

Fact and fiction: 10 common workplace myths

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Urban myths persist in many facets of our daily life.

They seem to achieve widespread levels of acceptance, when clearly, a reality check would expose them for what they are.

The workplace, it seems, is a fertile breeding ground for myth.

The Fair Work Ombudsman frequently sees examples of employers running their businesses based on myth.

Maybe it's hand-me-down or copy-cat action, whatever the reason, it's time to sort the fact from the fiction.

Because when we test the veracity of a myth against our workplace law, we'll surely find a breach of employee rights.

And the serious side of that mistake can be a very hefty bill for back-payment of underpaid wages, for example.

To help dispel some of the misconceptions we regularly encounter, I've come up with a list of 10 myth-busters.

MYTH 1: Employees don't need to be paid for time spent opening and closing a store or attending training and meetings outside normal work hours.

FACT: Employees must be paid for all the time that they are required to work. For example, if an employee is required to be at work at 7.45am to prepare for an 8am store opening, they need to be paid from 7.45am. If the employee is asked to stay back after work for a staff meeting or training session, they also need to be paid.

MYTH 2: Employers can make deductions from an employee's wages to cover losses arising from cash register discrepancies, breakages and customers who don't pay.

FACT: Unauthorised deductions from an employee's pay are unlawful. Deductions can be made only in very limited circumstances.

MYTH 3: Employers can employ young workers as 'trainees' without lodging any formal paperwork.

FACT: Employers must negotiate and lodge a registered training contract for an employee in order to lawfully be able to pay trainee or apprentice rates. An employer cannot pay an employee trainee rates just because they are young or new to the job.

MYTH 4: Employees must work for an organisation for 12 months before they can take annual leave or personal leave.

FACT: All leave starts to accrue as soon as employees commence work, and an employee can take leave at any time that is convenient to both the employer and employee.

MYTH 5: If an employee doesn't have a medical certificate, their employer doesn't have to pay them for a sick day.

FACT: Employers are entitled to ask employees for evidence that would satisfy a reasonable person that they took the day off for a proper reason. This may be a medical certificate, but a statutory declaration or other evidence may also be satisfactory.

MYTH 6: If an employee has a contract of employment, the National Employment Standards do not apply.

FACT: All employees are covered by the National Employment Standards, regardless of the terms stipulated in their employment contract.

MYTH 7: It is not mandatory to give employees pay slips.

FACT: Employers must give all employees a pay slip within one working day of pay-day. Employers can give employees paper or electronic pay slips, such as a link sent via email.

MYTH 8: If a worker has an Australian Business Number (ABN) they are an independent contractor.

FACT: Having an ABN does not automatically make a worker an independent contractor. Fair Work inspectors apply tests of fact and law to determine whether a worker's correct classification is as an independent contractor or an employee. Whether an employer has labelled a worker as a contractor and required them to obtain an ABN may not be relevant.

MYTH 9: Casual employees are not entitled to any sort of leave.

FACT: Casual employees are entitled to some unpaid leave under the National Employment Standards, including unpaid carers', unpaid compassionate and community service leave, as well as parental and pre-adoption leave in some circumstances.

MYTH 10: Enterprise Agreements stop operating once they have passed their 'nominal expiry date'.

FACT: Enterprise Agreements continue operating until they are either terminated by Fair Work Australia or replaced by a new Enterprise Agreement.

Employers who have been following any of the myths above are encouraged to seek advice and assistance about ensuring their business practices are correct. As a starting point, they can visit www.fairwork.gov.au or call our Fair Work Infoline on 13 13 94.

For regular updates on workplace laws, employers can also register for the Fair Work Ombudsman's regular eNewsletter at www.fairwork.gov.au/enewsletter (www.fairwork.gov.au/about-us/news-and-media-releases/newsletter/default) and follow us on Facebook and Twitter.

- Nicholas Wilson, Fair Work Ombudsman

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