



OTTO KRAUSE INCORPORATED

EMPLOYMENT AGREEMENTS: CLIENT INFORMATION QUESTIONNAIRE

Information required for the drafting of a contract of employment and the related workplace documents, and for advice upon a contract which has been offered to you

Client name	
File / matter reference	
Attorney dealing	
Date completed and returned	

HOW TO COMPLETE THIS QUESTIONNAIRE

This questionnaire may be completed on your computer. Click into any shaded block and type your answer. The block will expand as you type. It is not necessary to print the document or to complete it by hand. When you have finished, save the document and e-mail it back to this office.

Where you are unsure of an answer, simply leave the block blank. Several of these questions concern matters upon which you may want our advice before deciding, and that is exactly as it should be. We shall go through the questionnaire once we receive it and contact you about anything outstanding.

You are welcome to contact our offices directly at any stage should you experience any difficulty with any of the questions.

It is not necessary to attach any supporting documentation at this stage. A list of the documents we shall eventually require appears at the end of this questionnaire.

Everything you disclose in this questionnaire is protected by legal professional privilege and will be treated in strict confidence.

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BEFORE YOU BEGIN

A contract of employment is the foundation of every workplace relationship, and it is the document to which everybody returns when that relationship goes wrong. It costs very little to have it drawn properly at the beginning. It costs a great deal to do without it.

This firm acts for employers and for employees alike. We draw contracts and workplace policies for employers, and we advise employees on contracts which have been offered to them or which they are being asked to vary. What we cannot do is act for both parties to the same contract. If we already act for the other side, we shall tell you so at once.

Our advice to employers is to attend to these documents before the employee starts work, and not afterwards. An employee who has already begun working under terms which were never recorded is in a strong position to say that they were something other than what the employer now contends. Our advice to employees is not to sign on the day the contract is put in front of you. You are entitled to read it, to ask what a clause means and to take advice, and a reasonable employer will not object to your doing so.

Pay particular attention to the restraint of trade, the confidentiality clause, the deductions clause, the probation clause and anything dealing with commission or bonuses. Those five are the source of most of the disputes which reach us.



WHAT THE LAW REQUIRES TO BE IN WRITING

The Basic Conditions of Employment Act obliges an employer to supply every employee, in writing and when the employee starts work, with particulars of the employment. These include the names and addresses of the parties, the place of work, the date of commencement, the job title and a brief description of the work, the ordinary hours and days of work, the remuneration and how it is calculated, the frequency of payment, any deductions, any payment in kind, the leave to which the employee is entitled, the notice period, any period of previous employment which counts towards the employee's length of service, and a list of any other document forming part of the contract.

These particulars must be kept for a prescribed period after the employment ends, and must be revised whenever the terms change. An employer who does not have them is not merely exposed to a claim; it is also deprived of the evidence with which such a claim would ordinarily be answered.

The Act sets a floor and not a ceiling. Nothing prevents an employer from agreeing terms more favourable than the statutory minimum, but a term which gives the employee less than the Act allows is invalid to that extent, whether or not the employee agreed to it. Certain provisions of the Act do not apply to employees earning above the threshold determined by the Minister from time to time, which is presently [[current earnings threshold]] per annum. Whether an employee falls above or below that figure affects the position on overtime, on hours of work and on several other matters, and it is one of the first things we shall establish.



CHOOSING THE RIGHT KIND OF CONTRACT

Not every working arrangement is the same, and calling a contract by one name does not make it that thing. A court or a commissioner will look at how the relationship actually works, not at the heading on the page.

A permanent contract, properly called employment for an indefinite period, continues until it is terminated on notice or for a fair reason. A fixed-term contract ends on an agreed date or upon the completion of an agreed project, but where the employee earns below the threshold and the term exceeds three months, the Labour Relations Act requires a justifiable reason for fixing the term, failing which the employee is treated as though employed indefinitely. A part-time employee earning below the threshold must, after three months, be treated on the whole not less favourably than a comparable full-time employee.

An independent contractor is not an employee at all, and is not protected by the labour statutes. This is a distinction which employers frequently get wrong. A person who works under the employer's control and direction, whose hours are set by the employer, who is economically dependent upon that employer and who forms part of its organisation is likely to be found to be an employee whatever the contract says, and the consequences of that finding — unpaid leave, unpaid overtime, employees' tax and an unfair dismissal claim — are usually expensive.

Where labour is supplied through a temporary employment service, an employee earning below the threshold who is placed with a client for more than three months is generally deemed to be the employee of that client. Before engaging staff through a broker, an employer should understand that it may acquire the obligations of an employer in any event.



THE PRINCIPAL STEPS



Consultation and instructions. We take your instructions on the position to be filled or the contract offered to you, and advise on the form of contract which fits the arrangement you actually have in mind.



Agreeing the terms. Remuneration, hours, duties, benefits, probation and notice are settled. Where we act for an employee, we identify the clauses which should be resisted or renegotiated.



The statutory particulars. We confirm that everything the Basic Conditions of Employment Act requires to be recorded in writing is in fact recorded, and that no term falls below the statutory floor.



Drafting the contract. We prepare the contract together with its annexures — the job description, the remuneration schedule and any commission or incentive scheme.



Signature. The contract is signed by both parties before the employee commences work. Where the employer is an entity, we confirm that the signatory is authorised.



Protecting the business. Where the position warrants it, the confidentiality, intellectual property and restraint of trade provisions are drawn so that they are enforceable rather than merely intimidating. A restraint which is wider than the interest it protects will not be enforced.



Payroll and registrations. The employee is registered for employees' tax and unemployment insurance, and the employer's obligations in respect of the skills development levy and compensation for occupational injuries are attended to.



Policies and induction. The disciplinary code, grievance procedure and workplace policies are issued to the employee and their receipt is acknowledged. A code which has never been brought to the employee's attention is of little use when it is needed.



During the employment. Terms are varied by written addendum, performance is managed and recorded, and warnings and reviews are kept on file. Contemporaneous records are worth more than recollection.



Termination. The employment ends by resignation, agreement, retirement, expiry of the term or dismissal for a fair reason and by a fair procedure. Final payments, the certificate of service and the UI-19 are attended to.

**PART A: YOUR PARTICULARS AND YOUR CAPACITY**

In what capacity do you consult us? Mark the applicable block:

Capacity	Mark with an X
I am the employer, or I represent the employer	
I am the employee, or the person to whom the position has been offered	
I require a template contract for use in my business generally	
I require an existing contract to be reviewed or amended	
Other (please describe below)	

Full names and surname	
Position or job title	
Contact number	
E-mail address	
Preferred language (English / Afrikaans / other)	
Is there an existing written contract in place? If so, when was it signed and by whom was it drawn?	
Is there any urgency — a start date already agreed, or an offer which lapses on a certain date?	

**PART B: THE EMPLOYER**

Full registered name of the employer	
Trading name, if different	
Registration number	
Physical address of the workplace	
Registered address, if different	
Nature of the business	
Approximate number of employees	
Does the employer fall within the scope of any bargaining council, sectoral determination or collective agreement? If so, which one?	
Is there a recognised trade union in the workplace?	
Does the employer have a disciplinary code, grievance procedure and written policies in place?	
Who is authorised to sign contracts of employment on behalf of the employer?	

**PART C: THE EMPLOYEE AND THE POSITION**

Full names and surname of the employee	
Identity number (or passport number, nationality and particulars of any work permit)	
Residential address	
Contact number and e-mail address	
Job title	
Department and to whom the employee reports	
Does the employee supervise others? If so, how many?	
Describe the principal duties of the position (a job description may be annexed)	
Where is the employee to work, and may the employer require the employee to work elsewhere?	
Is remote or hybrid work contemplated? On what terms, and who provides the equipment and the connectivity?	
Is travel required, whether locally or abroad?	
Does the position require any licence, registration, qualification or clearance? Has it been verified?	
Is any qualification, criminal or credit check to be conducted, and has the employee's consent been obtained?	

PART D: COMMENCEMENT, PROBATION AND DURATION

Date of commencement	
Is the employment for an indefinite period, for a fixed term, part-time, casual or on an independent contractor basis?	
If fixed-term, what is the term, and what is the justifiable reason for fixing it? (An expiry date alone is not a reason)	
If a project is involved, how is its completion to be identified?	



Is there to be a probationary period? For how long, and how is performance to be assessed during it?	
May the probationary period be extended, and on what basis?	
Does any period of previous employment count towards the employee's length of service?	
Is there a retirement age, and what is it?	



**IOI PART E: REMUNERATION AND BENEFITS**

Basic remuneration (state the amount and whether hourly, weekly, fortnightly or monthly)	
Is remuneration expressed as a basic salary or as a total cost to company?	
On what day is remuneration payable, and by what means?	
Is a guaranteed thirteenth cheque payable? When?	
Is a bonus payable? Is it discretionary or guaranteed, and on what is it based?	
Is commission payable? Set out the rate, how it is calculated, when it accrues, when it is paid, and what happens to commission on sales concluded before but paid after termination	
Are there any allowances (travel, cellphone, subsistence, tools, housing)?	
Is a company vehicle provided, and on what terms?	
Is the employee to be a member of a medical aid, and what does the employer contribute?	
Is the employee to be a member of a pension or provident fund, and what does each party contribute?	
Is any group life, disability or funeral cover provided?	
When is remuneration reviewed, and is any increase guaranteed?	
What deductions is the employer to be entitled to make, and in what circumstances? (Deductions for loss or damage are strictly regulated and require a fair procedure)	

IOI PART F: HOURS, OVERTIME AND LEAVE

Ordinary hours of work, and on which days	
Starting and finishing times, and the meal interval	
Does the employee earn above or below the earnings threshold? (If you do not know, leave blank)	



Is overtime contemplated? Is it to be paid, or is it included in the remuneration where the employee earns above the threshold?	
At what rate is overtime, Sunday work and work on a public holiday to be paid, or is time off to be granted instead?	
Is shift work, standby or night work contemplated? Give particulars	
Annual leave — how many days per annum, and on what notice must it be taken?	
May leave be accumulated or encashed?	
Sick leave — is the statutory cycle to apply, or something more generous?	
When must a medical certificate be produced?	
Family responsibility leave and parental, adoption or commissioning parental leave arrangements	
Maternity leave — is any portion to be paid by the employer?	
Study leave, unpaid leave or sabbatical arrangements	
Is the business closed over any period, and must leave be taken then?	

**PART G: CONFIDENTIALITY, INTELLECTUAL PROPERTY AND RESTRAINT**

A restraint of trade is enforceable in South Africa, but only so far as it is reasonable. A restraint which is wider in duration, area or scope than is necessary to protect a genuine interest of the employer will be cut down or refused altogether.

What confidential information will the employee have access to (customer lists, pricing, formulae, methods, financial information, supplier terms)?	
Is a restraint of trade required? What legitimate interest does it protect?	
For how long after termination should the restraint operate?	
Over what geographical area?	
What activities should it prohibit?	
Should the employee be prevented from soliciting customers, suppliers or fellow employees, and for how long?	



Is any payment to be made in consideration of the restraint?	
Will the employee create intellectual property in the course of the work? Who is to own it?	
Is the employee presently subject to a restraint in favour of a former employer? Give particulars, and state whether we have seen it	
Does the employee bring any confidential information or client relationship from a previous employer? (This requires care)	

**PART H: COMPANY PROPERTY, CONDUCT AND PERSONAL INFORMATION**

What company property is issued to the employee (vehicle, laptop, telephone, tools, keys, access cards, uniform)?	
Is the employee permitted to use company equipment or the company's systems for private purposes?	
Is the employer to reserve the right to monitor its systems and communications? (This must be disclosed, and the Regulation of Interception of Communications Act applies)	
Is a dress or uniform requirement to apply?	
Is a substance-testing policy to apply?	
Is the employee permitted to hold other employment or a business interest outside the workplace?	
How is a conflict of interest to be declared?	
What personal information of the employee will the employer process, and has an employee privacy notice been prepared? (The Protection of Personal Information Act applies to employee records)	

**PART I: TERMINATION AND DISCIPLINE**

What notice period is to apply on either side?	
May the employer pay in lieu of notice, or place the employee on garden leave?	
Is a disciplinary code to be annexed to the contract or issued separately?	



Is a grievance procedure in place?	
What is to happen to company property, outstanding leave and any loan on termination?	
Is any handover obligation or exit interview required?	
Are there any circumstances in which the employer may suspend the employee, and on what terms as to pay?	

PART J: OTHER DOCUMENTS REQUIRED

Mark those documents which you would like us to prepare:

Document	Mark with an X
Contract of employment for an indefinite period	
Fixed-term contract of employment	
Part-time or casual contract	
Independent contractor or consultancy agreement	
Job description	
Commission or incentive scheme	
Restraint of trade and confidentiality agreement	
Disciplinary code and procedure	
Grievance procedure	
Workplace policies (leave, information technology, social media, substance abuse, harassment)	
Employee privacy notice under the Protection of Personal Information Act	
Remote or hybrid work policy	
Learnership or internship agreement	
Mutual separation agreement	
Acknowledgement of debt or loan agreement with an employee	
Employment equity plan	

PART K: ANY OTHER INFORMATION

Please set out anything else you consider relevant, including any concern about the position, the person or the arrangement which you would like us to address.

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PART L: DECLARATION BY THE CLIENT

I, the undersigned, confirm that the information furnished in this questionnaire is true and correct to the best of my knowledge and belief, and I instruct Otto Krause Incorporated to act upon it in the preparation of the contract of employment and the related documents. I undertake to inform my attorneys forthwith should any of the information change or should I become aware that any of it is incorrect or incomplete.

Full names	
Signature (you may type your name here and sign the printed copy at our offices, or attach a scanned signature)	
Place	
Date	

ANNEXURE: DOCUMENTS TO BE FORWARDED IN DUE COURSE

Document	Available? (Yes / No / Will obtain)
Any existing contract of employment or letter of appointment	
Any offer of employment already made or received	
Job description or advertisement for the position	
Identity document and, where applicable, work permit of the employee	
Registration documents of the employer	
The employer's existing disciplinary code and policies	
Any applicable bargaining council agreement or sectoral determination	
Commission or incentive scheme documents	
Medical aid and retirement fund schedules	
Any restraint of trade to which the employee is presently subject	
Payslips, where an existing employment is being regularised	
Correspondence between the parties	