



Australian Government

Fair Work

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Fair Work Handbook

An employer's guide to the Fair Work Act

Version 1.08

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The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.



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Fair Work handbook

This handbook is for employers and managers, and is about workplace rights and responsibilities under the *Fair Work Act 2009 (Cth)* (FW Act). You can use this handbook as a standalone resource, or you can add it to an existing workplace or operations handbook. As an employer or manager, you're responsible for giving your employees their correct entitlements. It's important you're aware of the FW Act and understand your rights and obligations.

If you need more information about your obligations under the FW Act, visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94.

Where to go for help

The Fair Work Ombudsman

The Fair Work Ombudsman (FWO) has free tools, information and advice about national workplace laws. Information about your workplace rights and obligations is available online, with language support in 27 languages.

Visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94

The FWO has developed easy-to-use, free and interactive online courses to help businesses and managers achieve best practice and compliance with the FW Act. The courses are on topics including hiring employees, managing performance and having difficult conversations in the workplace.

You can access the courses at www.fairwork.gov.au/learning

Tailored advice from your industry association

Industry associations can provide you with individually tailored information about rights and responsibilities if you are a member. You can contact your relevant industry association for more information about the services they offer, or visit the [Registered Organisations](http://www.fairwork.gov.au/registeredorganisations) page at www.fairwork.gov.au/registeredorganisations for a list of industrial organisations registered with the Fair Work Commission.

Some associations, such as the Ai Group, www.aigroup.com.au, represent employers across a variety of industries. Alternatively, you can visit the Australian Chamber of Commerce and Industry's website at www.acci.asn.au/Our-Network for a list of industry specific organisations and state and territory chambers of commerce.

Keeping up-to-date with your obligations

My Account

Register for an online account with us and you'll be able to:

- make enquiries online for priority support
- save results from our Pay, Shift, Leave and Notice and Redundancy Calculators
- save awards and searches from Award Finder
- save your favourite pages from this website to read or refer to later
- get information tailored to your needs.

Email

From time to time, legislation and your obligations will change. To make sure you're up to date, sign up to our email update service. You'll get email updates about the annual wage review, changes to the law, upcoming campaigns that could affect you and more.

Visit www.fairwork.gov.au/emailupdates to sign up.

Newsletter

We also have an employer eNewsletter. Sent every two months, it has information relevant to employers, including common workplace myths, important dates and tips to help you hire and manage your employees.

Visit www.fairwork.gov.au/enewsletter to read past issues and sign up.

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National Employment Standards

The National Employment Standards (NES) are 10 minimum employment entitlements that have to be provided to all employees.

The national minimum wage and the NES make up the minimum entitlements for employees in Australia. An award, employment contract, enterprise agreement or other [registered agreement](#) can't provide conditions that are less than the national minimum wage or the NES. They can't exclude the NES.

The 10 minimum entitlements of the NES are:

1. Maximum weekly hours of work - 38 hours per week, plus reasonable extra hours.
2. Requests for flexible working arrangements – certain employees have a legal right to request a change in their working arrangements.
3. Parental Leave – up to 12 months unpaid leave as well as the right to request an additional 12 months leave.
4. Annual leave – four weeks paid leave per year, plus an extra week for some shift workers (not for casuals).
5. Personal/carer's leave and compassionate leave – up to 10 days paid personal/carer's leave per year (not for casuals), two days unpaid carer's leave as needed, and two days compassionate leave (unpaid for casuals) as needed.
6. Community service leave – unpaid leave for voluntary emergency activities and leave for jury service (paid in some circumstances).
7. Long service leave (LSL) – paid leave for employees who have been with the same employer for a long time.
8. Public holidays – a paid day off on a public holiday, unless reasonably requested to work.
9. Notice of termination of employment and redundancy pay for some employees- for eligible employees based on age and/or length of service.
10. Fair Work Information Statement (FWIS) – a document that must be provided to all new employees. Download the FWIS from www.fairwork.gov.au/fwis

Casual employees only get NES entitlements relating to:

- unpaid carer's leave

- unpaid compassionate leave
- community service leave
- the Fair Work Information Statement.

For more information about the NES, and how they apply to casuals, visit

www.fairwork.gov.au/nas

Industrial instruments

Awards

An award is a document that sets out the minimum wages and conditions for a certain job (like the Clerks – Private Sector Award 2010) or industry (like the General Retail Industry Award 2010). They apply automatically unless your employees are covered by a registered agreement. Awards apply on top of the NES and can include information on:

- minimum wages, including annual wage or salary arrangements
- types of employment (e.g. full-time, part-time or casual)
- extra amounts such as penalty rates, overtime and allowances
- work arrangements (e.g. rostering or variations to working hours)
- annual leave loading and arrangements for taking leave
- superannuation
- procedures for consultation, representation and dispute settlement.

Awards may not apply to some managers or high income employees (who have an appropriate written guarantee of annual earnings). To work out which award applies to your business and how your employees should be classified go to www.fairwork.gov.au/awards-and-agreements/awards/find-my-award

Registered agreements

A registered agreement is a document that sets out the terms and conditions that apply to a particular business or workplace. Like awards, registered agreements can have extra entitlements, but they can't provide for less than the NES.

Registered agreements can benefit a business because they're tailored to a workplace's needs. To apply, a registered agreement has to be voted on by employees and approved by the Fair Work Commission. Once approved, the agreement will then operate until it is

replaced or terminated. There are rules about how to negotiate, lodge and approve a registered agreement. You can find out more at www.fwc.gov.au/awards-and-agreements/agreements

Registered agreements usually override the applicable award, but their base rates of pay can't be less than the base rates in the relevant award (see 'Pay Rates' below).

For more information about registered agreements, visit www.fairwork.gov.au/awardsandagreements

Note: if you purchased an existing business, your employees may be covered by a registered agreement with their former employer under transfer of business rules. For more information, go to www.fairwork.gov.au/transferofbusiness

Other employment arrangements

Award and agreement free employees

Some employees aren't covered by an award or registered agreement. These employees are still covered by the National Employment Standards and the National Minimum Wage. For more information go to www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions

Employment contracts

An employment contract can be written, spoken or simply inferred from the conduct of the parties. It's a good idea to record your employee's terms and conditions when they're hired. This can be done in a letter of engagement or through a more formal contract.

A contract must provide the same or more generous conditions than the NES and any applicable modern award or registered agreement. A contract can't undercut an employee's minimum entitlements from the NES or any applicable award or registered agreement, even if they agree to it.

You can download template engagement letters from www.fairwork.gov.au/templates. You can use these templates to set your employees' expectations and confirm their conditions of employment.

Individual flexibility arrangements

You and an individual employee can agree to change the effect of certain terms of a modern award or registered agreement. This is called an individual flexibility arrangement (IFA).

An IFA has to meet the genuine needs of you and the individual employee. It can't be used to undermine their minimum entitlements.

There are requirements for putting an IFA in place, including that the employee has to be better off overall.

For more information download the 'Use of Individual Flexibility Arrangements Best Practice Guide' from www.fairwork.gov.au/bestpracticeguides

Pay rates

An employee's minimum rate of pay is set by the applicable award or registered agreement. The rate of pay in a registered agreement cannot be less than the base rates of pay in an award. Where there is no award, pay rates in a registered agreement can't be less than the National Minimum Wage. This rule only applies to base rates of pay; penalties, loadings and allowances will still come from the registered agreement.

If no award or registered agreement applies, your employee is entitled to be paid at least the National Minimum Wage. Every year, the Fair Work Commission reviews the National Minimum Wage which can result in an increase to minimum wages. This increase is also applied to award rates of pay. Changes to pay rates usually start from the first pay period on or after 1 July each year.

An employee's minimum rate of pay can depend on their:

- age (e.g. junior employees may get different rates of pay)
- job classification, duties, qualifications and level of responsibility
- type of employment (full-time, part-time, casual, fixed term, daily hire and weekly hire or pieceworker)
- hours and times of work (e.g. working a weekend could attract a penalty rate).

If any of these factors change, then your employee's rate of pay may need to change.

Note: where an employee is paid a salary under a contract, you need to make sure the amount covers all the employees' entitlements under the applicable award or registered agreement.

Pay Calculator

Use our Pay Calculator to calculate base pay rates, allowances and penalty rates (including overtime). It's the tool our Infoline advisers use to answer your enquiries.

You can access our pay calculator at www.fairwork.gov.au/pay.

Record keeping and pay slips

Employee records

In any business, large or small, record keeping is vital to success. Record-keeping and pay slip obligations ensure employees receive correct wages and entitlements.

You need to keep detailed records for each employee about their employment, pay, hours of work, leave, superannuation and other matters.

These records have to:

- be in a form that is readily accessible to a Fair Work Inspector
- be legible and in English
- be kept for seven years
- not be changed, except for the purposes of correcting an error
- not be false or misleading to the employer's knowledge.

For further details about what information needs to be included in pay slips and employee records, download the 'Employee records and pay slips' fact sheet from www.fairwork.gov.au/factsheets. You can also access pay slip and record-keeping templates there.

Pay slips

Employees need to be issued a pay slip within one working day of being paid. Pay slips can be issued electronically or in hard copy.

Pay slips have to cover details of an employee's pay for each pay period. Below is a list of what to include:

- the employer's name and ABN
- the employee's name
- date of the payment and period the pay slip covers

- before and after tax amounts
- if paid hourly – the employee’s hourly rate, the hours worked at that rate, and the total amount paid at that rate
- if paid a salary – the employee’s salary rate
- loadings/allowances/bonuses/incentive payments/other separate monetary
- any deductions
- super contributions made or required for that pay period and the fund name or name and number.

Tip: for further details about what information needs to be included in pay slips and employee records, go to www.fairwork.gov.au/recordkeeping. You can also access record keeping templates at www.fairwork.gov.au/templates

Hiring employees

When employing staff, you should:

- check which award or registered agreement will apply to the employee
- determine their classification level under the award or agreement
- decide whether the position will be full-time, part-time, casual, fixed term, daily hire and weekly hire or pieceworker
- find out the minimum rates of pay, penalties, loadings and allowances. You can use [our pay calculator](#), available from www.fairwork.gov.au/pay
- write a position description, including the above information as well outlining the required duties, skills and experience the employee will need to be suitable for the job. A template position description can be downloaded from www.fairwork.gov.au/templates
- give new employees a Fair Work Information Statement (a legal requirement). You can download the Fair Work Information Statement from www.fairwork.gov.au/fwis
- give new employees a letter of engagement. While not a legal requirement, it’s best practice to inform your new employees, in writing, about the terms and conditions of their employment. This can also include a copy of the position

description. Template engagement letters can be downloaded from www.fairwork.gov.au/templates

Note: Unpaid work trials for any period beyond what is reasonably required to demonstrate the skills required for the job are unlawful. What's reasonable will vary depending on the nature and complexity of the work, but could range from an hour to one shift. For more information about unpaid trials and unpaid work, visit www.fairwork.gov.au/unpaidwork

The FWO has developed an online course on hiring employees that provides useful tips and techniques in the recruitment and induction process. Access the online training on 'hiring employees' at www.fairwork.gov.au/learning

Independent Contractors

An independent contractor is someone who is self-employed and contracts their services to clients, such as other businesses. Independent contractors aren't employees and have different rights.

It's important to understand the difference between independent contractors and employees and to give them their correct entitlements. Providing an ABN or an invoice for payment may not mean a worker is an independent contractor. Labelling people as independent contractors or getting them to sign contracts which state they are doesn't mean this either. There are a number of factors that need to be considered.

Misrepresenting or disguising an employment relationship as an independent contracting arrangement is known as 'sham contracting' and is against the law. Dismissing or threatening to dismiss an employee to engage them as an independent contractor is also against the law.

For information about independent contractors and how they differ from employees as well as more information on sham contracting visit www.fairwork.gov.au/find-help-for/independent-contractors

Handling workplace issues

Many workplace problems are the result of poor communication. If problems arise in the workplace it's important to take time to understand and discuss the issues with your employees. Keep detailed notes about any dispute and make sure that everything is recorded in writing to avoid any misunderstandings.

Awards and registered agreements have processes to help resolve disputes about matters within the document or in relation to the NES. Check the award or registered agreement that applies to confirm the process for handling disputes.

If the dispute can't be resolved at the workplace level, you or your employee can refer the dispute to an independent third party or to the Fair Work Commission.

The Fair Work Commission can be contacted on 1300 799 675 for information about its dispute resolution procedures, including application fees and processes.

The FWO has developed an online course to give you the skills to have a difficult conversation in the workplace. It teaches you skills to respond to employee concerns and deliver bad news.

Access the free online course at www.fairwork.gov.au/learning. You can also download our 'Effective Dispute Resolution' Best Practice Guide from www.fairwork.gov.au/bestpracticeguides

Performance management

Knowing how to manage underperformance is important for every business. If it's not handled quickly, well and sensitively, it is likely to have consequences for you, your employee and the rest of the workplace.

There are a number of resources available at www.fairwork.gov.au/employee-entitlements/managing-performance-and-warnings to help you manage employee performance, including our:

- free online course on managing employee performance
- Best Practice Guide on managing underperformance
- template performance plans and warning letters.

Ending employment

Termination of employment is when an employment relationship ends. This can happen for a number of reasons including redundancy, resignation or dismissal.

Notice of termination and redundancy

Full-time and part-time employees are entitled to notice of termination, or payment in lieu of notice. The notice needs to be given to them in writing.

The amount of notice depends on the employee's length of service and age. It is important to check the award or registered agreement for any eligibility to notice of termination and whether their casual service counts for the period of continuous service.

Period of continuous service	Notice period
Not more than 1 year	1 week
More than 1 year, but not more than 3 years	2 weeks
More than 3 years, but not more than 5 years	3 weeks
More than 5 years	4 weeks

Employees who are over 45 and have worked for the business for at least 2 years get an extra week of notice.

Redundancy

Redundancy happens when an employer either:

- doesn't need an employee's job to be done by anyone, or
- becomes insolvent or bankrupt.

Redundancy can happen when the business:

- introduces new technology (eg. the job can be done by a machine)
- slows down due to lower sales or production
- closes down
- relocates interstate or overseas
- restructures or reorganises because a merger or takeover happens.

When an employee's job is made redundant their employer has to give them redundancy pay, also known as severance pay. The amount of redundancy pay depends on the employee's length of service and the applicable award or registered agreement. You should check the award or registered agreement to find out how much redundancy pay your employee is entitled to.

Redundancy pay doesn't need to be paid to some employees, including:

- employees who have worked for less than 12 months
- employees employed for a specific task, project, time period or season
- employees terminated because of serious misconduct

- casual employees
- trainees and apprentices engaged only for the length of their training agreement
- employees of a business with less than 15 employees.

For more information on redundancy visit www.fairwork.gov.au/ending-employment/redundancy

Tip: Our notice and redundancy calculator can help you determine what entitlements your employees may get when their employment is terminated. You can use the calculator by going to www.calculate.fairwork.gov.au/endingemployment

Final pay

An employee should get the following entitlements in their final pay:

- outstanding wages for hours they have worked, including penalty rates and allowances
- any accumulated annual leave
- if it applies:
 - annual leave loading
 - accrued or pro rata long service leave
 - redundancy pay.

Sick and carer's leave is not paid out when employment ends.

Employees need to be given a pay slip with their final pay. You can download template pay slips from www.fairwork.gov.au/templates

Note: you aren't automatically entitled to deduct money from an employee's final pay if they don't give notice or return items (keys, uniforms, etc.). Deductions need to be properly authorised. For information about deductions, visit www.fairwork.gov.au/pay

Make sure the dismissal is fair

Employees can make unfair dismissal claims if they think the termination of their employment was 'harsh, unjust or unreasonable'.

Businesses with less than 15 employees should comply with the Small Business Fair Dismissal Code. This will help you make sure that your business is protected if an employee

makes an unfair dismissal claim. Download a copy of the Small Business Fair Dismissal Code visit www.fairwork.gov.au/endingemployment

Make sure the dismissal is lawful

It's unlawful to end an employee's employment because of:

- temporary absence from work because of illness or injury
- union membership (or non-membership) and participation in union activities
- the employee seeking office or acting as a representative of employees
- the employee makes a complaint, inquiry or participates in legal proceedings against the employer
- absence from work during parental leave
- reasonable temporary absence from work to participate in a voluntary emergency management activity
- race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

For more information about unfair dismissal, visit www.fairwork.gov.au/endingemployment

General workplace protections

The FW Act has general protections to ensure fairness and representation in the workplace. Employees and prospective employees:

- are protected from employers taking adverse action against them because of their race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin
- are protected from undue influence or pressure in negotiating individual arrangements
- are protected from dismissal due to temporary absence because of illness or injury
- have the right to become, or not become, members of an industrial association (such as a union)
- have the right to be represented by, or not represented by, an industrial association
- have the right to engage in, or not engage in, lawful industrial activities
- have the right to exercise their workplace rights, or engage in industrial activities, free from adverse action.

Employee can't be treated differently or worse because they possess or have exercised a workplace right, or for a discriminatory reason. This is called adverse action. Adverse action includes when the employer:

- dismisses an employee
- injures their employment
- alters the position of the employee to the employee's prejudice
- discriminates between the employee and other employees of the employer, or
- threatens to do any of the above

For more information about general workplace protection, you can download our General workplace protections fact sheet and our Unlawful discrimination self-assessment checklist at www.fairwork.gov.au/factsheets

What to do if the Fair Work Ombudsman contacts you

We're responsible for ensuring compliance with national workplace laws. If you are contacted by us, you should:

- cooperate with the Fair Work Inspector, including producing documents and records if requested.
- seek to promptly resolve any workplace issues raised in an audit.

Remember, the Fair Work Ombudsman is here to help you. For information about resolving workplace issues, visit fairwork.gov.au/help