



A Guide To Negotiating An Independent Employment Agreement

Whatever type of organisation you are employed in, it is entirely proper and legal for you to ask that your terms of service / conditions of employment be negotiated and agreed on an individual basis. An Individual Employment Agreement (IEA) is available to all employees, even those working for a large organisation such as a District Health Board (DHB), where a union might have negotiated terms of service for all of its members – known as Collective Bargaining.

Where a collective bargaining process has resulted in agreement of terms of service across a number of employers (all DHBs for example), this is known as a Collective Agreement. In the case of DHBs it is known as a multi-employer collective agreement or MECA. Even when a MECA has been agreed, if you are not a member of the union involved in the negotiation, you are entitled to ask to have your terms of service reflected in an IEA.

Negotiating your IEA

In the first 30 days of your employment you are automatically covered by the terms of a Collective Agreement if there is one in place in your workplace that includes the role you are working in.

If you are a new employee, the first step is to complete the 'Active Choice Form' your employer will give you within the first 10 days of you starting work. Indicate on this form that you do not wish to join a union (see also the College Guide to Managing Collective Agreements as a Non-Union Member). If you are an established employee and have joined the union, it is still possible to transfer to an IEA having left that union. In either situation next inform your direct line manager of your intent to have the terms of service / conditions of your employment negotiated on an individual basis – an IEA. Dependent on the size of your employing organisation that manager may be authorised to negotiate your IEA, or you may be referred to a representative of the human resources (HR) department, or similar. Don't be surprised if the initial response questions your right to negotiate an IEA, as this may be an unusual request in some organisations. Remember; it is entirely proper and legal for you to ask for an IEA.

Once your employer agrees, you can decide whether you simply negotiate the IEA yourself or engage the services of an employment adviser.

An important starting point is to have a job description (JD) agreed with your employer which accurately describes the work you do. On the basis of the JD you can undertake some research to find out what other people doing similar jobs might get paid. You can even consider the rates in a MECA as a point of reference. Perhaps more useful though is to try and find examples of roles like yours in similar organisations. Of course, the reason you are seeking to negotiate an IEA may be that your role is unique. In this case you will have to negotiate with your employer on the basis of what you consider your role to be worth. In turn, the employer may counter with a sum they believe is affordable.

Note that your reward for work may comprise of much more than the base rate of pay. Consider whether you are being asked to work unusual hours for example, or on a public holiday. You may also feel a certain amount of annual leave is required, and paid time away from work for professional development (PD), and even a financial contribution toward that PD. What happens if you are sick; how many days do you think it is fair for your employer to let you be away from work on full pay or part pay – how much would that be?

When negotiating your IEA remember to think of the future. For example, if your employer does not have a registered superannuation scheme and you have a KiwiSaver plan then your employer is obliged to contribute a sum equal to a minimum of 3% of your pay. You may of course want to negotiate a larger contribution.

Whatever you consider to be fair terms of service / conditions of employment for the work you do there are a wide range of minimum legal requirements from any employer. You in turn are expected to adhere to requirements as an employee.

Minimum requirements of an IEA

These requirements cover the considerations mentioned above and at absolute minimum your IEA should ensure:

- You have a written employment agreement (contract) – the IEA
- You have the right to get advice before signing the IEA
- You are paid at least the minimum wage if over 16 years of age
- You get breaks to be provided and taken at reasonable times throughout your working day. An example would be two paid rest breaks and one unpaid meal break when you work more than 8 hours in a day
- You are entitled to 11 public holidays off with pay, if they are normal days of work (if you have to work on a holiday you receive 1.5 times your normal pay rate and another day off work)
- You are entitled to 5 paid sick leave days and 3 paid bereavement leave days for the death of an immediate family member after 6 months employment
- You are entitled to 4 weeks paid annual holiday per year after 12 months employment
- You have no deductions taken from your pay without your consent other than those advised by law

Your IEA

It is likely you have decided to negotiate an IEA because you are not a member of the union that negotiated a MECA with your employer and you believe your individual circumstances are not reflected in that MECA.

With this in mind your individual arrangement with an employer is exactly that – an individual one.

As part of the negotiation your employer may suggest a date on which any pay increase might start and what the process is for agreeing to you moving up a pay scale. These agreements do not have to be the same as for those covered by a MECA. However, you cannot be disadvantaged by seeking an IEA.

THIS MEANS THAT IN NEGOTIATING AN IEA WITH YOU, AN EMPLOYER CANNOT SEEK TO GIVE YOU TERMS AND CONDITIONS OF EMPLOYMENT INFERIOR TO THOSE OF A COLLEAGUE UNDERTAKING A SIMILAR ROLE COVERED BY A MECA. IF YOUR ROLE IS NOT COVERED BY THE TERMS OF A MECA YOUR IEA CANNOT GIVE YOU LESS THAN THE LEGAL MINIMUM SUMMARISED ABOVE.

This guide includes changes to the Employment Relations Act 2000 (ERA) which came into force on 6 May 2019 and replaces all previously issued versions.