

INDIVIDUAL EMPLOYMENT AGREEMENT

Note: *This individual employment agreement is for Board of Trustees employees (such as school transport drivers and hostel workers) whose work does not fall within the coverage clause of a collective agreement. It cannot be offered to anyone whose work falls within the coverage clause of a collective agreement.*

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1 The Parties

The parties to this employment agreement (Agreement) are:

- (a) [Employer's name], the "Employer"; and
- (b) [Employee's name], the "Employee" or "you".

2 Your Position and Duties

2.1 Position

You are employed as [title of position].

2.2 Duties and job description

Your duties are set out in the Job Description attached to this Agreement, but may be modified and updated by the Employer from time to time following consultation with you. Your duties also include carrying out all instructions the Employer asks you to do (as long as the instructions are lawful and reasonable).

2.3 Reporting

You will report to [insert name of Manager] or to any other representative of the Employer designated from time to time by the Employer.

2.4 Performance objectives and reviews

2.4.1 The Employer shall, in consultation with you, set your performance objectives annually. These objectives shall be taken into account by the Employer when reviewing your performance.

2.4.2 The Employer will review your performance annually. This review will be taken into account in any remuneration review.

3 Obligations of the Relationship

3.1 Your obligations

3.1.1 You will:

- (a) comply with all policies and procedures (including any Codes of Conduct) implemented by the Employer from time to time;
- (b) comply with all lawful and reasonable instructions issued by the Employer;
- (c) perform your duties with all reasonable skill and diligence;
- (d) deal with the Employer in good faith in all aspects of the employment relationship;
- (e) comply with all relevant obligations arising from relevant legislation (e.g. Health and Safety at Work Act 2015, Vulnerable Children Act 2014); and
- (f) take all practicable steps to perform the job in a way that is safe and healthy for you, your fellow employees and the students.

4 Nature and Term of the Agreement

[use if employee is permanent] This is an individual employment agreement entered into under the Employment Relations Act 2000. Your employment shall commence on [insert date] and shall continue until either party terminates the Agreement in accordance with the terms of this Agreement.

[use if employee is fixed term] This is an individual employment agreement entered into under the Employment Relations Act 2000. Your employment is for a fixed period of time. Employment will start on [insert date] and end on [insert date]. Your employment will automatically end on this date without notice or pay instead of notice, unless the Employer or you end it earlier in line with this Agreement.

You and the Employer agree there is a genuine reason for the fixed term and for employment to finish when the term ends. The reason for it being fixed term, and finishing at the end of the term, is **[type a detailed reason, contact NZSTA for help]**.

The Employer has explained why your employment will finish when the fixed term ends, and you acknowledge that you have had a chance to get advice on this.

5 Trial Period

5.1 Application of a trial period

If you have not previously been employed by the Employer, the first 90 days of your employment will be a trial period to assess and confirm your suitability for the position.

5.2 Rights of employer during trial period

During the trial period the Employer may dismiss you. Any notice, as specified in this Agreement, must be given to you within the trial period, even if the actual dismissal does not become effective until after the end of the trial period.

5.3 Extent of limitation on legal rights and obligations of employer and employee during trial period

This trial period does not limit your legal rights and obligations or those of the Employer (including access to mediation services), except as specified in the Employment Relations Act 2000. If dismissed during the trial period, you cannot bring a personal grievance or other legal proceedings about the dismissal. You may still bring a personal grievance if you feel the Employer has treated you unfairly for other reasons, eg discrimination, harassment or unjustified disadvantage.

6 Your Place of Work

You will perform your duties at **[insert location(s) of where work will be required to be completed]**.

7 Hours of Work

7.1 Days and hours

7.1.1 You are required to work: **[insert details of days and hours of work – note that this clause may include a roster if relevant]**.

7.1.2 **[include only if term time only employee.]** You are employed to work **[insert number of weeks]** weeks per year, while the school is open for instruction. Except where this Agreement says otherwise, or you and the Employer agree, you will be on leave without pay when the school is closed for instruction.

7.2 Overtime

If the Employer has asked, and you agree to work more than your usual hours of work in a select period, you will be paid your normal hourly rate for the time worked.

7.3 Variation of hours per week and/or weeks per year

No more often than every 12 months your normal hours of work may be varied by the Employer after one month's notice and following consultation with you.

7.4 Meal and tea breaks

You are entitled to paid rest breaks and unpaid meal breaks. Breaks will be a suitable length to give you time out, eg for food, drink, rest or personal errands. Breaks will be taken at suitable times during your work. The Employer will offer reasonable compensation if breaks cannot reasonably be given.

8 Remuneration

8.1 Hourly rate and frequency of payment

You shall be paid \$[insert figure] per hour, which shall be paid fortnightly into a bank account nominated by you.

8.2 Reimbursement of expenses

You are entitled to reimbursement of all expenses reasonably and properly incurred by you in the performance of your duties, provided you obtain prior approval to the expenditure and produce receipts to the Employer.

9 Leave

9.1 Annual leave

9.1.1 Your entitlement

You shall be entitled to paid annual leave of four weeks per year after 12 months' continuous employment with the Employer, in accordance with the Holidays Act 2003. For the purposes of your annual leave, a 'week' of leave is based on your ordinary working week.

9.1.2 When annual leave shall be taken

You must take your annual leave when the school is closed for instruction at the end of the academic year unless there is agreement to do otherwise. The Employer will give you at least 14 days' notice of the closedown dates.

[leave this clause out if term time only employee] If you do not have enough annual leave to cover this period, you and the Employer will negotiate how to treat the time off. This may include you taking unpaid leave or anticipated leave.

If you have worked for less than a year by the time of the closedown, you will be paid 8% of your gross earnings up to the start of the closedown.

9.2 Public holidays

9.2.1 Your entitlement

You are entitled to 11 public holidays per year, in addition to annual leave. These days shall be those specified in the Holidays Act 2003. Where the day in question would otherwise be a working day for you, you will be entitled to be paid for that holiday. For clarity, public holidays which are observed during a term break shall be paid holidays provided that:

- (a) during term time you normally work on the day of the week on which the public holiday is observed; and
- (b) you are in continuous employment beyond that term break.

9.2.2 Requirement to work on a public holiday

The Employer may ask you to work on a public holiday, but you do not have to agree. You agree not to work on any public holiday unless asked to do so.

If you work on a public holiday:

- (a) you will be paid your relevant daily pay or average daily pay, plus half that amount again for each hour worked (time and a half).
- (b) if the public holiday you worked was a day that would otherwise be a working day for you, you will also get a paid day off at a later date. The date of this alternate holiday will be agreed between the Employer and you. If you and your Employer cannot agree, the Employer can decide and give you at least 14 days' notice.

9.3 Sick leave

9.3.1 Your entitlement

You will be entitled to 7 days' sick leave for each 12 month period of current service with the Employer, except where your working days are less than 5 days per working week in which case your annual entitlement shall be 6 days instead of 7. Sick leave can be taken when you or your partner, or a person who is dependent on you, is sick or injured.

9.3.2 Accumulation

Unused sick leave can be accumulated up to a maximum of 20 days.

9.3.3 Medical certificates

- (a) The Employer may require proof of sickness or injury at any time if you take, or have asked for, sick leave. The Employer will tell you as soon as reasonably possible that proof is required.
- (b) If you have been away for three or more calendar days in a row — or are taking sick leave that is more than the legal minimum — you must get a medical certificate at your own cost. If you have been away for less than three full days in a row, the Employer pays for you to get a medical certificate.

9.4 Bereavement leave

9.4.1 You are entitled to paid bereavement leave of up to three days in relation to the death of your parent, grandparent, sibling, child, grandchild, spouse, or parent of your spouse.

9.4.2 You are entitled to one day's paid bereavement leave if the Employer accepts that you have suffered bereavement through the death of another person.

9.5 Parental leave

You are entitled to parental leave in accordance with the Parental Leave and Employment Protection Act 1987.

9.6 Special leave

The Employer may grant you special leave with or without pay on such terms and conditions as determined by the Employer.

10 Health and Safety

10.1 General health and safety obligations

10.1.1 Both you and the Employer will meet your obligations under the Health and Safety at Work Act 2015. This includes the Employer providing and maintaining a safe working environment for you. You will follow the Employer's health and safety rules and procedures. You will take reasonable care to look after your own health and safety at work, your fitness for work, and the health and safety of others including students.

10.1.2 You must report any potential risks, incidents and near misses so the Employer can investigate, and eliminate or minimise harm or risk of harm.

10.1.3 Failure to follow reasonable health and safety rules may be considered serious misconduct.

10.2 Medical capacity

10.2.1 The Employer may ask you to be examined by a registered medical practitioner, at the Employer's cost. This will only happen if the Employer has reasonable grounds to ask for further medical information to help them understand one or more of these points:

- (a) Whether you are safe and healthy enough to return to work
- (b) The likelihood of you being able to return to work within a reasonable timeframe
- (c) Your ability to perform your duties safely and effectively
- (d) Whether your health is impacting or may impact the safety of others in the workplace.

- 10.2.2 You may refuse to have the medical examination or allow the relevant results to be shared with your Employer. If this happens, the Employer may act on their concerns based on the information available to them.

10.3 Alcohol and drug testing

- 10.3.1 Where the Employer has reasonable grounds for suspecting that you are under the influence of alcohol or drugs while at work, the Employer may require you to undergo a non-intrusive alcohol or drug test which will be conducted by a registered medical professional. In deciding whether to conduct such a test the Employer shall have regard for any comment by you. The testing process followed will be such as to ensure a safe and accurate test.

- 10.3.2 You agree to:

- (a) not be impaired or potentially impaired by drugs or alcohol when at work, travelling for work or representing the Employer
- (b) be tested for drugs or alcohol if asked
- (c) follow the testing procedures and not tamper with, or try to tamper with, the test or its results
- (d) agree to the results being given to the Employer.

If you do not meet one or more of these requirements, this might be considered serious misconduct.

- 10.3.3 On receipt of a non-negative test the Employer shall discuss the results with you and take into consideration any explanation received before any outcome is decided upon.

11 Other Employment Obligations

11.1 Employer policies, procedures and any other form of rule

- 11.1.1 The Employer has policies and procedures that relate to your job.
- 11.1.2 The Employer will make you aware of the policies and procedures, and will make sure they are available to you. You must ensure you are familiar with these rules and follow them at all times.
- 11.1.3 The Employer may introduce new policies or procedures, or change or cancel existing ones, but must give reasonable notice of any changes.
- 11.1.4 If you don't follow the policies and procedures, the Employer might take disciplinary action.

11.2 Criminal charges and convictions

You will inform the Employer as soon as practicable if charged with or convicted of any offence that may affect your suitability for ongoing employment.

11.3 Confidential information

You shall not, during your employment (or after it has ended) use, disclose or distribute to any person or entity, otherwise than as necessary for the proper performance of your duties and responsibilities under this Agreement, or as required by law, any confidential information, messages, data or trade secrets acquired by you in the course of performing your services under this Agreement. This includes, but is not limited to, information about individual students and the Employer's business.

11.4 Transporting of students

- 11.4.1 If your duties include transporting students:

- (a) Your primary obligation will be ensuring the safety and wellbeing of students that you are transporting.
- (b) You must obtain and maintain an up-to-date driver's licence with a minimum of a P Endorsement.
- (c) All accidents/damage to the vehicle must be reported to your manager as soon as possible and an accident report is to be completed and filed as soon as practicable.
- (d) If the vehicle is unable to function because of an accident your manager must be contacted as soon as possible, together with anyone else the Employer's policies and procedures require to be contacted.
- (e) No medication which carries specific warning in relation to driving a motor vehicle is to be consumed for at least 12 hours prior to you driving the vehicle.

12 Restructuring and Redundancy

12.1 Transfer of undertaking

12.1.1 Application of clause

Clause 12.1 applies in the event that the Employer proposes to restructure (as defined in section 690I of the Employment Relations Act 2000), and the work you perform may or will be performed for or by a new employer.

12.1.2 Employer's obligations

The Employer will:

- (a) schedule talks with the new employer
- (b) tell you about the upcoming talks and the intended timeframes
- (c) tell you what will generally be discussed
- (d) arrange for representatives of the Employer to engage in the talks with the new employer
- (e) subject to any statutory, commercial confidence or privacy issues, give the new employer all information about affected employees, including details of terms and conditions of employment
- (f) encourage the new employer to offer all affected employees jobs with generally the same or better terms and conditions
- (g) report back to you on the outcome of the meetings to the extent they relate to you.

12.1.3 If transfer of employment does not occur

- (a) Whether you are offered ongoing employment, and on what terms and conditions, will ultimately be the decision of the new employer.
- (b) If you do not transfer to the new employer, the Employer will determine what entitlements (if any) are available to you after discussion with you, such as:
 - (i) whether there are any options available to remain in employment with the Employer
 - (ii) your redundancy entitlements under this Agreement (if any), and what this could mean for you, including notice arrangements
 - (iii) whether the Employer can offer any additional support to you, eg a reference.
- (c) The Employer will consider your comments and confirm in writing the outcome of these discussions to you.

12.2 Redundancy

12.2.1 Definition

Redundancy is when your role is no longer needed.

12.2.2 Consultation

In the event the Employer considers that your position could be redundant, the Employer shall, except in exceptional circumstances, consult with you regarding the possibility of redundancy and, before a decision to proceed with redundancy is made, whether there are any alternatives to dismissal (such as redeployment to another role).

12.2.3 Provision of information

In the course of this consultation the Employer shall provide to you sufficient information to enable understanding and meaningful consultation, and shall consider your views with an open mind before making a decision as to whether to make your position redundant.

12.2.4 Termination by reason of redundancy

- (a) If after following a good faith restructuring process you are made redundant, you will be given notice as set out in clause 13.1 (General termination of employment). If you are a permanent employee you

will also get redundancy compensation of four weeks' pay before tax, calculated on your average gross weekly earnings over your previous 12 months service.

- (b) However, if the Employer or the new employer (in the case of restructuring as defined in section 690I of the Employment Relations Act 2000) offers you another suitable role on generally the same or better terms and conditions — or any role with terms and conditions you accept — then you will not get redundancy compensation or other redundancy entitlements, whether you accept the role or not.

13 Termination of Employment

13.1 General termination of employment

- 13.1.1 The Employer might end your job with reasonable cause, or you might resign.
- 13.1.2 Unless otherwise set out in this Agreement, either the Employer or you can end employment by giving four weeks' notice in writing.
- 13.1.3 The Employer may decide to pay you in lieu of giving you notice.
- 13.1.4 If you do not give the agreed amount of notice, the Employer might be able to claim a breach of this Agreement.
- 13.1.5 After notice is given, the Employer will inform you of the kind of duties you will be expected to carry out during the notice period. This may include a change in duties.
- 13.1.6 Nothing in this clause prevents the Employer from ending your employment without notice, or payment instead of notice, for serious misconduct or other reason provided for in this Agreement.

13.2 Termination for serious misconduct

- 13.2.1 The Employer may summarily dismiss you (ie dismiss you without notice) for serious misconduct, after following an appropriate process. Serious misconduct includes, but is not limited to:
 - (a) abuse of a child, whether or not that child is a student at the school
 - (b) disclosing personal information about an individual student or students without the appropriate authority
 - (c) being under the influence of alcohol or illegal drugs while at work
 - (d) being convicted of any offence that may affect your ongoing suitability for employment
 - (e) theft
 - (f) dishonesty
 - (g) harassment or bullying of a work colleague or student
 - (h) serious or repeated failure to follow a reasonable instruction
 - (i) deliberate destruction of any property belonging to the Employer,
 - (j) actions which seriously damage or have the potential to seriously damage the Employer's reputation
 - (k) failure to meet your obligation to inform the Employer as soon as practicable, that the you have been charged with or convicted of an offence that may affect your ongoing suitability for employment.

13.3 Termination on medical grounds

- 13.3.1 If the Employer believes on reasonable grounds that you are not able to do your job because of a condition, illness or injury, and will not be able to resume your job within a reasonable timeframe (eg 6 weeks), the Employer may end your employment by giving you notice under clause 13.1 (General termination of employment) and an additional four weeks' notice (ie a total of 8 weeks' notice). Before doing so, the Employer will:
 - (a) request medical details from you about your condition
 - (b) consider any information provided within a reasonable timeframe, together with any results from medical examinations they have asked you to take
 - (c) try to meet with you to discuss your condition and timeframes for recovery.

13.4 Abandonment of employment

- 13.4.1 If you are away from work for three working days in a row without telling the Employer or getting their permission — and the Employer has made reasonable efforts to contact you to clarify the reason for your

absence and whether you intend to return to work — the Employer may regard the employment as abandoned.

13.4.2 The Employer will tell you that you are deemed to have ended your employment. Your employment will finish at the end of the third day of absence.

13.5 Obligations of employee on termination

Upon the termination of your employment for whatever reason, or at any other time if so requested by the Employer, you shall immediately return to the Employer all information/ material (and copies); or property (including but not limited to security cards, keys, and information technology) belonging to or otherwise the responsibility of the Employer.

14 Disciplinary Procedures

14.1 Representation

You must be advised of the right to request representation at any stage of a disciplinary process.

14.2 Notice of concern

You must be advised in writing of the specific matter(s) causing concern.

14.3 Suspension

14.3.1 The Employer might decide to suspend you while investigating allegations against you, eg for serious misconduct, or if a condition, illness or injury means you pose an immediate risk to yourself and/or others.

14.3.2 If an investigation is delayed because you refuse to take part, or because of other reasons beyond the Employer's control, eg waiting for a criminal trial to end, the Employer may decide any further time on suspension will be unpaid.

14.4 Right of response

You must be given a reasonable opportunity to provide an explanation about the concern(s) raised.

14.5 Investigation

Before making a final decision, the Employer will need to consider any explanation you make and whether it needs to undertake further investigation in order to be satisfied as to the facts of the specific matter(s) causing concern.

14.6 Record of action

Any disciplinary action is to be recorded and placed on your personal file.

15 Resolving Employment Relationship Problems

15.1 Definition

15.1.1 A problem between you and the Employer might be a personal grievance, dispute or other issue.

15.2 Informal resolution

If you have any concerns about your employment, or how you are treated at work, you should tell the Employer as soon as possible so these can be resolved. The first step is for you and the Employer to talk about the problem and try to find possible solutions.

15.3 External assistance

15.3.1 If the problem cannot be resolved, you or the Employer can seek help from an external party, eg one or more of the following:

- (a) Ministry of Business, Innovation & Employment, which offers free information and mediation to help employers and employees work together to resolve problems

- (b) a union or an advocate
- (c) a lawyer.

15.3.2 If it cannot be resolved at mediation, you or the Employer might want to go to the Employment Relations Authority.

15.3.3 Some of these steps may come at a cost.

15.4 Timeframe for raising personal grievance

15.4.1 If it is a personal grievance, you have 90 days from the time the problem occurred, or became known by you, to raise the grievance with the Employer.

15.5 Support

15.5.1 You can invite a support person or representative to attend all steps in the process.

16 Acknowledgement of the Agreement

16.1 Variation of Agreement

The parties may vary this Agreement with the prior written concurrence of the Secretary for Education but no variation shall be effective or binding on either party unless it is in writing and signed by both parties.

16.2 Entire Agreement

Each party acknowledges that this Agreement, together with the letter of appointment and any documents referred to in this Agreement or the letter of appointment, contains the entire agreement between the parties and supersedes any previous agreements.

16.3 Employee acknowledgment

You acknowledge that:

- (a) you have been advised of your right to take independent advice on the terms of this Agreement
- (b) you have been provided with a reasonable opportunity to take independent advice
- (c) you have read and understood these terms of employment and their implications, and
- (d) you agree to be bound by this Agreement and the Employer's policies and procedures as implemented (and varied) by the Employer from time to time.

17 Declaration

I, [Employer's name], offer this Agreement to [Employee's name].

Signed by:..... Date:.....

I, [Employee's name], declare that I have read and understand the conditions of employment detailed above and accept them fully. I have been advised that I am entitled to seek independent advice in relation to this Agreement, and have had reasonable time to do so.

Signed by:..... Date:.....

IEA for full time or part time & permanent or fixed term employees not covered by a collective agreement

[JOB DESCRIPTION]