

Small business and the Fair Work Act

Best Practice Guide



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This best practice guide is for small business owners and managers. It explains your basic obligations under the Fair Work Act and how you can take a best practice approach to employment and workplace issues.

It includes:

- [Working at best practice](#)
- [Legal requirements](#)
- [Using best practice in your small business](#)
- [A best practice checklist](#)
- [Links and resources.](#)

It also has practical tips and case studies to help you move your business towards best practice.

Working at best practice

For small business owners and operators, working at best practice means understanding and meeting your obligations under Australian workplace laws. It also means going beyond these minimum requirements to help your employees and business thrive – and it is easier than you might think.

Every workplace can enjoy the benefits of taking a best practice approach to employment, even small business. These can include:

- improved ability to attract the best staff
- higher levels of staff performance and engagement
- lower turnover and hiring costs
- avoiding misunderstandings and disputes over employee entitlements
- easier implementation of workplace change
- improved ability to manage and grow the business.

Legal requirements

Complying with the law is a must, but it also makes good business sense. It allows you to:

- have peace of mind that you're meeting your legal obligations
- spend less time dealing with employee disputes and queries
- avoid significant penalties. The maximum penalty for a serious contravention of an Australian workplace law exceeds \$133,000 per breach (for an individual) or \$666,000 per breach (for a body corporate). Penalty amounts are subject to change. You can check the current maximum penalties at fairwork.gov.au
- build a reputation as an employer who values their employees and does the right thing by their employees.



National Employment Standards

The National Employment Standards (or NES) are minimum standards for all employees. Rules and exclusions may apply. **An award or agreement may provide more.**

Visit our [National Employment Standards page](https://www.fairwork.gov.au/nes) for more information at fairwork.gov.au/nes

	Full-time and part-time employees	Casual employees
Annual leave	4 weeks paid leave per year (pro rata for part-time employees) + 1 week for eligible shift workers	×
Personal leave (sick or carer's leave)	10 days paid leave per year (pro rata for part-time employees)	×
Carer's leave	2 days unpaid leave per permissible occasion (if no paid personal leave left)	2 days unpaid leave per permissible occasion
Compassionate leave	2 days paid leave per permissible occasion	2 days unpaid leave per permissible occasion
Family & domestic violence leave	5 days unpaid leave per 12 months	5 days unpaid leave per 12 months
Community service leave - Jury service	10 days paid leave with make-up pay + unpaid leave as required	Unpaid leave as required
- Voluntary emergency management activities	Unpaid leave as required to engage in the activity	Unpaid leave as required to engage in the activity
Public holidays	A paid day off if they would normally work. If asked to work the employee can refuse, if reasonable to do so	An unpaid day off. If asked to work the employee can refuse, if reasonable to do so
Long service leave	Paid leave (amount and eligibility rules vary between states and territories)	* Varies between states and territories
Parental leave eligible after 12 months employment	12 months unpaid leave – can extend up to 24 months with employer's agreement	12 months unpaid leave for regular and systematic casuals – can extend up to 24 months with employer's agreement
Right to request flexible working arrangements	Employees (including some regular casual employees) can request flexible working arrangements after 12 months employment, if they are aged 55 or over, a carer, have a disability, are experiencing violence from a family member (or are supporting a family or household member who is) or are the parent of, or have caring responsibilities for, a child of school age or younger	
Maximum hours of work	Full-time employees - 38 hours per week + reasonable additional hours Part-time and casual employees - 38 hours or employee's ordinary weekly hours (whichever is less) + reasonable additional hours	
Fair Work Information Statement and Casual Employment Information Statement	Must be given the Fair Work Information Statement	Must be given both the Fair Work Information Statement and the Casual Employment Information Statement



Notice of termination	1-5 weeks notice (or pay instead of notice) based on length of employment and age	×
Redundancy pay eligible after 12 months employment	4- 16 weeks pay based on length of employment (small business or other exclusions may apply)	×
Casual conversion	×	The right to become a full-time or part-time employee in some circumstances

Awards

An award (also called a modern award) is a document that sets out the minimum wages and conditions for an industry or occupation. Awards usually have rules about:

- which industry and occupations they cover
- pay
- work hours
- rosters
- leave and breaks
- allowances
- penalty rates
- overtime.

Awards apply in addition to the NES. A workplace can be covered by more than one award depending on the jobs that the employees do. Awards don't apply to employees covered by a registered agreement (except that the base rate of pay in the agreement can't be less than the base pay rate in the award).



PRACTICAL TIP: Use our [Find my award tool](https://www.fairwork.gov.au/findmyaward) to work out which award covers your employees. It's available at [fairwork.gov.au/findmyaward](https://www.fairwork.gov.au/findmyaward)



CASE STUDY – keeping up to date

Patty is the owner of a long day care centre. She knows her employees are covered by the Children’s Services Award. In the past Patty kept a printout of the award in her office, but she found that it became outdated because of annual wage changes and other updates.

Patty has recently signed up for an online ‘[My account](#)’ with the Fair Work Ombudsman (fairwork.gov.au/register). She can now get a current copy of the award, award summaries and pay rates straight from her account. She also gets email updates to let her know if there are changes to her award, like wage increases.

Patty also places links to the award and the NES on the centre’s intranet so her staff can access current electronic copies. This meets her obligation under the Award to provide employees access to their award and the NES.

Registered Agreements

A registered agreement is a document that sets out employment conditions for a specific business. It’s made between the employer and employees through a bargaining process and is approved by the Fair Work Commission. The most common type of registered agreement is an enterprise agreement.

Like awards, registered agreements apply in addition to the NES, and they can’t provide for any terms which are less than what is contained in the NES.

The base pay rate in the registered agreement also can’t be less than the base rate in the relevant award at any time. If it is, the employee must be paid at least the base award rate.

Registered agreements can benefit a business because they’re tailored to that workplace’s needs. The Fair Work Commission provides information on making agreements. Find out more on their [Agreements page](#) at fwc.gov.au/agreements

Award and agreement free employees

Most employees are covered by an award or agreement, but some jobs and industries aren’t. These employees are entitled to at least the National Minimum Wage and the NES.

Visit our [Award & agreement free wages & conditions page](#) for more information at fairwork.gov.au/award-free



PRACTICAL TIP: Use our [Pay and Conditions tool](#) to calculate the minimum entitlements that apply to your employees. Visit fairwork.gov.au/pact

Record-keeping

You need to make and keep certain employment records under the Fair Work Act. You have to keep time and wages records for 7 years. You also need to provide your employees with a pay slip within 1 working day of paying them.

Good record-keeping also helps you protect and manage your business.



PRACTICAL TIP: Take our free [Record-keeping and pay slips online course](#) at fairwork.gov.au/learning. It covers:

- what employment records are and why you need them
- when employment records need to be made and how long you must keep them
- what pay slips are and what details you need to include on them
- how to handle common record-keeping and pay slip questions, respond to audits and interact with Fair Work Inspectors
- tools and resources available to help you manage your obligations around record-keeping and pay slips.

Ending employment

An employer may dismiss an employee if they have a valid reason, such as:

- serious misconduct (theft, fraud, assault, sexual harassment, or serious safety breaches)
- ongoing underperformance
- the job is no longer needed (redundancy).

Employers need to follow a fair process when they dismiss an employee. They should keep a record of the process and the reason for the dismissal. Employees should know the reason for their dismissal and be given an opportunity to respond.

Small businesses with less than 15 employees have special rules for ending employment. This means:

- small business employers don't have to pay redundancy pay (in most cases)
- that an employee can only make an unfair dismissal claim if they have worked for the small business employer for 12 months or more
- small business employers are exempt from unfair dismissal claims, where they follow the [Small Business Fair Dismissal Code](#) available at fairwork.gov.au/unfairdismissal

Employers, including small businesses, must **not** dismiss an employee:

- for a discriminatory reason (such as pregnancy, disability, race, religion or sexual orientation)
- for being temporarily absent from work because of illness or injury
- for engaging in lawful industrial activity
- because they have exercised a workplace right (like being a member of a union)

- for making a complaint or inquiry related to their employment, such as asking about a pay rate or contacting the Fair Work Ombudsman
- to make them an independent contractor where they will be doing the same or substantially the same work.

If the employee believes they were dismissed for one of these reasons, they can make a 'general protections' claim or an 'unlawful termination' claim against the employer. These are different from 'unfair dismissal' claims and small businesses are not exempt from these types of claims.

Find out more, visit the [Ending employment page](https://www.fairwork.gov.au/ending-employment) at [fairwork.gov.au/ending-employment](https://www.fairwork.gov.au/ending-employment)

Using best practice in your small business

All employers must comply with their legal obligations, but there are many things you can do to make your business 'best practice' – that is, a great place to work.

Best practice doesn't look the same for all employers. The way to achieve best practice will vary because of things like the number of employees, industry and the business environment.

Below are initiatives and suggestions that can help you move your business towards best practice.

Build a positive workplace culture

Workplace culture is about the behaviour that people expect and accept in a workplace. It's the way people communicate with each other and the way people go about doing their work. Businesses with a positive culture tend to have low staff turnover, low absenteeism and more motivated employees.

Best practice employers create a positive workplace culture by:

- setting fair and clear expectations
- acknowledging people's differences and the value these differences bring to the business
- building trust through acting honestly, consistently and fairly
- inviting feedback and listening to employees
- taking an interest in employees' career development
- providing training and coaching to help employees reach their goals
- modelling the work ethic, values and behaviours they want to see in their employees
- recognising and rewarding good performance
- being flexible where they can and understanding that employees have lives outside of work
- insisting that employees behave and communicate in a respectful way.



PRACTICAL TIP: Complete our free [Managing employees online course](https://www.fairwork.gov.au/learning) to find out more about workplace culture and motivating employees, available at [fairwork.gov.au/learning](https://www.fairwork.gov.au/learning)



Engage and consult with employees

Employees who are engaged in their work, and the business, tend to perform better and stay with their employer longer. Employees are more likely to be engaged, and motivated to work hard, if they:

- know what the business's goals are
- understand how their work contributes to the success of the business
- feel part of where the business is heading
- believe their ideas are heard and appreciated.

Best practice employers share information with their employees and create an environment where employees are comfortable contributing their ideas. They listen and encourage employees to share ownership of the business goals.

You can work at best practice in your business by:

- discussing the goals of the business with your employees
- sharing details about the performance of the business
- acknowledging that your employees' experience and day-to-day work may give them valuable insights into your business that you don't have
- encouraging employees to share their ideas, ask questions and raise concerns
- providing ways for employees to do this, such as a dedicated email address, a suggestions box, online forums and having an 'open door' policy
- discussing staff ideas and suggestions at regular team meetings
- involving employees in solving problems and business planning
- holding annual planning days to involve employees in setting business and team goals and targets for the following year.

Read our [Consultation and cooperation in the workplace best practice guide](#) for more information, available at fairwork.gov.au/bestpracticeguides



PRACTICAL TIP: Employers may be reluctant to share business performance information with employees for several reasons. If the profit of the business is the owner's direct income, they may see that as private. If the business is underperforming, they may not want to cause staff to fear for their jobs. If there is a lack of trust, they may worry about business information being disclosed or misused.

If you're reluctant to share information with your employees, consider providing less sensitive, non-financial data (such as the number of sales made this week, or clients seen this month). Sharing this information on a regular basis shows employees how the business is tracking and allows them to be more responsive to opportunities and challenges when they arise.



Manage performance

Best practice employers give employees regular constructive feedback on their performance and help them continuously develop their skills. They implement simple performance systems, which allow them to set clear goals, communicate expectations, identify training needs and provide a framework for ongoing feedback and discussion.

You can work at best practice by:

- setting clear and achievable expectations
- meeting with employees to discuss and record their individual performance goals and training needs
- monitoring employees' performance and providing regular specific feedback, both positive and constructive
- dealing with any performance issues as soon as they come up
- supporting employees to improve performance, for example through training, coaching and mentoring
- conducting a review with each employee every 6 or 12 months to assess their performance against the agreed goals and to set new goals
- creating a performance agreement template for your workplace and ensuring your employees have a performance agreement in place
- recognising and rewarding employees who do a good job. This doesn't have to be a financial reward; many employees appreciate a simple acknowledgement.

Complete our free [Managing performance online course](#) to find out more about implementing performance systems in your workplace, available at fairwork.gov.au/learning

Be flexible

Employees look for ways to balance work and other commitments, such as caring for children or elderly parents, study, sporting activities or other hobbies.

Certain employees have a legal right to request flexible working arrangements. This may involve changes to work hours, patterns or locations (such as part-timework, changed start and finish times and working from home). Best practice employers go beyond the minimum legal requirements and offer flexibility to all employees to help them balance their work and personal lives.

To find out more read our [Flexible working arrangements best practice guide](#), available at fairwork.gov.au/bestpracticeguides, or take our free [Workplace flexibility online course](#) available at fairwork.gov.au/learning

Implement workplace policies

Best practice employers put in place workplace policies to provide clarity to employees and managers, reinforce their workplace values and to help them comply with their legal obligations.

Common issues covered in policies include leave, discrimination, bullying and harassment, workplace health and safety, social media, use of drugs and alcohol, flexibility, performance processes, discipline and termination of employment.

Best practice employers may also use policies to provide benefits that go beyond minimum legal entitlements, for example, access to company vehicles or phones. Providing extra benefits doesn't have to cost money, for example, making flexible work arrangements available to all employees or allowing employees to take additional annual leave at half pay.

Even small businesses can benefit from implementing workplace policies. These don't have to be long or complicated, they may simply record and clarify the practices you already have in your workplace. You can implement best practice workplace policies in your small business by:

- Involving staff in developing policies for your workplace. This will ensure your policies are tailored to the specific needs of your workplace, and that staff are able to understand and apply them
- Checking policies are easy to understand. Keep them short and use simple language
- Making policies accessible. Give copies to all new and existing staff and make paper or electronic copies available in the workplace
- Discussing policies in training and meetings to remind employees what is expected
- Asking managers and leaders to use and model workplace policies. This encourages other employees to take them seriously
- Reviewing policies regularly to ensure they are current and reflect any changes in the workplace or the law.



Best practice checklist

A best practice workplace involves more than just understanding and complying with the law. This checklist will help you work towards best practice in your small business:

- culture** – take steps to create a positive, inclusive and respectful workplace culture
- set the example** – model the work ethic, values and behaviour you want in your workplace
- consult** – share information with your employees, and invite them to provide feedback and listen to their ideas
- engage** – involve employees in problem solving and planning, so they feel invested in the business and its goals
- manage performance** – implement a performance system to help you to communicate expectations, identify training needs and provide ongoing feedback and development
- provide feedback** – give employees regular constructive feedback on their performance and help them continue to develop their skills
- recognition** – recognise and reward employees who do a good job or are improving
- be flexible** – offer flexibility to all employees to help them balance their work and personal lives
- develop policies** – work with employees to develop and implement policies that are tailored to your workplace



Links and resources

Resources

- Our [Small Business Showcase](#) provides tailored information and useful resources to help you meet your workplace obligations. It contains links to online resources such as pay tools, leave calculators, templates and more. Visit fairwork.gov.au/small-business-showcase
- You can access our free [online training](#) for employers and managers at fairwork.gov.au/learning. Available courses cover best practice approaches to difficult conversations in the workplace, hiring employees, managing employees, managing performance, diversity and discrimination, workplace flexibility and record-keeping and pay slips.
- You can find all our [Best practice guides](#) at fairwork.gov.au/bestpracticeguides. These easy-to-follow and practical guides will help you transform your business from compliant to best practice, so you can get the most out of your employees.

Links

Fair Work Commission

fwc.gov.au

CONTACT US

Fair Work Online: 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**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet 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.

Last updated: May 2022
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