

## Improving workplace productivity through bargaining

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Download the best practice guide:

- [Improving workplace productivity in bargaining \(PDF 177.9KB\) \(www.fairwork.gov.au/ArticleDocuments/711/Improving-workplace-productivity-through-bargaining-best-practice-guide.pdf.aspx\)](#)

### Working at best practice

The Fair Work Act 2009 (FW Act) promotes productivity, fairness and cooperation through an emphasis on enterprise-level collective bargaining, underpinned by simple good faith bargaining obligations and clear rules regulating industrial action.

Enterprise bargaining is a way of fostering a culture of change in the workplace and is a valuable tool in the process of continuous improvement. It can assist in the creation of responsive and flexible enterprises and help to improve productivity and efficiency. Increased productivity can provide higher wages to workers or more secure and satisfying work, higher profits to employers and lower priced goods and services to the public.

This best practice guide explains how best to negotiate when making enterprise agreements so that employees and employers can take advantage of productivity benefits. It explains:

- the basics of enterprise bargaining
- the advantages of working at best practice
- the process for enterprise bargaining and how to bargain in good faith
- protected industrial action as it relates to bargaining.

It also includes a checklist on best practice in enterprise bargaining.

This guide illustrates best practice when it comes to improving workplace productivity in bargaining. For specific information regarding your minimum legal obligations and rights in relation to bargaining, contact the organisations listed under the '[For more information](#)' section at the end of this guide.

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### What is enterprise bargaining?

Enterprise bargaining is usually a formal process where the employer, employees and their representatives - such as unions - negotiate for an enterprise agreement that may provide for changes in the terms and conditions of employment applying to the enterprise. The end product is usually an enterprise agreement which sets out the terms and conditions of employment for employees covered by the agreement. The process also offers business an opportunity to increase its productivity.

The FW Act sets out specific rules relating to the enterprise bargaining process as well as the range of matters that can and cannot be included in enterprise agreements.

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### What are the advantages of best practice enterprise bargaining?

Employers and employees engaging in best practice enterprise bargaining work cooperatively and in good faith towards reaching an

agreement that increases productivity and meets the needs of employees and employers. The parties view each other as equal partners in the negotiating process working towards this common goal.

Best practice enterprise bargaining can result in outcomes such as:

- more flexible hours and rosters
- broader job classifications
- new training and career opportunities
- profit sharing or other forms of performance related pay
- agreement to achieve efficiency gains such as new production targets or a reduction in waste
- improved service delivery to achieve greater client satisfaction
- family-friendly arrangements such as child care facilities, job sharing and career breaks
- improved procedures for handling employee grievances or consulting on workplace issues.

Cooperative enterprise bargaining can be rewarding and result in long term benefits for both the business and employees.

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## How do I bargain in 'good faith'?

Each employee and employer who will be covered by a proposed enterprise agreement has the right to be represented by a bargaining representative, for example, a union, a committee of employee representatives or an employer organisation.

The parties and their bargaining representatives must meet the good faith bargaining requirements under the FW Act, including:

- attending and participating in meetings at reasonable times
- disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner
- responding to proposals made by other bargaining representatives in a timely manner
- giving genuine consideration to the proposals made by other bargaining representatives, and reasons for any response to those proposals
- not behaving in a capricious or unfair way that undermines freedom of association or collective bargaining
- recognising and bargaining with the other bargaining representatives for the agreement.

The parties are not required to make an agreement or to make concessions they do not wish to make. The parties can agree to disagree. If the parties are unable to make an agreement, they may wish to leave the existing arrangements in place, ask the Fair Work Commission to help them reach an agreement or, in some cases, take protected industrial action.

There are also special provisions in the FW Act for the Fair Work Commission to help people in low-paid occupations bargain with their employers.

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## What happens if a party does not bargain in good faith?

If you have concerns that another bargaining representative is not meeting the good faith bargaining requirements, or that the bargaining process is not proceeding efficiently or fairly because there are too many bargaining agents, you may apply for a 'bargaining order' from the Fair Work Commission. However, you should give the other parties written notice of your concerns, and a reasonable opportunity to respond to them, before applying for a bargaining order.

A bargaining order sets out what the parties must do to ensure that the bargaining process is conducted fairly. If there is a serious breach of the bargaining order, and the parties cannot reach agreement, the Fair Work Commission can make a bargaining related workplace determination setting out the terms and conditions of employment which will apply to the parties. The Fair Work Commission cannot make such a determination if the parties follow best practice principles and commit to good faith bargaining.

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## What if a bargaining representative benefits?

Organisations that are bargaining representatives (employers, employer organisations, and unions) for a proposed enterprise agreement need to disclose certain financial benefits that they (or certain related parties) will (or could) get because of a term of the proposed agreement.

The disclosure must be set out in a document with details of the relevant financial benefit (a 'disclosure document'). An employer who creates a disclosure document must give it to their employees. A union or employer organisation who creates a disclosure document must give it to the employer, who then provides it to the employees.

You can access fact sheets and further information on corrupting benefits from the Registered Organisations Commission website at

## Protected industrial action and bargaining

In some circumstances, employers, employees and union officials may organise and engage in industrial action such as a strike or a ban on performing some duties, with some immunity from prosecution under state or territory laws. This is known as 'protected industrial action'.

Protected industrial action can only be taken in limited circumstances during the bargaining process. Special rules apply regarding the payment of wages during industrial action. For more information you should contact the Fair Work Infoline on 13 13 94.

By bargaining in good faith and maintaining open communication, the parties are far more likely to successfully reach an agreement without resorting to industrial action. It is also the case that the majority of bargaining processes are completed without the need to take such action. Once an enterprise agreement is in place, industrial action cannot be taken until after the agreement's expiry date. Reaching agreement can be a way of creating a productive and harmonious workplace.

## The process explained: An example of best practice bargaining

### Step 1.

Employer of employees decide to bargain for enterprise agreement with employees.

### Step 2.

Employer provides employees to be covered by the agreement the [Notice of Employee Representational Rights](https://www.fwc.gov.au/awards-and-agreements/agreements/about-agreements/enterprise-bargaining)  (<https://www.fwc.gov.au/awards-and-agreements/agreements/about-agreements/enterprise-bargaining>) . The Notice explains the employees' right to be represented by a bargaining representative, for example, a union.

### Step 3. Either:

Employer considers the business needs and interests of employees

or

Employees and their representatives think about what changes to conditions they would like as well as the business' needs

### Step 4.

Employers and Employees and / or bargaining representatives work together to develop an agreement that is good for business productivity and efficiency, and also benefits employees by improving/varying their work conditions. This may involve several meetings and discussions.

Employer takes reasonable steps to ensure that terms of the agreement and the effect of those terms are explained to the employees in an appropriate manner, having regard to the particular circumstances and needs of the employees (such as cultural background, their age, and if they are not represented by a bargaining representative).

During this bargaining process, meetings are held, information may be tabled and proposals made by both the employer and employees. The parties should give genuine consideration to all proposals.

### Step 5.

Employers gives employees a copy of the proposed agreement along with any incorporated material (and explains the time and place the vote will take place and the type of voting process being used) to consider at least seven (7) days before any vote

### Step 6.

Employees vote (this must be at least 21 days after the Notice of Representation Rights was issued to an employee).

### Step 7. Either:

This Agreement is not approved.

Those who would be covered by the agreement may return to the bargaining table and re-negotiate. This may involve further consideration of only some of the proposed terms in the agreement.

Then Employees vote on amended agreement (after being given a further seven (7) days to consider any changes)

or

The Agreement is approved. Approval occurs when a majority of employees who will be covered by the agreement cast a valid vote.

## Step 8.

An application for Fair Work Commission approval must be made within 14 days of the agreement being made. The Fair Work Commission will approve the agreement if it complies with the legal requirements.

**Complete.**

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## Checklist for bargaining best practice

Employers and employees engaged in best practice enterprise bargaining will:

- understand their obligations to bargain in good faith and apply those principles
- have an understanding of what may, must and cannot be included in an enterprise agreement
- ensure that all employees understand the terms of any proposed agreement with a focus on equity and access to information.  
You may need to make translations available where appropriate
- use good faith bargaining to achieve optimal organisational productivity and flexibility
- negotiate for outcomes that focus on fairness, cooperation and mutual benefit.

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## For more information

Fair Work Ombudsman  
13 13 94  
[www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Commission  
[www.fwc.gov.au](http://www.fwc.gov.au)  (<http://www.fwc.gov.au>)

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### Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)  
Fair Work Infoline: 13 13 94  
Need language help?  
Contact the Translating and Interpreting Service (TIS) on 13 14 50  
Hearing & speech assistance  
Call through the National Relay Service (NRS):  
For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94  
Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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