

# Seasonal Employment Agreement for Horticulture Worker

Version 15 July 2020



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## THE PARTIES

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*The parties to this employment agreement are:*

**Employer's Name:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**Suburb/Area:** \_\_\_\_\_

**City/Region:** \_\_\_\_\_

**Postcode:** \_\_\_\_\_ **Telephone No:** \_\_\_\_\_

**Employee's Name:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**Suburb/Area:** \_\_\_\_\_

**City/Region:** \_\_\_\_\_

**Postcode:** \_\_\_\_\_ **Telephone No:** \_\_\_\_\_

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## POSITION

The employee is being employed as a seasonal horticulture worker.

## DUTIES

The Employee is being employed as a seasonal horticulture worker to pick, prune, thin, pack, maintain plants and carry out other duties as required by the Employer. The duties include carrying out all instructions the employer asks the employee to do (as long as the instructions are lawful and reasonable).

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*Horticulture NZ has taken care and prepared this agreement in good faith and is providing it free of charge to the members of Horticulture NZ. Horticulture NZ does not accept responsibility or liability should any grower or other party incur any loss having relied on this agreement or the accompanying notes. Parties are advised to get legal advice if there are any concerns or areas of uncertainty.*

The employee's main tasks and duties are:

*Type in details of the main tasks and duties the employee is to perform, see note 5*

**Purpose of the position:**

**Main tasks and responsibilities:**

**Explanation of the tasks:**

**Fitness, physical and other requirements:**

It is permitted to require that a prospective employee have no disability which could prevent them from being able to safely carry out the duties of the role. You cannot legally exclude physical disabilities in total.

**Required qualifications:**

The employer and employee may agree to change these duties after a discussion in good faith with these changes recorded in writing and signed by both the employer and employee.

The employee is to report to:

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

The employer may change who the employee is to report to by giving notice to the employee.

## **FIXED TERM EMPLOYMENT AGREEMENT**

The employee will work for the employer for a fixed period of time.

**Employment start date:** \_\_\_\_\_

*DD/MM/YYYY*

**Employment end date:**

*Provide details a date or an event, e.g. when all the fruit is picked AND if the end is an event **also** insert a planned end date and state this could be 14 days either side of the stated planned end date.*

It will automatically end without notice or pay instead of notice, unless the employer or the employee ends it earlier as set out in this agreement.

The employer and employee agree there is a genuine reason for the fixed term and for employment to finish when the term ends.

**Reason for fixed term:**

*Provide details, e.g. when all the fruit is picked for the XXX season*

There will be no further work available for the employee once this has occurred. The employer has explained why employment will finish when the term ends, and the employee has had a chance to get advice on this.

## **ENTITLEMENT TO WORK**

EITHER

The employee has the legal right to work in New Zealand.

OR

The employee's legal right to work in New Zealand is temporary. This role is conditional on the employee being able to work legally for the employer. If, after following a fair process, the employer decides this condition is not met, the employee's job will automatically end without notice or pay instead of notice. The employee must tell the employer about any changes to, or information that may change, their right to work legally for the employer. The employee must not work if they are not legally able to do so.

## **TRIAL PERIOD**

- For workers who have not been employment by this employer before.
- The employment agreement to make this clause effective must be signed before work commences i.e. the day before employment starts.
- The Trial Period ONLY applies where there 19 employees or less AND cannot be for more than 90 days: typically for this type of agreement it would be for a period of 7 days

### **Trial Period:**

\_\_\_\_\_ days of employment will be a trial period, starting from the first day of work.

During the trial period, the employer's normal notice period doesn't apply. Instead, either the employee or the employer may end this agreement by giving one day's notice before the trial period ends and the employee may not pursue a personal grievance on the grounds of unjustified dismissal. The employer might decide to pay the employee not to work. For serious misconduct, the employee may be dismissed without notice.

During the trial period, the employer and employee must treat each other in good faith and there is no limit on the legal rights and obligations of the employer or the employee.

## **Terms**

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### **PLACE OF WORK**

The employee will work at multiple locations within the area, as required by the employer.

**Area:** \_\_\_\_\_  
*e.g. Hawke's Bay area*

The employer may ask the employee to travel outside the area stated above for work from time to time, but the employee does not have to agree.

### **HOURS OF WORK**

The hours of work are based on the availability of work for the employer's horticulture operation and are up to 40 hours per week and up to 10 hours per day worked over no more than 6 days per week Monday to Sunday inclusive. Hours in excess of these will be by agreement between the employer and employee.

The employer will notify the employee before the commencement of each week the days that the employee is to work for the next week. The minimum hours of employment will not be less than 2 hours work per day for those notified days of work. The employer will give the employee as much notice as possible if due to weather conditions the day's work is delayed, finishes early or the day's work has to be cancelled and pay the employee for a minimum of 2 hours work whether or not the employee has worked for 2 hours that day.

If the employer cancels the day's work without telling the employee before the start of the day's work the employee will be paid as if they had worked a normal day.

## BREAKS

The employee is entitled to paid rest breaks of 10 minutes duration and unpaid meal breaks. Breaks will be taken at suitable times during the employee's work. The employer cannot offer reasonable compensation if breaks cannot reasonably be given or where the employee is employed on a piece work basis.

*See Note 6*

## RULES, POLICIES & PROCEDURES

The employer has policies and procedures that relate to the employee's job. The employer will make the employee aware of the policies and procedures, and will make sure they are available to the employee. The employee must be familiar with these rules and follow them at all times.

The employer may introduce new policies or procedures, or change or cancel existing ones, but must give reasonable notice of any changes.

If the employee doesn't follow the policies and procedures, the employer can take disciplinary action.

## Remuneration and Benefits

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### PAYMENT OF WAGES

EITHER \_\_\_\_\_

The employee will be paid \_\_\_\_\_ (gross) an hour.  
*number*

Pay period:  Weekly

Fortnightly

Monthly

Payment Method:  Cheque

Cash

Employee's nominated NZ bank account

The employer may change how often the employee is paid, and will give the employee notice in writing.

The employer will maintain written and/or electronic records of the employee's personal details, time and wage records, holiday and leave records, personal protective equipment issued to the employee, training records, health and safety and other information related to the employment.

*Strike out the option not being used*

OR \_\_\_\_\_



If the employee doesn't work on a public holiday, they will get a paid day off if a public holiday falls on a day that would otherwise be a working day for them. If the employee works on a public holiday:

- They will be paid their relevant daily pay or average daily pay, plus half that amount again for each hour worked (time and a half).
- They will also get a paid day off at a later date unless the employee only ever works for the employer on public holidays. The date of this alternative holiday will be agreed between employer and employee. If they cannot agree, the employer can decide and give the employee at least 14 days' notice.

## **ANNUAL LEAVE**

The employee will get holiday pay at the same time as their regular pay instead of being paid during their holidays. This is known as pay-as-you-go leave and will be paid at a rate of 8% on top of the employee's gross earnings.

## **SICK LEAVE**

The employee can take up to 5 paid days off a year for sick leave once they have worked for the employer for six months doing an average of at least 10 hours a week, and at least one hour a week or 40 hours a month. This will be checked every 12 months by the employer.

The employee can take sick leave due to illness or injury, or to care for their partner or another dependent person who is sick or injured. They must tell their manager if they are going to be on sick leave as soon as they can (before their usual start time, if possible).

The employee can build up 20 days of untaken sick leave by accumulating 5 days sick leave a year. The employer will not pay the employee for unused sick leave when their employment ends.

If the employee has used all available sick days, the employer might let them take sick leave in advance or annual leave.

## **SICK LEAVE: MEDICAL CERTIFICATE**

The employer may require proof of sickness or injury at any time if the employee takes, or has asked for, sick leave. The employer will tell the employee as soon as possible that proof is required.

If the employee has been away for three or more calendar days in a row — or is taking sick leave that is more than the legal minimum — the employee must get a medical certificate at their own cost.

If the employee has been away for less than three full days in a row, the employer pays for the employee to get a medical certificate.

## **BEREAVEMENT LEAVE**

Once the employee has worked for the employer for six months doing an average of at least 10 hours a week, and at least one hour a week or 40 hours a month, they can get bereavement leave.

This means the employee can take up to 3 paid day/s off after the death of an immediate family member, e.g. parents, child, spouse or partner, grandparents, grandchildren, brother, sister, and parents-in-law.

The employee can also take 1 paid day/s off after the death of another person if the employer accepts the employee has suffered a bereavement.

As soon as they can, the employee must tell their manager of their relationship to the person who has died, and the dates they wish to be away from work. The employer will make a decision quickly so the employee has as much time as possible to make necessary arrangements.

## **LEAVE FOR OTHER REASONS**

If an employee needs time off for things they must do by law, such as jury duty or service in the Territorial and Reserve Forces or Domestic Violence Leave, the employer will meet any obligations the law requires.

This will be unpaid leave.

## **General Provisions**

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### **HEALTH & SAFETY**

The employer and employee will meet their obligations under the Health and Safety at Work Act.

The employee will follow the employer's health and safety rules and procedures. The employee will take reasonable care to look after their own health and safety at work, their fitness for work, and the health and safety of others.

The employee must report any potential risks, incidents and near misses so the employer can investigate, and eliminate or minimise harm or risk of harm.

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

### **PERSONAL PROTECTIVE EQUIPMENT**

The work being done by the employee may involve risks to their health and safety from time to time for which personal protective equipment (PPE) must be used or worn.

The employer will provide suitable PPE, as well as training and information about how it must be used or worn, where it is stored, and how it is maintained.

The employee must take all reasonable care at all times when dealing with risks. They must use or wear PPE when appropriate. At all times, the employee must follow the employer's health and safety policies and use safe and appropriate practices.

Failure to use or wear PPE as instructed may be considered serious misconduct.

## **DRUG & ALCOHOL TESTING**

To make sure the work environment is safe and healthy, the employer may carry out drug and alcohol testing at random. A reliable external agency will carry out the testing.

The employee agrees to:

- Not be impaired or potentially impaired by drugs or alcohol when at work, travelling for work or representing the employer.
- Be tested for drugs or alcohol if asked.
- Follow the testing procedures and not tamper with, or try to tamper with, the test or its results.
- Agree to the results being given to the employer.

If the employee does not meet any of these requirements, this may be considered serious misconduct.

## **SOCIAL MEDIA**

The employee agrees not, without the employer's express written authorisation, to use social media or other communications media, including making statements to the media organisations and reporters that discloses commercially sensitive information or damages the employer's reputation or involves harassment or bullying of anyone employed by or related to the employer.

## **CHANGES TO THIS AGREEMENT**

The employer and employee can agree to change the terms of this agreement at any time. Any changes must be in writing and agreed to by both employer and employee.

## **MEDICAL EXAMINATION**

The employer may ask the employee to be examined by a registered medical practitioner, at the employer's cost.

This will only happen if the employer has reasonable grounds to ask for further medical information to help them understand one or more of these points:

- If the employee is safe and healthy enough to return to work.
- The likelihood of the employee being able to return to work within a reasonable timeframe.
- The employee's ability to perform their duties safely and effectively.

The employee may refuse to have the medical examination or allow the relevant results to be shared. If this happens, the employer may act on their concerns based on the information available to them.

## **ENTIRE AGREEMENT**

The terms and conditions set out in this agreement are the entire employment agreement between the employer and the employee, and replace any previous written and verbal agreements.

## **SEVERABILITY**

If any clause no longer applies, e.g. if a court rules it invalid, the rest of the agreement will remain in place. The employment agreement will continue as if that clause had not existed.

If the Employment Relations Authority or the Employment Court changes a clause, their version of the clause will be used in the employment agreement.

## **Disputes**

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### **RESOLVING EMPLOYMENT RELATIONSHIP PROBLEMS**

A problem between the employer and employee might be a personal grievance, dispute or other issue.

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

If the problem cannot be resolved, the employee or the employer can seek help from an external party, e.g. one or more of the following:

- Ministry of Business, Innovation & Employment, which offers free information and mediation to help employers and employees work together to resolve problems.
- A union or an advocate.
- A lawyer.

If it cannot be resolved at mediation, the employee or employer might want to go to the Employment Relations Authority.

If it is a personal grievance, the employee has 90 days from the time the problem occurred, or became known by the employee, to raise the grievance with the employer.

Some of these steps may come at a cost to the employee.

The employee can invite a support person or representative to attend all steps in the process.

## **Termination**

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### **EMPLOYEE PROTECTION PROVISION**

Employees are entitled to certain protections in restructuring situations set out in the Employment Relations Act as defined in section 69O1 of the Employment Relations Act 2000, and the work the employee performs may or will be performed for or by a new employer.

The employer will start talks as soon as they can (subject to commercial sensitivities) with the new employer about the impact of the restructuring on the employee. This will include negotiating whether the employee can transfer to the new employer, and if so, whether this will be on the same terms and conditions. The employee will be informed as soon as practicable of any possible new offer of employment including the conditions of the new offer of employment. 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 this with the employee confirming this in writing.

## **ABANDONING EMPLOYMENT**

If the employee is away from work without telling the employer or getting their permission — and the employer has made reasonable efforts to contact the employee to clarify the reason for their absence and whether they intend to return to work — the employer may regard the employment as abandoned.

**Days away from work:** \_\_\_\_\_

*e.g. 3 days working days*

The employer will tell the employee that they are deemed to have ended their employment. The employment will finish at the end of the last day set out above.

*If an employee is absent, then an employer has a good faith obligation to make proper enquiries, and then to consult with the employee about the circumstances and possibly allow unpaid leave to be taken. Written records need to be kept as proof of proper enquiries.*

## **ENDING EMPLOYMENT: SERIOUS MISCONDUCT**

If, after following a fair process where the allegations are put to the employee, the employer concludes that the employee has engaged in serious misconduct, the employee may be dismissed without notice.

Serious misconduct is behaviour that fundamentally compromises the employer's trust and confidence in the employee.

Serious misconduct includes, but is not limited to:

- Theft.
- Sexual or other assault.
- Harassment of a work colleague or customer.
- Use of illegal drugs at work.
- Repeated failure to follow a reasonable instruction.
- Deliberate destruction of the employer's property.
- Actions that seriously damage the employer's reputation.
- A serious breach of the employer's policies and procedures.

## **SUSPENSION**

The employer might decide to suspend the employee on pay while investigating allegations against the employee, e.g. for serious misconduct, or if a condition, illness or injury means the employee poses an immediate risk to themselves and/or others.

If an investigation is delayed because the employee refuses to take part, or because of other reasons beyond the employer's control, e.g. waiting for a criminal trial to end, the employer may decide any further time on suspension will be unpaid.

## **FORCE MAJEURE**

The employee understands and agrees that their job may end without notice, or payment of notice, if a natural disaster, workplace fire, flood, hail event or other similar major event beyond the employer's control makes it impossible for employment to continue. Where practicable, the employer will consult with the employee before exercising this clause.

## **ENDING EMPLOYMENT**

Either the employer or the employee can end employment by giving one day's notice in writing. The employer may decide to pay the employee instead of the notice period and require the employee not to attend any of the employer's work places.

Nothing in this clause prevents the employer from ending the employee's employment without notice, or payment instead of notice, for serious misconduct or other reason provided for in this agreement.

## **ENDING EMPLOYMENT: DUTIES**

The employee must immediately return any of the employer's property and information on or before their final day of employment.

This includes, but is not limited to, any hard and soft copy files, confidential information, IT devices, access cards, keys, vehicles and workplace equipment, e.g. tools or PPE. The employee must also stop using passwords and codes for the employer's systems.

# Acknowledgement

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## EMPLOYEE ACKNOWLEDGEMENT

Employer's Name: \_\_\_\_\_ offer this employment agreement to

Employee's Name: \_\_\_\_\_

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

In signing this agreement, I \_\_\_\_\_ (*Employee's Name*)  
accept the terms and conditions of my employment as detailed within this offer and declare that:

- I have read, and fully understood the terms and conditions of this agreement, and have received a copy of it.
- I was told about my right to get independent advice on the terms and conditions of this agreement and I have been given time to take that advice.
- I have raised any issues I have about the terms and conditions of this agreement and my employer has responded to these issues.
- I accept this is a genuine fixed-term employment agreement. I understand the reason for the fixed term, including why employment will finish when the term ends, as set out in this agreement. I accept it is a genuine reason based on reasonable grounds. I have no expectation of continued employment after the term ends.
- I have told my employer about any existing physical and/or health conditions that might be worsened by doing the job, or might affect my ability to do the job.
- I confirm there are no contractual or other legal reasons that could stop me from working for my employer.
- I have not deliberately failed to disclose any matter that may materially influence the employer's decision to employ me.
- The information I have given is true and correct to the best of my knowledge and belief, and I have not left out anything that could affect the decision to employ me.
- I am, and will remain, able to work legally in New Zealand.

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

# Notes for Seasonal Employment Agreement for Horticulture Worker



Version 28 November 2016

## Introduction

HorticultureNZ has prepared the following employment agreement to be used when employing seasonal staff. All care has been taken preparing this agreement and the version on the web site will be kept up to date with changes in employment law. As it is provided free of charge, HorticultureNZ not accept responsibility or liability should any grower or other party incur any loss having relied on this agreement or the accompanying notes.

## Type of Agreement

This agreement is for a fixed term of employment where the employees are asked to work when work is available.

A different employment agreement will need to be used for permanent employment.

## Process for Completing the Agreement

1. All pages, changes and deletions are to be initialled and the last page signed by both the employers and employee.
2. Two copies need to be initialled and signed. One copy is to be kept by the employer and the other copy is for the employee.
3. Independent Advice: employees before signing are to be given an opportunity to seek independent advice about the terms of their employment agreements.
4. The employment agreement should where possible be signed the day before work commences. If there is to be a trial period, it is to be signed at least the day before work commences.

## Points to Note

5. Duties: write into this box: the purpose of the position the employee is being employed for; the main tasks and responsibilities of the role; explanation of the tasks to perform the role; the fitness, physical and other requirements for the job; and any qualifications for the job such as a driver license. Remember it is illegal to discriminate against someone on the basis of disability. An example of an explanation of the tasks to perform the role could be: Picking apples requires correctly and safely using ladders to climb apple trees, balance and good use of hand eye co-ordination as well as being able to select apples of the correct colour and maturity. The employee will be under the supervision of a field supervisor and work will be monitored by a quality controller (QC) to ensure that only the correct fruit is harvested. This job requires a good level of physical fitness and some heavy lifting is required.
6. Paid Breaks: as piece rate workers do not earn when they take their paid breaks their pay slips are to show that they are paid for paid rest breaks. This payment cannot be less than the contracted rate the employee earns and can be an average of what the employee has earned during the current pay period.

## Legal Advice

If there are any concerns or doubts, legal advice should be obtained without delay.