for a few months) you may be eligible for extra pay in the form of a Higher Duties Allowance. Check your employment agreement to see what your workplace does.

**YES.** If a salary review period drags on, and you end up getting a pay rise, you should expect that pay increase to be backdated to the review date.

## **Overtime or On call**

**YES.** You need to be compensated for overtime work - however this could be written into your contract as 'implicitly' part of your salary, so watch for sneaky wording. Most organisations will pay you extra for overtime and give you time off in lieu or stand-down time in return.

**YES.** You need some kind of allowance for being on call.

**YES.** There are limits to how long you can stay on-call or work overtime before you need to stand down. Doing shift work after hours, on an 8-hour day or less? It's standard

industry practice to compensate you for working unsociable hours. The ways of doing this vary.

General advice: look for plenty of specific detail in your employment agreement around overtime, whether it's expected in your role, what rewards you'll get for doing overtime, and so on.

## **Minimum wage**

**YES.** The minimum wage legislation applies to all your hours worked, not just 'office hours'.

If your salary doesn't add up to an hourly minimum wage - *your employer must compensate you for the difference.*

**YES.** You may well be entitled to the minimum wage as an intern.

The rule of thumb: check if you are a net 'asset' to your workplace. In other words: are you doing billable or essential work for a business, not just there to watch and learn? According to employment guidelines and industry best practice, if your internship is materially supporting the business, you should be considered an employee and get paid as such.

## **Unpaid interns**

**YES.** You are a volunteer. You should expect something for your volunteered time.

If you're not getting paid, you should be getting real and useful training, with the expectation that this prepares you for a role in the tech sector/with that business.

ITO and grad school internships may pay you a modest stipend while you're learning on the job.

**NO.** A travel allowance or koha is not a viable alternative to getting paid, and it could get a business or an employer in serious trouble. MBIE recommends signing interns to a fixed-term contract and paying them like a contractor.

Some unpaid internships try to offer alternative support like subsidised accommodation or travel. 'In-kind' payments are the worst of both worlds - your volunteer job status is lost, and you aren't being properly remunerated. 'In-kind' arrangements could affect your WINZ eligibility, or if you're not a New Zealander, they may cause problems with your work visa.

## **Parental Leave**

These facts apply to both paid parental leave and unpaid 'extended leave'.

**YES.** They must hold your job for when you get back.

**YES.** Parental leave is enshrined in law for you whether or not you're the one pregnant with your baby.

**YES.** There are some minimum entitlements, but you can also negotiate for more paid or unpaid leave, so it's worth talking to your boss about it.

**NO.** They can't discriminate against you if you are pregnant and interviewing for a role or asking for a raise.

## **Domestic Violence leave**

**YES.** This needs to be in your agreement somewhere.

It's now compulsory for Domestic Violence support and leave to be included in every new employment agreement (from 1 April 2019). All employees are entitled to it from that date even if it is not in your current contract.

## **Other interesting additions to an Employment Agreement:**

### **Flexible working hours/Work from Home clause**

These tend to be negotiable, and can either be one-off, short term arrangements or an ongoing agreement that can be written into a contract. Some tech companies encourage working from home arrangements because it helps them with Business Continuity planning. Others do it to try and get you on the clock 24/7.

A good arrangement will suit your needs as well as your employer's. It should be transparent and it must be supported not just by your boss, but by your co-workers and the broader organisation.

### **Harm Reduction or Substance Abuse rehab clause**

Many tech workers are in positions of such responsibility that substance abuse on the job is considered serious misconduct - but there are other options. A few organisations take a different tack and prefer a restorative, harm-reduction approach. It's an interesting indicator of work culture: it tells you a lot about an organisation's values and which communities it wants to feel welcome.

Check your agreement and your work's policies - a good workplace will have a solid explanation for their approach to substance abuse and drug testing.

### **Training incentives**

Got a raft of certifications to stay on top of? Yes, you can get paid for that - usually by getting your exam costs refunded, often with a modest one-off bonus payment on certification. Some employers will make your salary increases contingent on your training - check how incentives are structured.