COLLECTIVE EMPLOYMENT AGREEMENT BETWEEN

XXXXX

AND

YYYYY

TERM: DAY/MONTH/YEAR TO DAY/MONTH/YEAR

WAGE MOVEMENT: NO. EMPLOYEES COVERED:

*Section 54 of the Employment Relations Act 2000 outlines the criteria for establishing a binding collective agreement, and states:* **Section 54:** **Form and Content of Collective Agreement**

1. A collective agreement has no effect unless-
   1. it is in writing; and
   2. it is signed by each union and employer that is a party to the agreement
2. A collective agreement may contain such provisions as the parties to the agreement mutually agree on.
3. However, a collective agreement-
   1. must contain
      1. a coverage clause; and
      2. the rates of wages or salary payable to employees bound by the agreement; and
4. *[Repealed]*
   * 1. a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to—
5. the 12-month period within which a personal grievance must be raised under section 114(1) if the grievance is in respect of sexual harassment under section 103(1)﻿(d); and
6. the 90-day period within which any other personal grievance must be raised under section 114(1); and
   * 1. a clause providing how the agreement can be varied; and
     2. the date on which the agreement expires or an event on the occurrence of which the agreement is to expire; and
   1. must not contain anything-
      1. contrary to law; or
      2. inconsistent with this Act.
7. For the purposes of subsection (3)(a)(ii), a collective agreement **contains the rates of wages or salary payable to employees bound by the agreement** if it**—**
   1. contains, in respect of the employees bound by the collective agreement (whether by reference to the work or types of work done by the employees or by reference to named employees or types of employees),—
      1. the rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; or
      2. the minimum rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; or
      3. 1 or more methods of calculating the rates or minimum rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; and
   2. indicates how the rate of wages or salary payable to an employee bound by the agreement may increase during the term of the agreement

**NOTE:**

The following example collective employment agreement contains three different types of clauses:

1. **[MANDATORY CLAUSE]**: required under the Employment Relations Act 2000, section 54 (the Act).
2. **[STATUTORY ENTITLEMENT]**: obligations and entitlements created by other legislation e.g. Holidays Act 2003.
3. **[OPTIONAL CLAUSE]**: commonly found clauses in collective agreements that have been lodged with the Ministry of Business, Innovation and Employment (‘the Ministry’) that may be applicable to your industry or workplace.
4. Also throughout the example collective agreement you will find tips (‘**TIP’**) from the Ministry.

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1. APPLICATION OF AGREEMENT [OPTIONAL CLAUSE]
   1. This Collective Agreement (‘this Agreement’) is made under the Employment Relations Act 2000 (‘the Act’) and its subsequent amendments. It supersedes and replaces any previous employment agreement governing the employment relationship between the employer and the employees covered by this Agreement [and its attached schedules].
   2. For the first 30 days after a new employee commences employment with the employer, the employee’s terms and conditions of employment comprise the terms and conditions of this Agreement (other than any bargaining fee payable under Part 6B of the Act) and any additional terms and conditions mutually agreed to by the employee and employer that are no less favourable to the employee than the terms and conditions in this Agreement.
2. The purpose of this clause is to clarify the relationship between the Collective Agreement and any previously or currently existing terms and conditions that may have been agreed between individual employees and the employer, or may have applied under previous Collective Agreements.
3. The terms and conditions of employment of an employee bound by this Agreement may include any additional terms and conditions that are:
   * Mutually agreed by the employee and employer; and
   * Are not inconsistent with the terms and conditions of this Agreement.
4. PARTIES TO THIS AGREEMENT [MANDATORY CLAUSE]
   1. This Agreement is made between [employer’s legal name] referred to as the ‘employer’.

AND

* 1. The [union’s registered name] referred to as the ‘union’.
  2. Together the employer and union are referred to as ‘the Parties’.

1. APPLICATION [OPTIONAL CLAUSE]
   1. This Agreement will be binding on:
      1. The employer referred to in clause 2 above; and
      2. Employees referred to in clause 5 below.
2. TERM OF AGREEMENT [MANDATORY CLAUSE]
   1. This Agreement is for a term of [specify number] months starting on [Agreement start date] and ending on [Agreement end date].

**Note:** The maximum duration of a Collective Agreement is 3 years from the Agreement start date. Unless specified otherwise, an Agreement comes into force once it has been signed by both Parties.

1. COVERAGE [MANDATORY CLAUSE]

*Use one of the following:*

* 1. This Agreement covers the following types of work [specify].

OR

* 1. This Agreement covers the work done by the following types of employees: [specify].

OR

* 1. This Agreement covers the work done by employees of the following types [specify], at: [specify locations, if the Agreement is to apply to work done in particular locations or sites only].

OR

* 1. This Agreement covers the work done by the following employees: [specify and attach schedule].

1. State any exclusion to clarify the coverage clause. For example: “This Agreement does not cover any team leaders or managers.” Collective Agreements cover work rather than specific persons. The work may be described by reference to the work done, or categories of employees who do the relevant work. A coverage clause can refer to work or type of work done by named employees.
2. Any employee who joins the union automatically becomes covered by the Collective Agreement if the employee is in a position covered by the coverage clause.
3. EMPLOYEES BOUND SUBSEQUENT TO SETTLEMENT [OPTIONAL CLAUSE]
   1. New employees whose work falls within the coverage clause of this Agreement will be advised of the existence of this Agreement and be offered the opportunity to join the union and become bound by this Agreement.
   2. Employees whose work falls within the coverage clause of this Agreement and who join the union during the currency of this Agreement will become bound by this Agreement from the date on which they joined the union.
4. ADDITIONAL PARTIES [OPTIONAL CLAUSE]

State if the original parties allow an additional union or employer to join the existing Agreement.

* 1. Any [union or employer] by [state requirements] becomes a Party to this Agreement.

1. INTENT OF THE PARTIES [OPTIONAL CLAUSE]
   1. The Parties will:
      1. Deal with each other in good faith;
      2. Be active and constructive in establishing and maintaining a productive employment relationship;
      3. Be responsive and communicative with each other;
      4. Attempt to reach a timely and practicable manner of any issues that may arise between them while this Agreement is in effect; and
      5. Deal with employees bound by this Agreement in good faith.
2. This clause restates the parties’ responsibilities under the Employment Relations Act 2000 but parties often include this clause to provide a useful reminder and reference if issues do arise.
3. VARIATION OF EMPLOYMENT AGREEMENT [MANDATORY CLAUSE]
   1. The clauses of this Agreement may be varied by agreement between the parties. Any variation shall be recorded in writing and signed by both Parties. The Union will not agree to any proposed variation unless it has been ratified by [specify required majority] of votes cast by union members who are referred to in the coverage clause of this Agreement.

**Note:** To avoid undue disruption to the workplace, such a vote may often be limited to those directly affected by the variation.

1. EMPLOYER’S POLICIES AND PROCEDURES [OPTIONAL CLAUSE]
   1. The employer may (subject to the express provisions of this Agreement), issue or amend policies or procedures that will apply to its employees.
   2. Before issuing or amending policies or procedures that could affect the conditions of employment of employees covered by this Agreement, the employer will consult with the union and with affected employees covered by this Agreement.
   3. Employees bound by this Agreement will use their best endeavours to comply with all lawful and reasonable policies or procedures of the employer.
2. Reference to Equal Employment Opportunities (EEO) and Flexible work are often included as policies of the employer.
3. Parties often include a reference to employers’ common law right to issue or amend policies subject to the express provisions of an employment agreement. This can serve as a reminder to people that:
   * employers do have the right to make management decisions; and
   * consultation with employees is often required, but it will not be necessary to gain their agreement before implementing proposed changes.
4. DEFINITIONS [OPTIONAL CLAUSE]
5. To avoid ambiguous terminology and to clarify industry or workplace specific jargon the Ministry recommends this clause be included if necessary. Some examples include:
   1. ‘Act’ means the Employment Relations Act 2000.
   2. ‘Week’ means the seven days starting [specify period e.g. midnight Sunday/Monday (0000 hours)].
   3. ‘Casual employee’ means an employee who is engaged for work as and when it suits both them and the employer. They have no set hours or days of work and each engagement is standalone with no expectation of ongoing employment.
   4. ‘Compensatory measure’ has the same meaning as section 69ZEB of the Employment Relations Act 2000.
   5. ‘Family Violence’ has the same meaning as section 9 of the Family Violence Act 2018.
   6. ‘Fixed-term employee’ is an employee who is engaged for a finite period or until a specific event at which point the employment ends (as defined in section 66 of the Employment Relations Act 2000).
   7. ‘FTE’ means Full Time Equivalent or 40 working hours per week (*or insert the number of hours in a full time week in your organisation)*.
   8. ‘Hours of work’ includes any or all of the following: the number of guaranteed hours of work, the days of the week on which work is to be performed, the start and finish times of work, and any flexibility in these matters.
   9. ‘Part time employee’ is an employee who is employed for less than full time (less than 40 hours per week (*or insert the number of hours in a fulltime week in your organisation)*).
   10. ‘Person affected by family violence’ has the same meaning as section 69AAA of the Employment Relations Act 2000.
   11. ‘Relevant Daily Pay or RDP’ and ‘Average Daily Pay or ADP’ have the same meanings as in the Holidays Act 2003
   12. ‘Shift’ means the same work performed by one or more workers or successive groups of workers working successive periods.
   13. ’Service’ means the length of current continuous employment with the employer and its predecessors [list legal names], except where otherwise defined in the applicable clause.
   14. ‘Wages’ has the same meaning as in in section 5 of the Employment Relations Act 2000.
   15. ‘Work period’ has the same meaning as in section 69ZC of the Employment Relations Act 2000.
6. HOURS OF WORK [MANDATORY CLAUSE]

Use one of the following:

Ordinary Hours for Full Time Employees (other than Shift workers):

* 1. Ordinary hours of work for full-time employees (other than shift employees) will be [specify hours] to be worked on [specify number] consecutive days per week, at times between [specify earliest start time] and [insert latest finish time].
  2. Specific hours of work for each employee:
     1. Will be within range of permissible ordinary hours described above;
     2. Will be specified in writing when the employee starts employment; and
     3. May be varied by agreement in writing between the employer and the employee.

OR

Set Hours of Work

* 1. Full time employees’ ordinary hours of work will be [specify number] hours per week on [specify days] between the hours of [specify start time] and [specify end time].
  2. Part time employees’ ordinary hours of work will be [specify number] and will be within the times and days specified in paragraph (a).

OR

Hours of Work and Rosters

* 1. Employees’ hours of work will be in accordance with the shift patterns and rosters contain in schedule [specify schedule] to this Agreement.

OR

Rostered Hours with a Minimum Number of Hours of Work to be Provided

* 1. Employees’ hours of work will be set by the employer in advance in accordance with a roster. Rosters may be changed by the employer, following consultation with the union and affected employees.
  2. Employees will be given at least [specify period] of notice of a new roster.
  3. Employees will be provided with a minimum of [specify number] hours work per [specify period – day/week/fortnight/month].
  4. In setting the roster the employer will provide the employee with [specify number] consecutive days off within a reasonable period.

1. If hours of employment are on an individual basis use this clause to state the fact, to avoid any confusion.
2. FLEXIBLE WORKING SHORT TERM FOR PEOPLE AFFECTED BY FAMILY VIOLENCE [STATUTORY ENTITLEMENT]
   1. Employees affected by family violence may make a request (or have a request made on their behalf) at any time for a short term (two month or shorter) variation of their working arrangements (including any additional terms that need variation), for the purpose of assisting the employees to deal with the effects on the employees of being people affected by family violence.
   2. The request may be made regardless of how long ago the family violence occurred, and even if the family violence occurred before the person became an employee.
   3. The employer may refuse a request only if the employer determines one of both of the following:
      1. That proof required to be produced under the Act was not produced within 10 working days after the employer receives the request;
      2. That the request cannot be accommodated reasonably on one or more of the non-accommodation grounds specified in section 69ABF of the Act.
   4. A request does not prevent a request also being made under the flexible working provisions of the Act by or on behalf of the employee for a permanent, or fixed-period longer than 2 months, variation to the employee’s working arrangements.
   5. The employee must make the request in writing and meet the requirements relating to a request as specified in section 69ABC of the Act.
   6. The employer must deal with the request as soon as possible but not later than 10 working days after receiving it, and must notify the employee in writing of whether their request has been approved or refused in accordance with the requirements in the Act. Prior to giving the employee written notification of their decision the employer must provide the employee with information about appropriate specialist family violence support services.
3. REST BREAKS AND MEAL BREAKS [STATUTORY ENTITLEMENT]

Employee’s entitlement to rest breaks and meal breaks

* 1. The employer must provide the employee with rest and meal breaks in accordance with the Act.
  2. If an employee and employer have agreed on the times at which the employee will take rest breaks and meals breaks during the employee’s work period, the rest breaks and meal breaks will be taken at those times. If the employee and employer have not agreed on the times for rest breaks and meal breaks the provisions in the Act apply.
  3. If an employee’s work period is 2 hours or more but no more than 4 hours, the employee is entitled to one 10-minute paid rest break. The employer must, so far as is reasonable and practicable, provide the employee with the rest break in the middle of the work period.
  4. If an employee’s work period is more than 4 hours but not more than 6 hours, the employee is entitled to one 10-minute paid rest break and one 30-minute meal break. The employer must, so far as is reasonable and practicable, provide the employee with the rest break one-third of the way through the work period and the meal break two-thirds of the way through the work period.
  5. If an employee’s work period is more than 6 hours but not more than 8 hours the employee is entitled to two 10-minute paid rest breaks and one 30-minute meal break. The employer must, so far as is reasonable and practicable, provide the employee with a rest break halfway between the start of work and the meal break and the meal break in the middle of the work period and a rest break halfway between the meal break and the finish of the work period.
  6. If an employee’s work period is 8 hours, the employee is entitled to two 10-minute paid rest breaks and one 30-minute meal break. The employer must, so far as is reasonable and practicable, provide the employee with a rest break halfway between the start of work and the meal break and the meal break in the middle of the work period and the rest break halfway between the meal break and the finish of the work period.
  7. If the employee’s work period is beyond 8 hours (the subsequent period), the employee is entitled to the following:
     1. If the subsequent period is 2 hours or more but not more than 4 hours, to one 10-minute paid rest break. The employer must, so far as is reasonable and practicable, provide the employee with the rest break in the middle of the work period.
     2. If the subsequent period is more than 4 hours but not more than 6 hours to one 10-miute paid rest break and one 20-minute meal break. The employer must, so far as is reasonable and practicable, provide the employee with the rest break one-third of the way through the subsequent period and the meal break two-thirds of the way through the subsequent period.
     3. If the subsequent period is more than 6 hours but not more than 8 hours to two 10-minute paid rest breaks and one 30-minute meal break. The employer must, so far as is reasonable and practicable, provide the employee with the rest break halfway between the start of the subsequent period and the meal break and the meal break in the middle of the subsequent period and a rest break halfway between the meal break and the finish of the subsequent period.

Exemption from requirements to provide rest breaks and meal breaks (only applies to essential services or employers engaged in New Zealand’s national security – delete if not applicable)

* 1. As an exempt employer, the employer is not required to provide employees with the set rest and meal breaks in the Employment Relations Act. The employer will make every endeavour to provide employees with the rest and meal break at an alternative time, as agreed with the employee. However, if these breaks cannot be provided the employee will be compensated for not receiving their break.

1. The employer is exempt from the requirement to provide rest breaks and meal breaks if the employer is engaged in the protection of New Zealand’s national security and:
   * Continuity of service is critical to New Zealand’s national security; and
   * The employer would incur unreasonable costs in replacing an employee who is employed in the protection of New Zealand national security during the rest and meal breaks with another person who has sufficient skill and experience and without compromising New Zealand’s national security.

The employer is exempt if the employer is engaged in essential services and:

* + Continuity of service or production in the essential service is critical to the public interest, including services affecting public safety; and
  + The employer would incur unreasonable costs in replacing an employee who is employed in the essential service during the rest and meal breaks with another person who has sufficient skill and experience and without compromising New Zealand’s national security.

If the exemptions above apply then the employer and employee may agree that the rest breaks and meal breaks are taken in a different manner (including the number and timing of breaks) than specified in the Act.

Compensatory measures (only applies where employer’s qualify for the exemption from providing set rest breaks and meal breaks – delete if not applicable)

* 1. If the employer and employee are unable to reach agreement about how rest breaks and meals breaks are to be taken under clause 14.8 above the employer will provide the employee with compensatory measures.
  2. The compensatory measure for breaks that have not been able to be taken in accordance with the Act is [insert compensatory measure(s)].

1. If the compensatory measure is time off work at an alternative time:
   * The employee must be provided with at last an equivalent amount of time off work (that is, the same amount of time that the employee would otherwise have taken as arrest break or meal break); and
   * The time off work at an alternative time must be provided on the same basis as the rest break or meal break that the employee would otherwise have taken.
   * If the compensatory measure provided is financial compensation, that financial compensation, at a minimum, must relate to the amount of time that the employee was required to work but would otherwise have taken as a rest or meal break and must:
     + In the case of an employee paid at variable rates during a work period, be calculated at the employee’s average rate of pay in the relevant period of work; or
     + In the case of any other employee, be calculated at the employee’s ordinary rate of pay.

If the compensatory measure includes both time off work at an alternative tie and financial compensation, the total amount of alternative time plus time for which payment is made must be at least equivalent to the amount of time that the employee would otherwise have taken as a rest break or meal break. The financial compensation must:

* + In the case of an employee paid at variable rates during a work period, be calculated at the employee’s average rate of pay in the relevant period of work; or
  + In the case of any other employee, be calculated at the employee’s ordinary rate of pay.

1. REMUNERATION [MANDATORY CLAUSE]
   1. The [specify wages or salary] of employees bound by this Agreement will be [specify amount, minimum rates, or one or more methods for calculating rates or minimum rates].
   2. Over the term of this agreement [specify how the rate of wages or salary payable to an employee bound by the agreement may increase during the term of the agreement].
2. If the workplace has a number of different rates of pay it can be useful to create a clause where employees can find all the information for example: Training minimum wage, starting out minimum wage, performance pay, service pay, salarisation and any bonus provisions. If individual rates of pay are negotiated individually this should be stated.
3. Wages or salary rates must be specified in the Collective Agreement, along with an indication of how the rates or salary may increase over the Agreement’s term. For the purposes of the Act a collective agreement contains the rates of wages or salary payable to employees bound by the Agreement if it
   * contains, in respect of the employees bound by the collective agreement (whether by reference to the work or types of work done by the employees or by reference to named employees or types of employees),—
     + the rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; or
     + the minimum rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; or
     + 1 or more methods of calculating the rates or minimum rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; and
   * indicates how the rate of wages or salary payable to an employee bound by the agreement may increase during the term of the agreement.

The wording of this clause is highly specific to the workplace, and would normally be discussed by the parties in collective bargaining.

1. OVERTIME [OPTIONAL CLAUSE]
   1. Overtime may be worked by agreement between the employer and employees. The employer may request employees to work overtime in order to meet operational requirements.
   2. Where an employee has had authorised paid leave, the hours the employee would ordinarily have worked on the days that leave was taken, will be deemed to be hours worked for the purposes of this clause.

Use one of the following:

* 1. Any hours worked outside an employee’s ordinary hours of work or in excess of [specify number e.g. 40] hours in a working week will be considered overtime. Waged employees will be paid at the rate of [specify rate – e.g. 1.5 times] the employee’s normal wage for the first [specify number of hours e.g. 4] hours worked in a day and [specify rate e.g. 2 times] the employee’s normal wage for each further hour.

OR

* 1. The employer may ask employees to work overtime in order to meet operational requirements. Any hours worked outside an employee’s ordinary hours of work or in excess of [specify number e.g. 40] hours in a working week are overtime. Waged employees will be paid at their normal hourly rate when working overtime.

1. Overtime can be calculated on a daily, weekly, fortnightly or monthly basis. Different overtime can apply to hours worked on weekends and public holidays. It can also be paid in the form of Time off in Lieu (TOIL) and can also be a fixed amount added to the employee’s hourly wage (e.g. $2).
2. If you want to require employees to be available to work above agreed hours and to accept overtime that they must work then this clause can be amended. You will need to ensure you meet the requirements relating to ‘availability provisions’ under section 67D of the Employment Relations Act 2000.
3. PENAL RATES [OPTIONAL CLAUSE]

If different rates of pay apply to different days e.g. on weekends.

* 1. If the employee works on [specify date or after a specified time] they will be paid at a rate of [specify rate] and be entitled to a minimum payment of [specify hours] of pay.
  2. If the employee works on [specify date or after a specified time] they will paid at a rate of [specify rate] and be entitled to the time off in lieu.

1. Penal Rates do not have to be stated in a Collective Agreement. However, it is normal practice to do so, as the purpose of a Collective Agreement is to bring together employees’ terms and conditions of employment in a single document that may be read and understood both by the parties to it, and by the employees bound by it.
2. ALLOWANCES [OPTIONAL CLAUSE]
   1. The employee is entitled to the following allowances [select from the following options]:
      1. Meal Allowance [specify per meal or daily rate]
      2. Standby Allowance [specify per shift or daily rate]
      3. On Call Allowance [specify per shift or daily rate]
      4. First Aid [specify weekly amount]
      5. Dirty Work Allowance [specify per shift or hourly rate]
      6. Arduous Task Allowance [specify per shift or hourly rate]
      7. Travel Allowances [specify per km or daily rate]
      8. Uniform Allowance [specify annual amount inclusive of GST]
      9. Footwear Allowance [specify annual amount inclusive of GST]
      10. Laundry Allowance [specify per shift or weekly amount]
      11. Tool Allowance [specify per hour of annual amount]
      12. Higher Duties Allowance [specify daily, hourly or weekly amount]
      13. Supervisory Rate [specify daily, hourly or weekly amount]
      14. Training Others Allowance [specify daily, hourly or weekly amount]
      15. Working Away from Site [specify daily, hourly or weekly amount]
3. Like wages, allowances are often highly specific to the workplace, and should be discussed between the parties. The above are some examples of common conditions.
4. PAYMENT OF EMPLOYEES [OPTIONAL CLAUSE]
   1. The employer may pay employees by direct credit, at [specify frequency of payment cycle e.g. fortnightly] intervals. Remuneration will be paid in arrears, by no later than [specify number of days] after the completion of the [specify period e.g. fortnight] that the payment relates to.
5. WAGE DEDUCTIONS [OPTIONAL CLAUSE]
   1. When requested by an employee, the employer will deduct from their salary/wages any specified amount for matters such as membership or a union or other organisation, superannuation or a staff social club, and pay the amount to the account specified by the employee.
   2. Where an employee has an acknowledged debt to the employer, the employer will be entitled to recover payment of the debt by deduction from the employee’s or wages or salary, at a rate to be agreed between the employer and the employee. That agreement must be written in accordance with the Wages Protection Act 1983.
   3. The employer will be entitled to deduct from any amount payable to an employee upon termination of employment:
      1. Any overpayment made to the employee for leave taken in advance; or
      2. Any other money acknowledged by the employee to be owed to the employer.
6. Deductions can only be made under a general deductions clause in an employment agreement after consultation with the employee.

An employee can vary or withdraw their consent to deductions and if they do, the employer has to vary or stop making the deduction within 2 weeks of receiving notice if practicable, or as soon as practicable.

1. REIMBURSEMENT OF EXPENSES [OPTIONAL CLAUSE]
   1. The employer will reimburse employees for actual and reasonable expenses incurred by them in the course of performing their duties.
2. State what evidence is required for the employee to be entitled to reimbursement e.g. GST registered receipt.
3. SUPERANNUATION [OPTIONAL CLAUSE]
   1. Existing employees have the option of joining KiwiSaver. New employees will be automatically enrolled into KiwiSaver with the ability to opt out, in accordance with the requirements of Inland Revenue.
   2. When an employee is enrolled into a KiwiSaver scheme the employee's KiwiSaver contributions will be deducted from their pay. The employer is also required to make employer contributions to the employee's KiwiSaver scheme (with some exceptions).

Include if applicable:

* 1. In addition to, or as an alternative to, joining KiwiSaver, employees may opt to join the superannuation scheme described in schedule [specify schedule number] to this Agreement.

1. It would be useful to include <https://www.ird.govt.nz/kiwisaver> for employees who wish to gather further information.
2. Some employers provide superannuation benefits beyond what is required under the KiwiSaver legislation. Such benefits may be incorporated into a collective agreement. Alternatively there may be reference to a scheme that is described within company policy, while still allowing the employer the discretion to change the scheme without requiring amendment to the collective agreement itself.
3. ANNUAL HOLIDAYS [STATUTORY ENTITLEMENT]

Under the Holidays Act 2003, employees are entitled to a minimum of four weeks of paid annual holidays on the completion of 12 months’ continuous service.

* 1. Employees will be entitled to be paid annual holidays on the following basis:
     1. Employees will be entitled to [specify number – minimum = four] weeks annual holidays after each 12 months of continuous service.
     2. Annual holidays may, with the agreement of the employer, be taken in advance.
     3. Employees may request in writing up to a maximum of one week of annual holidays be paid out in each entitlement year.
     4. Employees will, upon request, be provided with an opportunity to take at least two weeks of their annual holiday entitlement in an uninterrupted break.
     5. The time for taking annual holidays may be agreed between the employer and employees. However, failing agreement the employer may, after consultation with the employee, and having taken into account work requirements and the opportunities for rest and recreation available to the employee, provide at least 14 days’ notice to the employee directing them to take annual holidays starting on a particular date.
     6. For the purposes of calculating annual holiday entitlements, employees’ anniversary date will be [either the anniversary of the actual date on which they started employment or specify the date which is proximate to the beginning of any closedown period specified below].

1. ADDITIONAL LEAVE [OPTIONAL CLAUSE]
   1. Employees that have completed [specify number e.g. 5] years' continuous service, will receive [specify number e.g. 1] week additional annual holidays per annum for their [specify number 6th] and subsequent years of service.

Shift Leave: If applicable:

* 1. Employees that are required to work [specify amount of qualifying shifts or shifts outside a particular time frame] will be entitled to [specify number of weeks] additional annual holidays per annum.

Closedown: If applicable:

* 1. The employer may close all or part of its operations during the period from [specify range of dates within which a close-down may be in effect], in accordance with section 33 of the Holidays Act 2003*.* During this time, employees may be required to take annual holidays, even if they do not have enough entitlements to paid annual holidays to cover the whole period of the close-down. The employer agrees to give a minimum of 14 days’ notice of a closedown period. If a closedown period includes public holidays (as can happen over the Christmas and New Year period) then the employees are entitled to paid public holidays if they would be otherwise working days for them, taking the factors in section 12 of the Holidays Act 2003 into account as if the closedown were not in effect.

Fixed term employees:

* 1. Employees who are employed by the employer to work for a fixed term of less than 12 months, or are employed by the employer on a series of fixed term agreements of less than 12 months, may be paid holiday pay at the same time as their wage or salary payments. Holiday pay paid in this way shall be an identifiable payment in their pay slip and pay records, and will be at least [specify percentage – minimum = 8%] of their wages or salary.

Casuals:

* 1. Casual employees may be paid holiday pay at the same time as their wage or salary payments. Holiday pay paid in this way will be an identifiable payment in their pay slip and pay records, and will be at least [specify percentage – minimum = 8%] of their wages or salary.

1. FAMILY VIOLENCE LEAVE [STATUTORY ENTITLEMENT]
   1. An employee may take family violence leave if the employee is a person affected by family violence (regardless of how long ago the family violence occurred, and even if the family violence occurred before the person became an employee).
   2. An employee is entitled to family violence leave:
      1. After the employee has completed six months’ current continuous employment with the employer; or
      2. If the employee has, over a period of six months, worked for the employer for at least an average of 10 hours a week during that period and no less than one hour in every week during that period or no less than 40 hours in every month during that period.
   3. If the employee has completed 6 months’ current continuous employment family violence leave must be provided to an employee for the 12-month period of continuous employment beginning at the end of the 6-month period and each subsequent 12 months of current continuous employment.
   4. If clause 26.2.2 above applies family violence leave must be provided for the 12-month period of employment beginning at the end of the 6-month period and each subsequent 12-month period of employment as long as the circumstances referred to in clause 26.2 above continue to apply.
   5. The employer and employee may agree that the employee may take family violence leave in advance and the amount of leave taken in advance will be deducted from the employee’s entitlement to family violence leave.
   6. The employee must notify the employer of the intention to take family violence leave as early as possible before the employee is due to start work on the day that is intended to be taken as family violence leave or if that if not practicable, as early as possible after that time.
   7. An employee is not entitled to be paid for any family violence leave that has not been taken before the date on which the employee’s employment ends.
   8. The employer may require proof that an employee is a person affected by family violence to be produced for family violence leave taken. The employer will only require the proof to be produced as specified by the Act.
   9. An employee may take up to 10 days’ family violence leave in the 12-month period and cannot carry forward any family violence leave not taken in that 12-month period.
2. PAYMENT FOR FAMILY VIOLENCE LEAVE [STATUTORY ENTITLEMENT]
   1. The employer must pay an employee an amount that is equivalent to the employee’s relevant daily pay or average daily pay for each day of family violence leave taken by the employee affected by family violence that would otherwise be a working day for the employee.
   2. The employer is not required to pay an employee for any time for which the employee is paid weekly compensation under the Accident Compensation Act 2001 or former Act.
   3. The employer must not require an employee to take as family violence leave any time for which the employee is being paid:
      1. First week compensation by the employer under the Accident Compensation Act or former Act; or
      2. Weekly compensation for a work-related injury within the meaning of the Accident Compensation Act or former Act.
   4. If the employer pays the difference between the employee’s first week compensation or weekly compensation and ordinarily weekly pay, the employer may agree with the employee that the employer may deduct from the employee’s family violence leave entitlement one day for every five whole days that the employer makes that payment.
   5. The employer must pay an employee for family violence leave in the pay that relates to the pay period in which the leave is taken.
   6. If an employee is required to provide proof that they are a person affected by family violence and fails to do so without reasonable excuse, the employer is not required to pay the employee for any family violence leave in respect of which the proof is required until the employee complies with that requirement.
3. LONG SERVICE LEAVE [OPTIONAL CLAUSE]
   1. An employee will be entitled to long service leave of [specify number] week/s upon completion of a [specify number] year period of recognised service as defined in [specify definitions clause].
   2. The employee is entitled to further long service leave of [specify period] after each subsequent period of [specify number].
   3. The rate of pay for long service leave will be [specify e.g. same as annual holidays or the employee’s ordinary base rate]. Long service leave will be taken during the year in which the employee becomes eligible for it or will be forfeited.
4. Include a clause if the employee is entitled to long service leave upon redundancy or termination, and/or any entitlement to cash it in.
5. Extra leave for employees with long service is not a legal requirement. However, it is a feature of many collective agreements, and is a common way of encouraging retention of staff. This may take a variety of forms, including extra annual holidays for those with more than a specified number of years’ service and/or one-off holidays upon achieving specified milestones.
6. LEAVE PROVISIONS [STATUTORY ENTITLEMENT]

Sick Leave

* 1. Employees will be entitled to [specify days – minimum 5] days of paid sick leave per annum.
  2. Employees’ entitlement to sick leave will start [specify period- minimum – when they have been in continuous employment for 6 months].
  3. The employee may accumulate sick leave entitlements up to a maximum of [specify days – minimum 20] days.
  4. The employee will contact the employer [specify notice time frame e.g. as soon as possible, first day of absence, within four hours of commencement time] if they are sick.
  5. Sick leave will be paid at the employees’ relevant daily pay or average daily pay in accordance with the Holidays Act 2003.

[OPTIONAL CLAUSE]

* 1. Where an employee is unable to work due to an injury and is receiving first week compensation or weekly compensation, the employer and the employee agree that the employer will pay the employee the difference between their earnings-related compensation and their ordinary earnings. For every 5 days when such payments are made, one day may be deducted from the employee’s sick leave balance. In the event that the employee has insufficient sick leave, the employer will not be obliged to make any payment or further payment.

Medical Certificate

* 1. Where the employee has taken sick leave, the employer may require proof of sickness or injury after any absence, if the employer meets the meet reasonable costs associated with the employee obtaining proof of sickness; and
  2. Where an employer requires proof of sickness or injury after a sickness or injury of three or more calendar days under s 68(1) of the Holidays Act 2003, there is no requirement on an employer to pay the employee’s costs.

Bereavement Leave / Tangihanga Leave

* 1. Employees who suffer a bereavement will have the following entitlements:
     1. Eligibility to bereavement leave will commence from [specify e.g.: the first day of their employment or when they have been in employment for 3 months/ (statutory minimum is 6 months) 6 months etc.].
     2. Eligible employees will be entitled to paid bereavement leave of up to [Specify number - statutory minimum = 3] days in relation to the death of their parent, grandparent, sibling, child, grandchild, spouse, partner or parent of their spouse or partner.
     3. Eligible employees will be entitled to paid bereavement leave of up to [specify amount - statutory minimum = 1] day/s if they suffer a bereavement as a result of the death of any other person.
     4. Bereavement leave will be paid at an employee’s relevant daily pay or average daily pay in accordance with the Holidays Act 2003.

1. PUBLIC HOLIDAYS [STATUTORY ENTITLEMENT]
   1. The following holidays shall be allowed in accordance with the Holidays Act 2003 and its amendments provided that the public holiday falls on a day which, but for it being a public holiday, would otherwise be a working day for the employee:
      1. New Year’s Day
      2. The Day After New Year’s Day
      3. Waitangi Day
      4. Good Friday
      5. Easter Monday
      6. ANZAC Day
      7. Sovereign’s Birthday
      8. Region’s Anniversary Day
      9. Labour Day
      10. Christmas Day
      11. Boxing Day
2. To clarify what happens when public holidays fall on the weekend it is recommend to include:
   * If Christmas Day, Boxing Day, New Year’s Day, the day after New Year’s Day, Waitangi Day or Anzac Day:
     + falls on a Saturday or a Sunday and the day would otherwise be a working day for the employee, the public holiday must be treated as falling on that day;
     + falls on a Saturday or a Sunday and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday (or Tuesday if Christmas Day, Boxing Day, New Year’s Day or the day after New Year’s Day fall on a Sunday).
   1. If an employee is asked to work and works on any part of a public holiday, the employer shall pay that employee the greater of:
      1. The portion of the employee’s relevant daily pay or average daily pay (less any penal rates)that relates to the time actually worked on the day plus half that amount again’ or
      2. The portion of the employee’s relevant daily pay that relates to the time actually worked on the day.
3. Many collective agreements state a minimum amount of hours be paid for working on a public holiday.
   1. An employee is entitled to another day’s holiday (alternative holiday) instead of a public holiday if:
      1. The public holiday falls on a day that would otherwise be a working day for the employee; and
      2. The employee when asked to work actually works on any part of that day;
   2. The entitlement to an alternative holiday remains in force until it is taken by the employee or paid for in accordance with section 60(2) of the Holidays Act 2003.
   3. The employer and employee may agree in writing to transfer the public holiday to another day for the employee where that day would otherwise have been a working day. This will not reduce the number of paid public holidays for the employee.
4. SHIFT WORKERS’ PUBLIC HOLIDAYS [STATUTORY ENTITLEMENT]

Public holidays for night-shift employees may be observed as follows:

* 1. Employees whose rostered shift crosses midnight into the date on which a public holiday would normally be observed will complete their rostered shift. When this occurs, the employee will be:
     1. paid their normal rate for the entire shift and receive an alternative holiday to be agreed upon.

OR

* + 1. paid their normal rate for the entire shift and their next succeeding shift will be deemed a holiday.

1. Unless agreed otherwise, public holidays are observed from midnight to midnight on the dates specified in the Holidays Act 2003. This can result in part of a shift falling within a public holiday, resulting in complications for night-shift employees and their employers. However, section 44A of the Holidays Act 2003 allows the parties to agree on different times for the observance of the holiday in order to avoid this issue.
2. EMPLOYEES ON CALL DURING PUBLIC HOLIDAYS [STATUTORY ENTITLEMENT]
   1. Employees who are on call during a public holiday and that day would otherwise be a working day for the employee:
      1. If the employee is called by the employer to work on that day, the employee is entitled to an alternative holiday; or
      2. If an employee is not called in to work, the employee is also entitled to an alternative holiday if the nature of the restriction imposed by the on-call condition for all practical purposes means the employee has not had a whole holiday.

OR

* 1. Employees may be required to be on call during public holidays.
  2. Employees who are on call during a public holiday shall be entitled to:
     1. an on call payment of [specify amount]; and
     2. payment for any time actually worked, at the rate of [specify rate – statutory minimum is time and a half]
  3. If an employee is on call on a day that would normally be a working day for them, and if being on call imposes restrictions that result in the employee not receiving the benefit of a whole holiday, they shall also be entitled to an alternative holiday.

1. The Holidays Act 2003 has provisions for employees on call. Please refer to the Holidays Act for further information.
2. PARENTAL LEAVE [STATUTORY ENTITLEMENT]
   1. Employees will be entitled to parental leave in accordance with the Parental Leave and Employment Protection Act 1987.
3. The Parental Leave and Employment Protection Act 1987 provides that employment agreements may have additional or enhanced parental leave terms and conditions; provided that the conditions are overall as favourable to the employee, or more favourable to the employee, than the rights and benefits provided for in Parts I to V of the Act. However, to take effect, the terms and conditions must be **comprehensive**. A collective agreement or other arrangement is comprehensive if it effectively addresses **all** of the following matters:
   * the conditions of eligibility for any parental leave;
   * the duration of parental leave;
   * the degree of protection provided for the employee's position in the employment of the employer during and subsequent to any absence on parental leave;
   * the employer's obligation or lack of an obligation to pay remuneration during the parental leave; and
   * the procedural requirements relating to parental leave.

If the employment agreement is not comprehensive, then only the provisions of the Parental Leave and Employment Protection Act 1987 will apply.

1. UNPAID LEAVE [OPTIONAL CLAUSE]
   1. Applications for unpaid leave will be given reasonable consideration by the employer, but will be granted only at the employer's sole discretion having regard to the requirements of the employer's business and operations. Applications for unpaid leave will be considered in situations such as for compassionate reasons; to undertake a course of work-related study; or to gain additional work-related experience.
2. Some other commonly found types of leave include: graduation leave, sports leave and cultural leave.
3. VOLUNTEER PROTECTION LEAVE [STATUTORY ENTITLEMENT]
   1. Leave for training or service in the Defence Forces will be covered by the Volunteers Employment Protection Act 1973.
4. JURY LEAVE [OPTIONAL CLAUSE]

Use one of the following:

* 1. Where the employee is called for jury duty, the employer will continue the employee's ordinary pay for the duration of the jury service for days that would otherwise have been working days, and the employee will pay to the employer any attendance fees they receive in relation to their jury service.

OR

* 1. Employees called for jury duty will not be entitled to any payment from the employer, but will be entitled to retain any attendance fees payable to them.

1. It may be necessary for the employer to seek an exemption for the employee attending jury service due to the nature of the business. Employees should be made aware of this by including a clause in the collective agreement.
2. Failure to address situations such as payment while on jury duty can lead to different understandings and therefore conflict when situations arise in practice. It is therefore suggested that this matter be addressed in the collective agreement.
3. HEALTH AND SAFETY [STATUTORY ENTITLEMENT]
4. Health and Safety is an important part of every occupation. Both the employer and employees should focus on keeping both themselves and others safe at work. Many collective agreements contain a number of clauses relating to health and safety and employee wellbeing. What is appropriate in any particular agreement will reflect the nature of the workplace and employees’ duties.

Examples of common clauses that could be used or adapted follow:

* 1. Both the employer and employees will comply with their obligations under the Health and Safety at Work Act 2015.
  2. The employer shall so far as is reasonably practicable:
     1. Ensure the health and safety of its workers at work;
     2. Provide employees with appropriate training, safety equipment and protective clothing; and
     3. Comply with relevant codes of practice.
  3. Employees will:
     1. Ensure they are familiar with the employer's health and safety policies and co-operate with any reasonable health and safety policy or procedure at the workplace that has been notified to them;
     2. Comply with all reasonable instructions from or on behalf of the employer regarding health and safety;
     3. Take reasonable care to ensure that in the performance of their employment they do not undermine their own health and safety or the health and safety of any other person; and
     4. Report any risks, incidents or hazards that could cause harm to people in the workplace.
  4. The employer will develop effective worker participation practices in consultation with its employees and the union.

1. DRUG TESTING [OPTIONAL CLAUSE]
   1. The employer may request that employees undergo drug and or alcohol testing:
      1. At random wherethe employee works in a safety sensitive area or job;
      2. After an incident or near miss in which someone was or could have been injured; and
      3. If the employer believes they have reasonable cause e.g. if an employee’s actions, appearance or behaviour suggest they may be under the influence of alcohol or drugs.
   2. The employee agrees to:
      1. Not be impaired or potentially impaired by drugs or alcohol when at work, travelling for work or representing the employer;
      2. Be tested for drugs or alcohol if asked;
      3. Follow the testing procedures and not tamper with, or try to tamper with, the test or its results; and
      4. Agree to the results being given to the employer.
   3. Where the employee does not meet one or more of the requirements in clause 37.2 above, this may be considered serious misconduct.
2. MEDICAL BENEFITS [OPTIONAL CLAUSE]

Employers may provide a range of medical benefits to employees. Any combination of the benefits below may be included within a collective agreement.

* 1. **Medical Insurance:** The employer will provide [specify employees or employees and their families] with medical insurance [specify either up to a specified value or specify a schedule to the agreement]
  2. **Immunisation:** The employer will [arrange and] pay for the employee to receive a flu injection on an annual basis, where available and requested by the employee.
  3. **Eye Test:** Employees will be entitled to reimbursement of the cost of an eye test, once per year to a maximum cost of [specify amount].
  4. **Employee Assistance Programme (EAP):** In the event the employee considers that they require or could benefit from EAP support they should be able to contact the EAP representative on [specify contact details]. Where the employer has reasonable grounds for concern regarding the employee's wellbeing, the employer will be entitled to refer the employee to the specified EAP.
  5. **Counselling Assistance:** The employer will provide access to a counsellor to provide support and assistance to its employees. In the event the employee considers that they require or could benefit from counselling support they should be able to contact the counsellor on [specify contact details]. Where the employer has reasonable grounds for concern regarding the employee's wellbeing, the employer will be entitled to suggest that the employee contact the specified counselling service.
  6. **Policy on Stress:** The employer will make available to the employee its policy on stress [specify where policy can be located]. The policy should be designed to provide information in order to minimise stress in the workplace by [outline policy briefly].

1. OBLIGATIONS OF EMPLOYEES [OPTIONAL CLAUSE]

Employees’ Duties:

* 1. Employees’ work duties will be specified in written job descriptions.
  2. Employees’ job descriptions will be made available to the employee prior to the start of their employment, and at other times upon request.
  3. The employer may amend the employee’s job descriptions, following consultation with the employee. However, where amendments are so extensive as to change the fundamental nature of an employee’s position, and there is no mutual agreement between the employer and employee, the provisions relating to redundancy in this Agreement will apply.

Confidentiality

* 1. Employees will not, whether during the term of their employment or after its termination, directly or indirectly, use, copy, share or disclose any trade secrets or other confidential or other information not known to the public about any aspect of the employer’s business, including (but not limited to) strategies, financial affairs, contracts, actual or potential customers, suppliers or clients except as part of the proper performance of their job or with the written agreement of the employer.

Copyright and other Intellectual Property

* 1. Anything produced, invented, created, developed or made by employees in the performance of their duties, or during work time, or using the employer’s property (including material, equipment, hardware, software and applications) and the right to the copyright and all other intellectual property in all such work, is the sole property of the employer unless the employer specifically agrees otherwise in writing.

Conflict of Interest

* 1. Employees will ensure they are not subject to any contracts, restrictions or other matters that would interfere with their ability to discharge their obligations under this Agreement.
  2. If before, or while, performing their duties and responsibilities under this Agreement, an employee becomes aware of any potential or actual conflict between their interests and those of the employer, then the employee will immediately inform the employer.
  3. Where the employer forms the view that a conflict does or could exist, it may direct the employee to take reasonable action(s) to resolve that conflict, and the employee will comply with that instruction.
  4. When acting in their capacity as employee, an employee will not, either directly or indirectly, receive or accept for their own benefit or the benefit of any person or entity other than the employer any gratuity, emolument, or payment of any kind from any person having, or intending to have, any business with the employer without the employer’s express consent in writing.
  5. Employees will comply with policies issued by the employer in relation to conflict of interest.

1. A register should be created to keep a record of all potential and actual conflicts of interest and actions take to mitigate the conflicts where this is reasonably possible. Gifts should also be recorded on the register to avoid issues of undue influence.

Internet and email usage

* 1. Employees will have access to email and the internet in the course of their employment.
  2. Employees will ensure that at all times their use of the email and internet facilities at work meets the relevant policies and standards of the workplace.
  3. A reasonable level of personal use is acceptable to the employer. Usage must not interfere with the employee's employment duties or obligations, and must not be illegal or contrary to the interests (including reputation) of the employer.
  4. Employees will comply with email and internet policies issued by the employer.

1. Many Collective Agreements deem a serious breach of this clause to be serious misconduct.
2. TERMINATION [OPTIONAL CLAUSE]
   1. The employer may, for cause and following a fair process, terminate an employee’s employment, by providing [specify period] notice in writing to the employee.
   2. Employees may terminate employment by providing [insert period] notice in writing to the employer of their intention to resign.
   3. The employer may, at their discretion, pay remuneration in lieu of some or all of the notice period.
3. The period of notice for the employee and the employer should be the same.

Although it is not a legal requirement to do so, it is a good idea to have clauses in an Agreement covering termination of employment. Because of the likelihood of conflict around termination of employment, this is an important protection for both employer and employees.

1. ABANDONMENT [OPTIONAL CLAUSE]
   1. If an employee has been absent from work for [specify period – e.g. 3 or 5 days] without any notification to the employer, and the employer has made reasonable efforts to contact the employee, the employer may deem the employee to have terminated their employment without notice.
2. TERMINATION FOR SERIOUS MISCONDUCT [OPTIONAL CLAUSE]
   1. Notwithstanding any other provision in this Agreement, the employer may terminate this Agreement without notice for serious misconduct and following a fair process on the part of the employee.
   2. Depending on the circumstances, and the seriousness of the employee’s actions, serious misconduct may include (but is not limited to) behaviour such as:
      1. Theft or other dishonesty;
      2. Assault;
      3. Bullying or harassment of another other staff member or customer/ client;
      4. Serious or repeated failure to follow a reasonable and lawful instruction;
      5. Use of, or possession of, or being under the influence of illegal drugs at work;
      6. Deliberate destruction of any property belonging to the employer or a customer or client of the employer;
      7. Actions that seriously damage the employer's reputation; or
      8. A serious breach of the employer’s policies and procedures.
3. This is not an exclusive list, other conduct specific to the type of employment or industry may be relevant to include.
4. TERMINATION ON MEDICAL GROUNDS [OPTIONAL CLAUSE]
   1. In the event an employee has been absent from work for an extended period due to illness or injury, the employer will be entitled to require that the employee undergo a medical examination, at the employer's cost.
   2. In assessing the employee's fitness for work, the employer will take into account any report provided as a result of that examination, any other medical report provided by the employee, and any other comments made by or on behalf of the employee.
   3. If the employee will not be capable of the proper performance of their duties within a reasonable period of time, the employer may terminate this Agreement upon notice.
5. TERMINATION WHILE ON PROBATIONARY PERIOD [OPTIONAL CLAUSE]
   1. The employer and new employees, whose work is covered by this Agreement, may agree to a probationary period of employment, subject to section 67 of the Employment Relations Act 2000.
   2. The details of any such probationary period will be specified in writing in an individual agreement entered into by the employer and employee, prior to the employee commencing employment.
   3. Termination of employees subject to a probationary period will be in accordance with section 67 of the Act.
6. TERMINATION WHILE ON TRIAL PERIOD [OPTIONAL CLAUSE]
   1. A small-to-medium sized employer and an employee who has not previously been employed by the small-to-medium sized employer and whose work is covered by this Agreement may enter into an employment agreement containing a trial provision in accordance with section 67A of the Act.
   2. For the purposes of this Agreement and pursuant to the Act a “small-to-medium sized employer” means an employer who employs fewer than 20 employees at the beginning of the day on which the employment agreement is entered into.
   3. For the purposes of this Agreement and pursuant to the Act “trial provision” means a written provision in an employment agreement that states or is to the effect that:
      1. For a specified period (not exceeding 90 days) starting at the beginning of the employee’s employment, the employee is to serve a trial period;
      2. During that period, the small-to-medium sized employer may dismiss the employee; and
      3. If the small-to-medium sized employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
   4. The details of any such trial period will be specified in writing in an individual agreement entered into by the employer and employee, prior to the employee commencing employment.
   5. Termination of employees subject to a trial will be in accordance with section 67B of the Act.
7. OBLIGATIONS UPON TERMINATION OF EMPLOYMENT [OPTIONAL CLAUSE]

Employee Obligations:

* 1. Upon termination of employment, the employee will promptly return to the employer any information or property belonging to it, including:
     1. any uniform or protective equipment items supplied;
     2. any tools supplied;
     3. any keys or access card provided;
     4. any vehicles supplied;
     5. any mobile phone, tablet, computers or other equipment provided; and
     6. any company records or information in the employee’s possession or control.

Employer Obligations:

* 1. Upon termination of employment, the employer will promptly:
     1. return to the employee any property belonging to the employee;
     2. pay the employee any entitlements owing; and
     3. provide the employee with a certificate of service within 14 days of receiving a written request.

1. DISCIPLINARY PROCEDURE [OPTIONAL CLAUSE]
   1. Employees suspected of wrongdoing or failure to perform to the required standard will be dealt with in accordance with the following procedures:
      1. The employer will conduct a fair and thorough investigation into any issues that could lead to disciplinary action against employees.
      2. If the employer considers disciplinary action may be appropriate, the employer will arrange for a meeting to be held with the employee.
      3. The employee will be given the opportunity to seek independent advice and/or representation in relation to the disciplinary action.
      4. As soon as practicable, and a reasonable period of time before such a meeting is to be held, the employer will provide the employee with the following information:
         * The substance of the allegations against the employee;
         * Information known to the employer which relates to these allegations, including any complaints against the employee or other information provided to the employer by any witnesses;
         * Any workplace rules alleged to have been breached by the employee;
         * The fact that the employee has a right to have a representative present at the meeting; and Possible consequences if the allegations against the employee are established, including, where applicable, that the employee’s employment may be terminated.
      5. At the meeting, the employee will be given an opportunity to address the person who will be deciding the issue on:
         * The allegations against the employee;
         * Information that may support or disprove those allegations;
         * Any mitigating circumstances or other factors that should be taken into account if the allegations are established; and
         * What the employee believes an appropriate outcome would be, if the allegations are established.
      6. The employer will consider information and comments made by the employee in response to the allegations, and investigate any issues arising from their comments.
      7. If, after considering the information and comments provided by the employee in response to the allegations, the employer is satisfied that some or all of the allegations against the employee are established, the employer will determine whether in all the circumstances the conduct constitutes poor performance, misconduct or serious misconduct.
      8. If serious misconduct is established, the employer may:
         * Terminate the employee’s employment, with or without notice; or
         * Take any other step.
      9. If poor performance or misconduct is established, the employer may:
         * Take corrective measures, including providing the employee with a warning; or
         * If the employee has already been given a final warning for relevant matters, terminate employment on notice.
2. The law requires that an employer’s actions would be what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal. By incorporating these processes into a Collective Agreement, parties clarify the process to be followed if a situation of concern does arise.
3. SUSPENSION [OPTIONAL CLAUSE]
   1. Where circumstances deem it reasonable for the employer to investigate any alleged misconduct, it may, after discussing the proposal of suspension with the employee, and considering the employee's views, suspend the employee on pay while the investigation is carried out.
4. RESTRUCTURING AFFECTING VULNERABLE WORKERS [MANDATORY CLAUSE (if applicable)]
   1. “Vulnerable workers” as referred to in this Agreement refers to the specified categories of employees specified in Schedule 1A of the Act.
   2. Subpart 1 of Part 6A of the Act applies to all employees who are in a category specified in Schedule 1A of the Act who work in a business that is being restructured, who will no longer be required by the employer to work as a result of the restructuring, and whose work (or substantially similar work) is to be performed by employees of the new employer.
   3. “Restructuring” for the purposes of this clause in this Agreement has the same meaning as in section 69B of the Act. It includes contracting out, contracting in, subsequent contracting or selling or transferring an employer’s business (or part of it) to another person.
   4. In accordance with section 69G of the Act, no later than 20 working days before contracting out, contracting in, subsequent contracting, sale or transfer of all or part of the employer’s business, the employer will provide employees who will be affected with:
      1. Information about whether the employees have a right to make an election under section 69I of the Act;
      2. A reasonable opportunity for the employee to exercise their right to transfer to the new employer under section 69I of the Act on the same terms and conditions;
      3. Information sufficient for the employees to make an informed decision about whether to exercise any right to make an election. This information must satisfy the requirements in section 69G(2) of the Act; and
      4. The employee must exercise their right to elect to transfer within 10 working days after the day on which the employees are provided with information referred to in clause 48.4.3 above or a later date if the employees’ employer and the new employer agree to this.
   5. If the restructuring is a contracting in or subsequent contracting (e.g. the work is to be carried out by another person) the employer will be given sufficient notice of this to enable it to comply with the requirements in section 69G(1) of the Act.
   6. Pursuant to section 69H of the Act, before an employee decides to elect to transfer to a new employer, they can bargain with their employer for alternative arrangements. These alternative arrangements may include the employee’s ongoing employment with the employer, or the termination of the employee’s employment on agreed terms. If the employee and employer agree on alternative arrangements in writing the employee may not subsequently elect to transfer to the new employer.
   7. If an employee covered by Subpart 1 of Part 6A elects to transfer to a new employer, then they will become the employee of the new employer, on the same terms and conditions that applied at that specified date. “Specified date” has the same meaning as section 69I of the Act being the date on which the restructuring takes effect.
5. RESTRUCTURING AFFECTING OTHER EMPLOYEES [STATUTORY ENTITLEMENT]
   1. This clause applies to employees who do not come under the specified categories in Schedule 1A of the Act but are affected by restructuring and their work is to be performed by or on behalf of another person.
   2. The employer will:
      1. Schedule talks with the new employer;
      2. Tell the employee about the upcoming talks and the intended timeframes;
      3. Tell the employee what will generally be discussed;
      4. Arrange for senior representatives of the employer to engage in the talks with the new employer;
      5. 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;
      6. Tell the new employer to offer all affected employees jobs with the same or better terms and conditions;
      7. Report back to the employee on the outcome of the meetings to the extent they relate to the employee.
   3. If the employee does not transfer to the new employer, the employer will determine what entitlements (if any) are available to the employee by discussing with the employee:
      1. Whether there are any options available to remain in employment with the employer;
      2. Their redundancy entitlements under this agreement (if any), and what this could mean for the employee, including notice arrangements; and
      3. Whether the employer can offer any additional support to the employee, e.g. a reference.
   4. The employer will consider the employee’s comments and confirm in writing the outcome of these discussions to the employee.
6. TECHNICAL REDUNANCY CLAUSE [OPTIONAL CLAUSE]
   1. Where the employee’s position is disestablished due to the sale or transfer of any part of the employer’s business or operations or the employer contracting out of the work, the employee will not be entitled to redundancy compensation or their period of notice on termination if they are offered similar employment by the purchaser, transferee, or contracting entity on terms of employment which are no less favourable than the employee’s terms of employment at the time of the sale or transfer, or contracting out on terms that they accept.
7. REDUNDANCY [OPTIONAL CLAUSE]
   1. **Definition of Redundancy:** Redundancy is a situation where an employee’s position is disestablished due to the position no longer being needed by the employer and there are no other suitable positions available for the employee.
   2. **Redundancy Process:** If the employer is considering a proposal that could result in the disestablishment of a position of an employee covered by the agreement, it will consult with the employee and union. The consultation process will include:
      1. Explaining the proposal and the reasons for it;
      2. Allowing employees and the union a reasonable opportunity to comment on the proposal and the reasons given; and
      3. Considering and responding to any feedback provided by employees or the union.
   3. If the employer then decides to disestablish any employees’ position:
      1. the parties will discuss the process which will apply for selection amongst potentially affected employees;
      2. Any selection between employees will be fair and transparent; and
      3. The employer will consult with employees whose positions are disestablished about what options may be open to them, including possible alternative positions.
8. Including redundancy clauses can give certainty to employers and employees when the changing amount or nature of work in an enterprise makes some or all employees surplus to requirements.
9. The selection process can also be described in the collective as discretionary, last on first off, voluntary or a combination of the named processes.
   1. **Redundancy Notice:** In the event an employee's employment is to be terminated by reason of redundancy, the employee shall be provided with a minimum of [specify period] notice in writing. This notice is in substitution for and not in addition to the notice set out in the [refer back to termination clause].
   2. **Non-Monetary Entitlements**: During the notice period:
      1. The employer will assist surplus employees to find alternative employment by allowing them a reasonable amount of time off work to attend job interviews without loss of pay. This is subject to the employer being given reasonable notice of the time and location of the interview before the employee is released to attend it; and
      2. The employer recognises redundancy is a difficult time and will provide the employee with relevant counselling, budget advice and career advising services.
   3. **Redundancy Compensation** Use one of the following:
      1. In the event an employee's employment is terminated on the basis of redundancy, the employee shall be entitled to redundancy compensation on the basis of the following formula:

*[Specify formula]*

1. There are a range of options open to the parties. The most common approach to quantifying redundancy compensation entitlements in collective agreements is to include a formula that provides for an amount of compensation for the first year of service or part thereof, and another amount for each subsequent year, to a specified maximum.

For example:

* + In the event the employee's employment is terminated on the basis of redundancy, the employee will be entitled to redundancy compensation on the basis of the following formula:
    - [specify number] week’s ordinary pay for the first year’s service or part thereof; and
    - [specify number] week’s ordinary pay for each subsequent year’s service or part thereof,
    - to a maximum of [specify number] weeks’ ordinary pay.

1. State if there is a minimum amount of service that must be served before redundancy compensation is payable. Also state if compensation is pro-rated or have additional payment for dependents.
   1. However, no redundancy compensation will be payable in cases where:
      1. An employee is offered a suitable alternative role with the employer, on terms and conditions that are no less favourable than they received in the role that has been disestablished, and at a location reasonably convenient to them; or
      2. The work done by the employee is to be done for a new employer, and that employer offers the employee continuity of employment on terms and conditions no less favourable than those contained within this agreement, recognition of service and at a location reasonably convenient to them.

OR (If no compensation will be payable in the event of redundancy use the following):

* 1. In the event the employee's employment is terminated on the basis of redundancy, the employee will be entitled to notice of termination of employment as specified in the termination clause, but will not be entitled to any additional payment, whether by way of redundancy compensation or otherwise.

1. Where an employee’s position is disestablished, the employer and employee may agree that the employee moves into a new role, or the employee’s employment may be terminated. Situations where the employee’s position is disestablished but the employee is offered a suitable alternative role are often referred to reassignment or redeployment. Many Collective Agreements, but not all, contain a right to compensation if an employee’s role is disestablished and they are not offered a suitable alternative position. However, employees who are offered a suitable alternative position on no less favourable terms and conditions are not usually entitled to redundancy compensation, as the loss of their original position does not result in any real loss to them.
2. UNION REPRESENTATION [STATUTORY ENTITLEMENT]
   1. The employer will be notified of the election or appointment of any employee as a union delegate, and of any relevant designations such as head delegates or senior site delegates.
3. UNION RIGHTS [STATUTORY ENTITLEMENT]
   1. An employee is entitled to spend reasonable paid time undertaking union activities during the employee’s normal hours of work if:
      1. The employee has been appointed or elected as a union delegate, in accordance with the rules of procedures of the union, to represent other employees of the employee’s employer who are members of the union on matters relating to their employment;
      2. The activities relate to representation of employees of the employer; and
      3. The activities would not unreasonably disrupt the employer’s business or the union delegate’s performance of employment duties.
   2. Before undertaking union activities the employee must agree with the employer that the employee may undertake activities under this section from time to time without notice or notify the employer when the employee intends to undertake the activities and how long the employee intends to spend undertaking the activities.
   3. The employer may refuse to allow an employee to undertake the activities only if the employer is satisfied, on reasonable grounds, that the activities would unreasonably disrupt the employer’s business or the union delegate’s performance of employment duties.
   4. An employer must pay the employee for any time spent undertaking union activities at the rate of pay that the employee would otherwise have received if the employee were performing their ordinary employment duties during that time.
4. This clause does not prevent an employer from providing an employee with enhanced or additional entitlements to spend paid time undertaking union activities on a basis agreed with the employee.
   1. A union representative will be allowed to enter work premises to consult with union members on any matter relating to the operation of this Agreement or its re-negotiation, for purposes related to employment of a union member, for purposes related to the union’s business or to assist any employee (including those who are not a member of a union) with matters relating to health and safety if that employee has requested their assistance.
   2. In accordance with section 30A of the Act the Union can at any time request the employer to provide certain specified information about the role and functions of the union to prospective employees under section 63B of the Act. The union must specify the information and the form in which the union requests the employer to provide the information to prospective employees. The employer may refuse to comply with the request only if the information is confidential or the information is about the employer and would, or is likely to, mislead or deceive the prospective employee and would significantly undermine bargaining between the employer and the prospective employee. The employer is deemed to agree to comply with the request if they do not respond to the request within 15 working days.
5. UNION INFORMATION [STATUTORY ENTITLEMENT]
   1. The employer must share new employee information with the union unless the employee objects in accordance with section 62A of the Act.
   2. The employer must, within ten days after a new employee commences employment, provide the employee with a form that the employee may complete and return for the purposes of:
      1. Notifying the employer whether the employee intends to join a union (or particular union);
      2. Objecting to the employer providing information about the employee to the union (if the employee does not intend to join the union) or any other union (if the employee intends to join a particular union).
   3. The employer must, within ten working days of the expiry of the 30 days after the employee commences employment, provide the union that is a Party to this Agreement (unless the employee has objected) with:
      1. The name of the employee; and
      2. The completed form referred to in this clause of this Agreement or notice that the employee did not complete and return the form.
   4. The employer must inform prospective employees within the first 30 days of employment that this Agreement, that the employee may join the union, how to contact the union, that if the employee joins the union they will be bound by this Agreement. The employer must also inform the prospective employee that if they enter into an individual employment agreement with the employer, the prospective employee’s terms and conditions of employment will, during the first 30 days of employment comprise the terms and conditions in this Agreement and any additional terms and conditions mutually agreed to by the prospective employee and the employer that are no less favourable to the employee than the terms and conditions in this Agreement.
   5. The employer must provide prospective employees with a copy of this Agreement and any information about the role and functions of the union that the employer is required to provide to prospective employees in accordance with a request by a union under section 30A of the Act.
6. UNION REPRESENTATIVE ACCESS TO WORKPLACE [STATUTORY ENTITLEMENT]
   1. In accordance with section 20 of the Act, a Union Representative is entitled to enter a workplace for purposes related to the employment of the union’s members, the union’s business, related to health and safety of any employee who is not a union member if the employee requests the assistance of the union.
   2. The purposes related to the employment of a union’s members include to:
      1. Participate in bargaining for a Collective Agreement;
      2. Deal with health and safety matters of union members;
      3. Monitor compliance with this Agreement;
      4. Monitor compliance with the Act and other Acts dealing with employment-related rights in relation to union members;
      5. Deal with matters related to an individual employment agreement; and
      6. Seek compliance with relevant requirements where there is non-compliance.
   3. The purposes related to a union’s business include to discuss union business with union members, to seek to recruit employees as union members, and to provide information on the union and union membership to employees.
   4. Discussions at a workplace between an employee and Union Representative must not exceed a reasonable duration and will not be treated as a union meeting.
   5. The employer will not deduct wages from the employee in respect of the time the employee is engaged in discussion with a Union Representative.
   6. A Union Representative does not require the consent of the employer or a representative of the employer before entering a workplace of employees whose work is included in the coverage clause of this Agreement.
   7. A Union Representative does not require the consent of the employer or a representative of the employer before entering a workplace if the union has initiated bargaining for a Collective Agreement and the intended coverage covers work done by the employees at the workplace.
   8. The employer must not unreasonably withhold consent for a Union Representative to enter a workplace and must advise the Union Representative of their decision no later than the working day after the request. The employer’s consent will be deemed to have been provided if they do not respond to the request within two working days after the date the request was received.
   9. If the employer withholds consent they must provide the Union Representative with written reasons no later than one working day after the date of the decision. Access may only be denied under the grounds set out in sections 22 or 23 of the Act.
7. UNION MEETINGS [STATUTORY ENTITLEMENT]
   1. Employees are entitled to attend (on ordinary pay) union meetings totalling [specify – minimum four hours] in any one calendar year subject to employer’s services and operations being maintained at a safe level and subject to the employer being given a minimum of 14 days’ advance notice.
8. If union representatives are allowed to use the employer’s resources (for example: meeting rooms, phones and faxes) for union related matters include a clause outlining the resources and occasions of use to avoid confusion.
9. DEDUCTION OF UNION FEES [STATUTORY ENTITLEMENT]
   1. The Employer will deduct union fees from the wages of members of the union when authorised in writing by members and remit [specify time frame] to the respective union.
10. EMPLOYMENT RELATIONS EDUCATION LEAVE [STATUTORY ENTITLEMENT]
    1. The union is entitled to allocate Employment Relations Education Leave to members employed by the employer. The amount of leave able to be allocated shall be [as specified in Part 7 of the Employment Relations Act 2000 / or specify statutory minimum amounts]. Employees taking Employment Relations Education Leave will be entitled to be paid their relevant daily pay (or average daily pay) in accordance with the Holidays Act 2003).
11. Part 7 of the Employment Relations Act 2000 creates an entitlement to Employment Relations Leave and governs how unions may allocate leave, and how leave may be taken. The amount of leave entitlements is set out in section 74 of the Act. Section 79 guarantees eligible employees taking leave a right to relevant daily pay (or average daily pay if it is not possible or practicable to determine an employee’s relevant daily pay or the employee’s daily pay varies within the pay period when the leave falls) in accordance with the Holidays Act 2003. This draft clause does not change these substantive rights, but by incorporating them into the agreement, the need to refer to documents beyond the employment agreement is reduced.
12. CONSULTATION WITH UNION [OPTIONAL CLAUSE]
    1. The employer will consult with the union about any proposals or other matters that may affect union members’ continuity of employment or their terms or conditions of employment.
    2. Consultation will be in accordance with the following principles:
       1. The employer will disclose relevant information;
       2. Consultation will commence as early as practicable;
       3. The union and affected employees will be accorded opportunities to ask questions, seek clarification and provide feedback to the employer; and
       4. The employer will address, and as far as practicable accommodate employees’ concerns.
    3. The extent of consultation will reflect the nature and degree of the likely impact upon employees.
    4. The union will take all practicable steps to prevent the disclosure of confidential information provided to it for the purposes of consultation.
13. RESOLUTION OF EMPLOYMENT RELATIONSHIP PROBLEMS [MANDATORY CLAUSE]
    1. If the employment relationship is to be as productive as possible, it is important that all parties to this Agreement, and employees bound by this Agreement, deal promptly and effectively with any problems that may arise.
    2. This Agreement sets out information on how problems can be raised and worked through. The particular details are attached as schedule [specify schedule number] to this Agreement.
14. GOOD FAITH [OPTIONAL CLAUSE]
    1. The Parties acknowledge that an essential feature of any employment relationship is that it is based on good faith and the Parties will not do anything either directly or indirectly to mislead or deceive each other.
    2. The Parties undertake to behave towards one another in a manner that will maintain and increase trust and confidence.
    3. In particular the employer undertakes to be a good employer and will:
       1. Provide the resources and support reasonably necessary to enable the employees to discharge their obligations under this Agreement;
       2. When making a decision that will, or is likely to, have an adverse effect on the continuation of employment of one or more of their employees, to provide to the employees affected:
          * Access to information, relevant to the continuation of the employees’ employment, about the decision;
          * An opportunity to comment on the information to their employer before the decision is made; and
          * This information does not include confidential information if there is good reason to maintain the confidentiality of the information.
    4. The employees who are covered by this Agreement undertake to apply themselves diligently and conscientiously to the discharge of those obligations.
15. The Employment Relations Act 2000 does not define “good faith” exhaustively. However, section 4 of the Act outlines requirements of good faith behaviour, including the obligation not to mislead or deceive each other. Section 32 of the Act covers good faith in bargaining for Collective Agreements. Codesof good faith are provided for by section 35 (1) of the Act.

**SIGNATURES**

DATED this ……………………. Day of ………………….. 20XX

For and on Behalf of [Employer]

………………………………………………….

[Specify name and title of signing person)

For and on Behalf of [Union]

………………………………………………….

[Specify name and title of signing person)

**Note:** A collective agreement does not come into force until it is signed by both Parties. A union cannot sign a collective agreement unless the proposed collective has been ratified by members.

**SCHEDULE ONE: RESOLUTION OF EMPLOYMENT RELATIONS PROBLEMS**

This clause sets out how employment relationship problems are to be resolved.

**1. Definitions**

(a) An ‘employment relationship problem’ includes:

(i) A personal grievance;

(ii) A dispute

1. Any other problem relating to or arising out of the employment relationship.
2. It does not include any problem with negotiating new terms and conditions of employment
3. A ‘personal grievance’ includes a claim that an employee
   1. Has been unjustifiably dismissed; or
   2. Has had his/her employment, or his/her conditions of employment affected to his/her disadvantage by some unjustifiable action by the employer; or
   3. Has been discriminated against in his/her employment; or
   4. Has been treated adversely on the grounds that the employee is, or is suspected or assumed or believed to be, a person affected by family violence; or
   5. Has been sexually harassed in his/her employment; or
   6. Has been racially harassed in his/her employment; or
   7. Has been subject to duress in relation to union membership
   8. Has not had their rights protected in relation to continuity of employment for employees affected by restructuring

In relation to individual employment agreements, it also includes a claim that an employee:

* 1. Was disadvantaged by their employment agreement not meeting legal requirements for:
     1. agreed hours of work
     2. availability provisions
     3. shift cancellation
     4. secondary employment provisions
  2. was treated unfairly when they lawfully refused work in specific circumstances
  3. Who made a protected disclosure had retaliatory action taken against them

**Note:** The terms used in this clause have precise legal meanings, which are set out in detail in the Employment Relations Act 2000. Employees who believe they have a personal grievance should seek the advice of the union by approaching their representative first.

1. A ‘dispute’ is a disagreement over the interpretation or application of an employment agreement.

**2. Raising employment relationship problems**

(a) An employment relationship problem should be raised and discussed with the employee’s manager as soon as possible.

(b) The employee is entitled to seek advice and assistance from a union representative in raising and discussing the problem.

(c) The employee, employer and union will try in good faith to resolve the problem.

**3.** **Time limit of raising a personal grievance**

An employee who believes he/she has a personal grievance must make the employer aware of the grievance within 90 days of the grievance arising (or of the employee becoming aware that he/she has a grievance). However, when the personal grievance is due to sexual harassment, the time period to make the employer aware of the grievance is within 12 months of the grievance arising (or of the employee becoming aware that he/she has a grievance).

**4. Mediation**

1. If the problem is not resolved by discussion, any party may (without undue delay) seek the assistance of the mediation services provided by the Ministry of Business, Innovation and Employment. The Ministry’s contact details are 0800 20 90 20 or www.employment.govt.nz.
2. All parties must act in good faith with the mediator and each other in a further effort to resolve the problem.
3. Mediation is confidential and, if it does not resolve the problem, is without prejudice to the parties’ positions.
4. Any agreed settlement of the problem signed by the mediator will be final and binding.

**5. Employment Relations Authority**

If the problem is not resolved at mediation, it may be referred to the Employment Relations Authority for investigation and determination.

***Note:*** *The powers of the Employment Relations Authority, and the remedies it may award, are set out in detail in the Employment Relations Act 2000. The union can advise and assist further on these procedures.*