

Employment Law Fact Sheet No. 22

NOTES ON DRAFT SERVICE OCCUPANCY AGREEMENTS



Why a licence and not a tenancy?

- Both draft service occupancy agreements create a licence rather than a tenancy. This is an important distinction because:
 - possession can be obtained faster for a licence; and
 - the employee can be required to vacate, and possession proceedings can be issued immediately on termination of employment for a licence.

Can a fee or rent be charged for accommodation?

- Yes, but studs need to be sure that by doing so they do not create a tenancy and forfeit the advantages set out above. See below for more details.

Why don't these licences provide for charging a fee or rent?

- Because of the risk of creating a tenancy, these draft licences do not require the payment of rent. If no rent is charged a tenancy cannot be created.
- However, it is possible to charge 'rent' without creating a tenancy, provided the elements of a service occupancy agreement exist. They are:-
 - the accommodation is required by the employee in order to better perform their duties; and
 - the employee is expressly required to occupy the accommodation to perform those duties.
- Warning! If a fee or rent is charged, whatever is written in the agreement,-
 - the employee's occupation of the accommodation is not in fact of material assistance to their employment/was offered as a fringe benefit/to encourage the employee to work better; or
 - the employee was not actually required as a term of their employment to take up the accommodation and instead was given an option to do so it is likely that a tenancy will be found to be created.
 - If employees are obliged to live on site so as to be on hand to deal with equine emergencies, foaling etc out of hours, it is unlikely that a tenancy will be created even where rent is charged.

Relationship to employment contract

- service occupancy agreement runs alongside the employee's employment contract. Both should be completed at the same time.
 - If an employee is dismissed but not required to vacate immediately, care must be taken to avoid a tenancy being created. Individual legal advice should be taken if continued occupation is proposed.

Health and Safety Obligations

- The employer should ensure that it complies with electrical, gas and furniture regulations in providing the accommodation, equipment and furniture.

Warning

- These documents are specimens only, and are not tailored for your stud's individual circumstances. Separate legal advice should be taken in each case.
- Please note that these documents should not be used in cases where individuals are involved in agriculture.

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