

Who should you engage?

Dairy farms can be run solely by their owners. Sometimes, however, farm owners want to step aside and let someone else take over all, or some of, the running of the farm. Federated Farmers has contracts that will enable you complete this process.

There are several arrangements that can be made:

- contracting a sharemilker, either 'variable order' or 'herd owning'
- employing a contract milker
- employing a farm manager
- employing a dairy farm worker
- employing a dairy trainee

A **sharemilker**, by definition, is any person contracted to perform work on a dairy farm in return for a share of the returns or profits derived from the dairy farm operation. They are responsible for some costs and may own the stock and machinery.

A **Variable Order sharemilker** is one who does not own any cows – he or she works on the farm owner's land and milks the farm owner's cows. These sharemilkers are covered by the Sharemilking Agreements Act 1937 and the Sharemilkers Agreement Order 2011.

The Federated Farmers Variable Order Sharemilking Agreement 2012 is ideal for this situation. It covers, amongst other things:

- a description of the farm – what it is, past production, usual practice regarding grazing-off and fertiliser use, the number and type of stock, farm machinery ownership
- the remuneration option chosen for milk produced, calves raised
- the obligations regarding
 - provision of labour
 - children on farm
 - the herd
 - pasture management and feed requirements
 - milking plant and facilities
 - milk quality
 - insurance
 - effluent management
 - electricity
 - maintenance
 - animal health
 - accommodation
- Administration, including ACC levies, Occupational Health and Safety obligations, termination of the agreement
- Dispute resolution procedures

Helpful charts setting out any expenses likely to be included in calculating the amount of remuneration to the sharemilker, an accommodation checklist and monthly reporting sheets are also included.

Order your Agreement here: <http://www.fedfarm.org.nz/n1112.html>

A **Herd Owning sharemilker** is one who works on the farm owner's land but owns some or all of the cows. This position is sometimes known as a 50:50 sharemilking

one, based on the historical practice of the sharemilker sharing 50 percent of the profits derived from the dairy farm operation, with the farm owner receiving the other 50 percent. Today there are often different percentage splits used, hence the change in name.

These people are not covered by the Sharemilking Agreements Act 1937 or the Sharemilking Order 2011.

The Federated Farmers Herd Owning Sharemilking Agreement is ideal for this situation, and includes, amongst other things:

- Opening capital
- Remuneration options
- A description of the land, stock, house,
- Animal health requirements
- Shed requirements
- Effluent management
- Milk quality
- Pasture and farm management
- Dispute resolution procedures

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A **Contract Milker** is someone who is usually paid on an agreed number of dollars/cents per kilogram milk solids produced. These people are not covered by the Sharemilking Agreements Act 1937 or the Sharemilking Order 2011.

The Federated Farmers Contract Milking Agreement has been drafted on the basis that the contract milker will be an independent contractor and not an employee. Some of the key differences between independent contractors and employees are:

Employees are –

- subject to the Employment Relations Act 2000
- required to have PAYE deducted from their wages
- not eligible to charge or claim for GST

Independent contractors are –

- not covered by the Employment Relations Act 2000
- allowed to deduct certain expenses incurred in the course of their work as a contract milker
- required to account to the IRD for their own tax and ACC payments
- responsible for the wages and tax of any employees they employ.

The key tests the courts, or other government authorities such as the IRD, will apply in deciding whether a contract milker is an independent contractor or an employee are:

- The greater the control the farm owner has over the contract milker's work and how it is done the more likely the contract milker will be an employee.
- Conversely the more independence the contract milker has, the more likely they would be an independent contractor. Key factors here include that the contract milker can hire or fire whatever staff they want and pays their own tax, GST, ACC levies, etc.
- A contract milker will be more likely to be considered an employee if they are an integral part of the farm owner's business in the sense that the work they

do is commonly done by employees, their role is continuous (i.e. it is not a 'one-off') and the job they do is for the benefit of the farm owner's business rather than the contract milker.

- A contract milker will more likely be found to be an independent contractor if that is what the farm owner and contract milker intend, that is how they have described their relationship, and that is how they operate in practice.
- If, as a matter of fundamental economic reality, the contract milker is in business on his or her own account, then they will likely be found to be an independent contractor.

If it is intended that the proposed contract milker will be an employee of the farm owner, this type of business structure should not be used. Legal advice should be sought on what sort of agreement should be used. It may be that the Federated Farmers' employment agreement is suitable.

The Federated Farmers Contract Milking Agreement is deliberately non-specific and includes items that need to be discussed as each situation will be different. Clauses to be discussed include:

- Payment and calf rearing
- Farm owner's responsibilities
- Contract milker's responsibilities
- Relief staff

Also included are:

- Description of the land
- Typical costs for such items as labour, electricity, machinery
- Dispute resolution procedures
- Farm management schedule, suggesting such things as pasture covers, daily grazing management etc should be discussed before the Agreement is signed
- A regular reporting schedule

Order your Contract here: <http://www.fedfarm.org.nz/n1112.html>

A **Farm Manager**, while having control of the management side of the farm, is a direct employee of the farm owner.

The **Dairy Trainee and the Dairy Farm Worker** are also employees. Both of these positions will be under the direct supervision of the employer, who may be the farm owner, the farm manager or the sharemilker.

Federated Farmers has a number of contracts to suit employees:

- Individual Employment Agreement, both permanent and fixed term
- Casual Employment Agreement

Employees employed under a **permanent agreement** remain Employees until they choose to resign or until the Employer has justification to terminate their employment. The employment does not come to an end automatically at the end of the season.

Employees who are not temporary or casual, are usually permanent Employees, even if they only work part time. Likewise, employees who have been on fixed term contracts that are renewed annually are probably permanent *not* fixed-term, despite the contract saying otherwise.

The reason why the position is only for a fixed period must be a genuine business reason. You cannot use a fixed term agreement to “trial” a staff member. Examples of genuine reasons could be:

- The Employer’s share milking contract is for a period of 10 months, and the Employer will not require the Employee’s services when that contract comes to an end.
- The Employee is required for a 12 month period only because the Employer has already contracted with another person to commence permanent work at the start of the following season (for example where a family member takes a year off to do an OE).

To tie in with the end of the dairy season IS NOT a sufficient reason in itself.

Fixed-term employment relationships come to an end at a specified time, upon a specified event or at the end of a specified project. *There must be a genuine reason for imposing a fixed term agreement rather than a permanent one.* For example, you cannot use a fixed term agreement to “trial” a staff member or to simply tie the employment in with the end of the traditional dairy season. Examples of genuine reasons could be:

- The Employer’s share milking contract is for a period of 10 months, and the Employer will not require the Employee’s services when that contract comes to an end.
- The Employee is required for a 12 month period only because the Employer has already contracted with another person to commence permanent work at the start of the following season (for example where a family member takes a year off to do an OE).
- An Employee is required for a 12 month period while another employee takes parental leave.

An employer must advise an employee when or how the employment will end, the way it will end and the reasons for the employment ending in that way (you can do this in the agreement).

Both the **Federated Farmers Individual Employment Agreements (Fixed term and Permanent)** can be used for any employment type (they are not tied to dairy farming operations) and contain clauses to do with:

- Remuneration and reimbursements
- Duties
- Probationary and trial periods
- Accommodation
- Hours of work
- Leave – this includes the recent changes to the law
- Meal and rest breaks
- Termination of employment
- Legal requirements
- Dispute resolution procedures

The Agreements also include three schedules: Serious conduct/misconduct; Accident reporting and recording; and Health and safety.

The **Federated Farmers’ Casual Employment Agreement** is very basic, covering off duties, hours of work and remuneration.

Order your Agreement here: <http://www.fedfarm.org.nz/n1112.html>

Federated Farmers is proud of all its Contracts and Agreements. They have all been developed by farmers, for farmers, are written in clear language and suit the purpose. They are also developed in partnership with Federated Farmers' legal partners, DLA Phillips Fox. Additionally, because the Federated Farmers Variable Order Sharemilking Agreement is tied to actual law, it is based very closely on the 2011 Order. The Order itself was written by a team from the Federated Farmers Sharemilkers' Section and the Federated Farmers Sharemilker Employers' Section, and then sent to the Department of Labour for legislative approval and finally it was signed off by the Governor General.