



Employment Issues Specific to Farmers

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Rural employment disputes are relatively rare but when a dispute does arise, commonly both sides take it personally. There are always two sides to ANY dispute.

By the time that my farmer client has contacted me, the relationship between employer and employee has usually deteriorated to a very low point. This is a problem almost uniquely associated with farming - because - as farmers, we usually work on a collaborative basis - we develop, if not a friendship, a close relationship with our employees. They usually live on site; we know their partners, their children and their idiosyncrasies.

Consequently, we become tolerant of errors to the point that we adapt our expectations of performance. UNTIL, one day, the last straw is loaded on the camel's back and our tolerance becomes exhausted. At that point, we begin to recall all the past errors and omissions and we convince ourselves that our employee ("Jack") has always been a liability; will not ever learn - and he should simply go!

So, the usual telephone conversation with me goes something like this:

*"I need to get rid of my shepherd/manager/tractor driver. He's useless.
I don't want any trouble - I just want him gone."*

Q: Does he have an Employment Agreement?

A: About 50% yes.

Q: How long has he worked for you?

A: About 3 years.

Q: Have you ever issued him with any warnings or given any indication that he is not meeting your expectation?

A: 95% NO

So, this is where resolution to this problem becomes a problem. If there is no Employment Agreement, the employer is already on shaky ground. (Liable to a penalty of \$10k for an individual and up to \$20k for a company).

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The absence of an Agreement is not fatal - it just makes the whole process less certain from an employer's perspective. The ideal Agreement sets out exactly what the job entails; how it is to be done - and when - and who is responsible for what.

There are certain provisions which must be in an EA:

- NAME OF BOTH PARTIES
- POSITION DESCRIPTION
- LOCATION OF EMPLOYMENT
- INDICATION OF HOURS OF WORK
- WAGES
- DISPUTE RESOLUTION EXPLANATION
- EMPLOYEE PROTECTION PROVISION

Employment Agreements are available from Federated Farmers - they are adequate but depend upon filling in detail to suit circumstances.

Many Agreements are brief- simply referring to legislation eg. Leave shall be accrued in accordance with the Holidays Act / ACC Act / Minimum Wages Act.

My preference is to spell out the legislative requirements (broadly) in the Agreement. That way, the employee is in no doubt as to what his entitlements are and how they are calculated.

Do not be tempted to write your own Employment Agreements using the internet templates. You will end up with contradictory clauses and a whole lot of meaningless mumbo jumbo legalese that is not relevant to your employment relationship.

While you can put, pretty much what you like in an EA, you cannot 'contract out' of legislation, i.e. if there is a legal requirement to provide some entitlement then you cannot, **EVEN BY AGREEMENT**, make another deal. EG: I hate holidays, just pay me extra and I won't take the holidays.

Obviously the legal requirement to have an Employment Agreement can be met with a simple, relatively short document. However I advise on a more comprehensive document that spells out everything you want from the beginning. Here we lead to the POSITION DESCRIPTION.

There is a BALANCE to be met

- If it is too brief, the employee can claim that he wasn't informed as to what his full duties were: and,
- If it is too comprehensive, he can limit his responsibilities to exactly what was reduced to writing.

In the dairy industry, tasks are clearly set out. After all, there are only so many steps to take to milk a cow, (keeping it healthy and well fed).

Working in the sheep & beef industry presents a different set of expectations of what may or may not have to be done on short notice. Sheep are affected by climatic conditions such as flystrike; worm infestation; difficult lambing etc. Most employees in the S&B industry are aware of the need to be flexible in their working arrangements.

However, other issues should be clearly set out from the beginning, such as:
When is firewood cut - is it provided - who provides the chainsaw & splitter?
How often are House Muttons provided - and when are they killed?
Is there a roster for stock shifts in the weekend?
Who will be taking Christmas and New Year off?

These should be carefully discussed BEFORE employment starts.

- Have your Employment Agreement prepared BEFORE you conduct any interviews?
- Have a thorough Position Description prepared so the candidate knows what the job entails
- Preferably have any partner attend the interview
- Allow a House Inspection at the interview
- Is the House insulated and how is it heated?
- If refurbishment is promised – keep the promise
- How many people will be living in the house?
- Discuss the provision of wet weather gear
- Discuss how many dogs are allowed; what they will be fed and who will register and vaccinate them. Does this include pig dogs? Do you have a vet policy?
- Does the employee have any pets – dogs, horses?
- Do you allow the keeping of pigs?

Having employed 'Jack' - and agreed on all the above points, let's look at what may go wrong in this relationship.

Most employees' complaints are initially raised about PAY. In my experience, it is rarely about PAY. It is about APPRECIATION. Good stockmen often work extra hours finishing drenching or dagging a mob of lambs; taking a mob back to a paddock after shearing - the sort of jobs that are routinely expected of stockmen. Always acknowledge this service. It doesn't take much - a simple thanks the next day will be appreciated. There is an employment adage: "CATCH YOUR EMPLOYEE OUT DOING SOMETHING GOOD". Look for opportunities to compliment your staff.

HOWEVER - when you are unhappy about some aspect of their performance, you must make them ACCOUNTABLE. This does not mean bawling them out at the time. To achieve a worthwhile gain you should:

- Ask them to meet you later
- If possible, start with a positive statement
- Tell them what you observed
- Tell them how you would like it to be done in future
- Close the discussion by going on to some other task

Sometimes, you have simply chosen the wrong person for the job.

Don't beat yourself up - it happens to the most skilled recruiters. BUT, you cannot blame the employee. YOU made the decision to hire him.

If you come to this conclusion within 90 days (and he has signed a TRIAL PERIOD clause BEFORE he started work), then you can exercise your right to terminate his employment. This is not an option if you have a PROBATIONARY CLAUSE which will oblige you to go through a long process before you can terminate the employee.

Two important things to remember about 90 day Trial Periods:

- It must be agreed and signed before work commences
- 90 days means 90 days. 91 days will not cut the mustard

If Jack has managed to work for 91 days without annoying you and he then starts to slack off or perform below your expectations, what are your options?

The answer lies in PROCESS.

The *Employment Relations Act* is insistent that process must be fair and that it must be followed. There is a general misapprehension that our employment laws have taken away employers' rights to dismiss bad employees. Not so. The Employment Relations Act is well regarded internationally as it protects the interests of both employers and employees. True, it is weighted in favour of employees but that takes into account the imbalance of power between the parties.

You CAN dismiss employees but you must act in good faith and scrupulously follow process.

The final test is contained in the wording of Section 103A:

"The question of whether a dismissal was justifiable must be determined whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in the circumstances at the time"

PERSONAL GRIEVANCES

An employee may raise a PG at any time - it is not restricted to post employment although that is the most common period. It may refer to a change of terms that the employer has initiated without agreement.

A PG must be raised within 90 days of whatever action was taken that gives rise to the complaint. The 90 day rule has a couple of exceptions:

- Where the employee sought professional advice and the professional was tardy in raising the PG; and
- In exceptional circumstances – e.g. the employee was so traumatised by the event that he/she could not make a rational decision about the grievance.

Generally speaking, the ERA is strict about the 90 day rule.

WHAT HAPPENS NEXT IF YOU ARE NOTIFIED OF A PG?

- You will be asked to provide a copy of the EA and all wage & holiday records.
- You will be asked if you are prepared to attend DoL mediation.

While attending mediation is not compulsory, refusal to attempt mediation will be seen as 'bad faith' behaviour and will be taken into account if the matter proceeds to an EMPLOYMENT AUTHORITY HEARING.

MEDIATION

Informal but strictly run by mediators

Mediators will provide guidance on strength/weakness of the case. You do not have to agree to anything

THE AUTHORITY

If the matter doesn't settle at mediation, the aggrieved employee may seek a Hearing at the Employment Relations Authority.

You are not required to be represented by a lawyer - many employers represent themselves. It is a 'round the table' type of inquiry -- the Hearing is conducted by the member, who is often legally trained - and who has the authority to subpoena anyone in NZ to provide evidence.

LEAVE ENTITLEMENTS

CLAIMS FOR ACCRUED LEAVE represents a large part of exit strategy negotiations and is the most common reason for dissatisfaction from both parties.

Keep a record - even the kitchen calendar. Keep a running tally of accrued leave - keep the employee informed.