



5 Pitfalls for Small Business Owners and how to avoid them.



Introduction

Starting your own business and venturing into what you are truly passionate about is an exhilarating time for every business owner.

Employsure often asks clients what their first day was like. The response is always warm and tender, as they fondly recollect their memories of starting their own business.

Although details differ, the emotions remain. Consistently, clients share that the day began in a bubble of excitement and nerves.

And rightly so, starting a business is both an exciting and frightening endeavour. It is the materialisation of a dream laced with the reality of logistics, management and finances.

Small business owners often find themselves in a pile of tasks that keep growing and they often need to perform different and contrasting roles in order to complete them. In the midst of all this, there are certain things that slip through the cracks.

Employsure has carefully studied small businesses and their practices over the years, and several trends and patterns have emerged as a result.

This ebook condenses the 5 most common employment matters that business owners overlook. It calls attention to these pitfalls and provides advice on how to overcome them – addressing legal matters, employee management, and business growth.

This ebook highlights the 5 common pitfalls that small businesses are prone to.

It identifies and advises business owners on what they are and how to overcome them – speaking to legal matters such as the content of a contract, employee management, and furthering business growth.



1. Underestimating Contracts

It is a common misconception that employment contracts are only necessary for large companies or that they only need to be in place for businesses where employers don't personally know each and every one of their employees.

This is not the case. In fact, failing to set up contracts is one of the biggest pitfalls small business owners fall in to.

An employment contract not only defines the relationship of the employer and employee, it shapes how the employee fits into the company – spelling out clearly how their role links to the framework of the business.

From a legal perspective, an employment contract protects employers. It also sets out the rights and obligations of the employee and employer who are parties to that contract.

So, it is imperative that every employee is provided with an employment contract, whether they are engaged on a casual, part-time or full-time basis.

The Three Pillars

An employment contract can be as detailed or brief as the employer decides but it needs to have the following three elements:

- (1)** offer
- (2)** acceptance
- (3)** consideration

If any one of the three is missing, the contract is not legally enforceable.

It is best practice to have a written contract of employment signed by witnesses, even though the law sometimes accepts verbal contracts too – this



depends on the Modern Award your employees are covered by. All employment contracts should be checked by a lawyer or workplace relations specialist to ensure that the necessities have been covered.

Your Safety Net

An employment contract is especially helpful in two cases:

(1) When you need to discuss rights, duties, promises and agreements

(2) If a dispute arises

In a dispute, first consider whether the contract is indeed legally binding (does it have an offer, acceptance and consideration?).

If it is a legally binding agreement and you've breached that contract – for example, by not paying the bonus you promised – you might be open to legal action.

Contents of a Contract

When considering the contents of an employment contract it is important to consider several things, including:

- legislation relating to various employment conditions (such as leave and rates of pay)
- any oral/verbal arrangements that were agreed upon
- custom and practice at your particular workplace
- common law rules and terms (law developed by judges, courts, and similar tribunals)
- any implied terms of the contract (may exist in order to make the contract effective)
- professional practice rules (specific to some workplaces, like medical ethics)
- workplace policies and employee handbooks

Tip: Make sure the contract means what it says, rather than what it ought to mean (i.e. it clarifies rights, duties, promises and agreements).

Set and forget?

Many employers believe that once they implement employee contracts, they do not need to update them. This is misguided.

Contracts are not written in stone. They evolve with the business, employee's role, and legislation.

An employment contract should be updated following amendments to an employee's role or entitlements.

As best practice, an updated contract should be provided prior to commencement of the changes.

If employment contracts are not updated it can cause issues in the event of a dispute, and often, it is left to a court or other relevant tribunal to decide what the terms of the contract are. Once again, it's a good idea to have changes reviewed by a lawyer or workplace relations specialist.

Do note that where changes to an employment contract are required, both parties (the employee and employer) must mutually agree on such changes.



A Clean End – Contract Termination

Employment can end for various different reasons:

- The employee may resign
- You may dismiss or fire them
- You may mutually agree to end their employment

If you have made the decision to end an employment contract, you need to follow the rules about dismissal, notice and final pay.

There are also different rights and obligations when a job is made redundant or, worst case, a business goes bankrupt.

Terminating an employee contract must be done in accordance with relevant legislation. Check with your adviser early to lower your chances of being accused of unfair or unlawful dismissal.

2. Record Keeping – shying away from the 7 year commitment

Small business owners have a lot on their plate, and record keeping can sometimes get pushed to the bottom of the to-do list when other priorities keep piling up. But failing to keep accurate records is a huge potential pitfall for small business owners.

With the Fair Work Amendment (Protecting Vulnerable Workers) Bill introduced in 2017, it is essential that employers maintain accurate employee records, and keep them for a **period of seven years**.

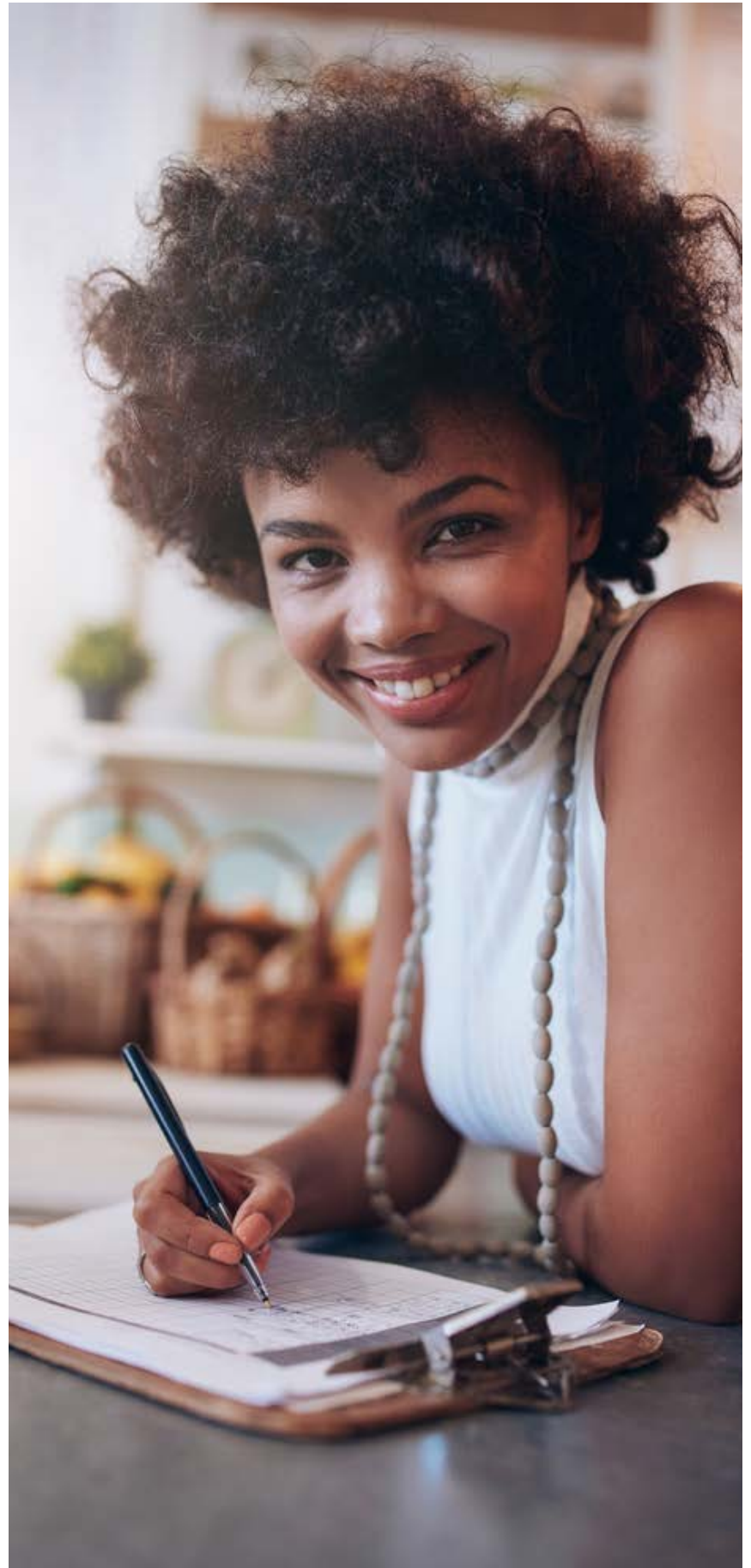
Employsure recommends that business owners take the time to examine their record-keeping practices, and get professional advice if there are any concerns. This is regardless of size and industry.

All employers need to keep time and wage records of their employees. In addition to what type of information needs to be kept, employers need to be aware of who can access the records, and what happens if records aren't kept.

Harsher Penalties since 2017

In 2017, the Government introduced harsher penalties for employers who fail to comply with the Fair Work Act and keep accurate wage records. Under this new legislation, employers can face financial penalties up to 10 times higher than the maximum penalties for a new category of 'serious contraventions'.

The maximum penalty for certain 'serious contraventions' of the Fair Work Act are \$126,000 for individuals and \$630,000 for corporations.



Understanding the requirements of the new legislation and abiding by new record keeping regulations is key to protecting your business.

The Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 (Act)

In addition to raising the maximum civil penalties for 'serious contraventions', the Act explicitly prohibits an employer from making or keeping employee records that the employer knows are false or misleading; or giving a pay slip that the employer knows is false or misleading.

Employers that do not comply with record keeping obligations and cannot give a reasonable excuse for non-compliance will have to disprove any wage related claims made in a court. For this reason, keeping accurate records is the **best defence against underpayment claims.**

Who Can Access Records?

It is important for employers to know their rights, and understand who has the authority to access their records. Typically, an employee is entitled to see their own records even if they no longer work for the employer. Fair Work Inspectors are also entitled to ask for records.

Note: A common shortcoming in record keeping is not recording hours of work correctly, which is also a problem as this can be one of the first things a Fair Work inspector will ask for when auditing a business.



Checklist for Record-Keeping:

One simple way employers can protect themselves is by ensuring they are keeping the below records:

General Details

- employer name and ABN
- employee's name
- date employee started work
- employment status – full-time, part-time or casual, and whether the employee is permanent or temporary

Pay Records

- pay rate
- gross and net amounts paid to the employee
- any deductions from the gross amount paid
- incentives paid such as bonus or penalty rates

Hours Of Work

- hours of work if the employee is a casual or irregular part-time employee whose pay is based on time worked
- penalty rates or loading paid for overtime
- number of overtime hours and when the employee started and finished these hours

Leave

- any leave (personal, annual etc) taken
- total leave an employee has
- where employees are able to cash out annual leave, an employer must record the agreement in which they agreed to the amount being cashed out, as well as the finer details of when the payment was made

Individual Flexibility Agreements (IFA)

- copy of the written IFA
- any notice or agreement to terminate the IFA

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3. Solid foundation, weak framework – neglecting policies and procedures

Starting a business requires a solid foundation; and building a business requires a stable framework. It can be appealing to play it by ear when a business is very small but failing to set up the correct policies and procedures from the start can lead to huge headaches when the business grows.

A business, no matter how big or small, needs to have the right framework to succeed – policies and procedures are an integral component of that framework. Without the right policies in place, a business will grow without unity.

Workplace policies hold the business together, ensuring that everyone is growing harmoniously with the business. Although these policies and procedures form a large part of your business' future success, many employers tend to overlook this step.

Employee Handbook

One simple step small business owners can take to get started is by documenting the company policies in an employee handbook.

The employee handbook is a document given to employees by their employer which outlines both the company's policies, culture and expectation of employee behaviour and work.

Employee handbooks should be given to employees on their commencement of employment and should be regularly referred to in shaping their work life.

You do not legally have to provide an employee handbook. But many employers choose to because they help to clarify expectations and reduce misunderstandings at work.

Onboarding New Employees

Employers usually provide employee handbooks to new employees as a way of welcoming them to the company and introducing them to the way you do things. The handbook is one of the best ways for employees to learn about your workplace in their own pace. It also maps the right journey for employees from the very start of their employment.

An Employee Handbook Includes:

- welcome note and information for new joiners
- background and culture of the company
- code of conduct
- health and safety
- hours of work
- leave provisions
- pay and benefits
- performance standards
- redundancy
- rules of company
- training and development
- termination (ending) of employment
- use of company vehicles

It also sets out your policies and procedures, for example:

- absence and sickness policies
- equality or equal opportunity policy
- internet, email and social media (or IT) policy
- use of company property policy
- bullying and harassment policy and procedure
- appraisal procedure
- disciplinary and grievance procedure
- parental leave procedure
- performance management procedure
- resignation procedure

Employment related policies and procedures are essential as they clearly outline the expectations of staff. Such policies and procedures are required to be regularly reviewed and updated to ensure they reflect your current workplace practices.



4. Turning a Blind Eye to Employee Capabilities and Potential

Are You Sitting on a Goldmine?

It is not uncommon for employers to get so caught up with running their business as an entirety that they overlook the individual components that piece the business together – their employees.

In several instances, employees have a lot more to offer than what they produce on a regular basis. Employers should try their best to maximise their employees potential, this is not only good for the business but also good for the employee.

Motivating Staff

A great way to go about maximising your employees potential is through motivation. Employees who feel motivated are more likely to produce their best work. It's an easy solution to get more commitment from your employees.

So what exactly motivates staff?

A recent study conducted by Dan Ariel in his book *Payoff: the hidden logic which shapes our motivations* used four groups of employees to try and determine the key for motivating staff. His study tested which incentive would boost productivity the most:

- Voucher for a free pizza
- Cash bonus
- Compliments from their boss

The results?

In the course of two weeks, the group receiving compliments from their boss saw over 6.6% increase in productivity – while the group promised the cash bonus became 6.5% less productive! Giving frequent positive feedback is a great and cost effective way to boost productivity.

Training and Development

Whether due to fear that a skilled employee will leave, or due to general disinterest, many employers are reluctant to upskill their employees. But failing to invest in your biggest asset is a huge pitfall for many small business owners.

Sure, there is always a risk that your employee may leave, however, having a team of employees who are not developing and growing with the industry is a far greater risk. This will hold the business back and make it less competitive in its field. Plus, investing in your employees builds loyalty which is essential to a small business.

Employees who are not constantly developing and improving are more likely to become jaded and disengaged. By providing regular training and development, you are not only getting the most from your employees in terms of skill set, you are also letting your employee know that you value and believe in them.





Staff Happiness

This element cannot be reiterated enough. It is absolutely essential that employers value their staff and realise that the business cannot grow with an unhappy team. It is unreasonable for an employer to expect commitment and dedication from discontent staff.

The greatest way to maximise your employees' potential is to ensure that they are happy in their work and are willing to delve further into it.

One simple way to check the happiness of your employees is by asking yourself the following questions:

- Does your staff feel challenged?
- Do your employees feel like they have a purpose?
- Are there achievable goals that you have set for your employees?
- Do you invest in employees' professional development?
- Are you aware of your employees' aspirations?
- Do you promote internally?
- Do you conduct regular performance reviews?
- Do you reward a job well done?

5. Jack of all Trades, Master of None – Why Small Businesses Need to Outsource

To be a business owner requires a host of skills. You are regularly required to wear different hats and slip into different roles.

From business development, employee management, cash flow monitoring, and complying with strict employment law. It's incredibly demanding and with your attention stretched over various areas, it makes it all the more challenging to focus on what you do best – developing your business.

With the changing landscape of workplace practices and employment trends, outsourcing is a popular and growing phenomenon. Especially so for small businesses. It helps to level the playing field – allowing small businesses access to the same opportunities that big corporations have.

Why Outsource?

Develop specialist staff

In small businesses, much like the employer, the employees are made to take on and accommodate to tasks that are not within the spectrum of their original roles.

For instance, an office manager may have to look into not just the logistics of running an office but juggle that with the changes in laws and legislation to ensure that the business is compliant.

By having your employees perform duties completely outside of their skill set hinders their development and professional growth. This may not only disengage staff over time but the business will suffer as a result too – getting overall mediocre results that are at times erroneous.

Manage cashflow

Outsourcing frees up capital for the business to invest in immediate areas that may be more practical and useful to the company.

Outsourcing saves the business excessive overheads.

It does so by converting fixed costs (like a salary for a full-time employee) to a variable cost (like engaging and paying a freelancer when required).

Level the Playing Field

To run a business successfully is getting increasingly challenging with growing competition. Small business owners not only have to keep up with their direct competitors and bigger corporations – there is also the looming threat of online giants like Amazon.

While a large company can hire a team of people to solve their biggest challenges, small businesses must decide between giving it a go themselves, or outsourcing to experts.

By outsourcing some of the tricky, time consuming aspects of running a business, employers can gain access to a much larger talent pool, and save a lengthy process of trial and error.

Through outsourcing, employers can build on the skills and experience of the specialists they wouldn't otherwise be able to hire.





Saving time on Red Tape

Many Australian business owners find themselves tangled in red tape. Complying with workplace laws has proven to be a drain on resources for many businesses — this is especially true for small businesses.

In a 2015 survey conducted by the Australian Chamber of Commerce and Industry, 47% of businesses claimed that regulations have prevented them from growing their business.

In fact, in early 2018 the Fair Work Commission president said that the language used in industrial awards documentation was “tortuous”, stating that “small business operators want to meet their legal

obligations,” but they find the **Award system too complex to understand.**

Outsourcing to external advisers will not just help employers focus on their business, it will also give them peace of mind.

With Employsure, business owners gain access to an entire team of professionals. We not only understand Australian employment law inside out, we are also the leading expert in the field.

Employsure ensures that businesses are compliant, provides 24 hour advice, legal representation in the event of a claim and offers insurance associated with Fair Work and workplace health and safety claims.

This is simply what we do – we read, breathe, and live employment law, and we’re passionate about giving small business owners all the help they need to succeed.

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Why Employsure?

At Employsure, we believe all Australian employers, no matter the size, deserve access to comprehensive, quality, honest advice and support that is scalable to the needs of their business.

Since the introduction of the Fair Work Act in 2009, workplace obligations have become more complex and difficult to manage, especially for overstretched small business owners.

Employsure was established in response to these challenges. **It is our aim to ensure Australian business owners have access to cost-effective, professional advice on all employment relations and work health and safety matters.**

What We Offer

Employsure provides customised documentation, unlimited advice, policy and procedure review, insurance and legal representation for small business owners.

Being an Employsure client means no surprises – we keep our clients updated on Award changes, wage updates and essential compliance issues. Our expert advisers are available 24 hours a day to guide employers through any difficulties they may face.

Employsure is the largest provider of employment relations and workplace health and safety services in Australia - **servicing over 20,000 clients nationally.**

What our Clients have to say:



Employsure has given me the freedom to run my business in a way that I need to. It's given me the time and it's actually taken away a lot of worry that I previously had.

Kieran Syme DentFree AutoTree



Google can only help you so far. Sooner or later you need to actually talk to somebody who is an expert in the field and that's where I found Employsure.

Ursula Zajaczkowski The Source Bulk Foods



Biggest thing from Employsure, it gives us certainty. Where we have guidance and help of what we need in place, how to put it in place, and how to implement the systems for HR'

Jonathon Grealy Niche Reform