

Fair Work Handbook

An employer's guide to the Fair Work Act

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The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws.

It is your responsibility to comply with workplace laws that apply to you.

The information contained in this handbook is:

- *General in nature and may not deal with aspects of the law that are relevant to your specific situation; and*
- *Not legal advice.*

Therefore, you may wish to seek independent legal advice to ensure all the factors relevant to your circumstances have been properly considered.

Fair Work handbook

This handbook is for employers and managers about rights and responsibilities under the *Fair Work Act 2009* (FW Act). You can use this handbook as a standalone resource, or you can add it to an existing workplace or operations handbook. If you need more information about your obligations under the FW Act, visit our website (fairwork.gov.au) or call the Fair Work Infoline on 13 13 94.

As an employer or manager, you're responsible for giving your employees their correct entitlements. It's important you're aware of the FW Act¹ and understand your rights and obligations.

Where to go for help

The Fair Work Ombudsman (FWO) has free tools, information and advice about national workplace laws. Information about workplace rights is also available in 27 languages.

Visit fairwork.gov.au or contact the Fair Work Infoline on 13 13 94 (8am to 6pm Monday – Friday).

Keeping up-to-date with your obligations

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 your obligations or entitlements, upcoming campaigns that could affect you and more.

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

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

¹ The national workplace relations system, governed by the FW Act, covers most Australian workplaces. Sole traders, partnerships, other unincorporated entities and non-trading corporations in Western Australia remain in their state system. Incorporated businesses (such as Pty Ltd or Inc) in Western Australia are generally covered by the FW Act.

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National Employment Standards

From 1 January 2010, the National Employment Standards (NES) have provided a safety net for all employees covered by the national workplace relations system. The 10 NES are:

1. Maximum weekly hours of work - 38 hours per week, plus reasonable additional hours.
2. Requests for flexible working arrangements - allows parents or carers of a child under school age, or of a child under 18 with a disability, to request a change in working arrangements to help care for their child.
3. Unpaid parental leave and related entitlements² - up to 12 months unpaid leave, plus other entitlements. These include the right to request an extra 12 months unpaid leave and the right to return to the pre-parental leave position.
4. Annual leave - 4 weeks paid leave per year, plus an extra week for some shift workers.
5. Personal / carer's leave and compassionate leave - 10 days paid personal / carer's leave per year, 2 days unpaid carer's leave as needed, and 2 days compassionate leave (unpaid for casuals) as needed.
6. Community service leave - unpaid leave for voluntary emergency activities and leave for jury service.
7. Long service leave (LSL) - an entitlement for some employees with LSL entitlements before 1 January 2010, pending a uniform national LSL standard.
8. Public holidays - a paid day off on a public holiday, except where reasonably requested to work.
9. Notice of termination of employment and redundancy pay - based on age and/or length of service.
10. Provision of a Fair Work Information Statement (FWIS) - employers must provide this statement to all new employees. Download the FWIS from fairwork.gov.au/fwis.

The NES underpins modern awards, enterprise agreements (EAs) and employment contracts. These may contain extra terms or entitlements, but can't remove or reduce an employee's rights under the NES.

There are rules about how and when the NES apply. Some NES don't apply to casual employees.

For more information about the NES visit fairwork.gov.au/employment.

You can use the Leave Calculator, available at fairwork.gov.au/leave, to calculate annual and personal leave under the NES.

² Employees may also be eligible for paid parental leave, through the Government funded Paid Parental Leave Scheme and/or through an employer funded arrangement in an agreement, policy or contract. For information about Government funded Paid Parental Leave, see the Department of Human Services website (humanservices.gov.au/paidparentalleave).

Industrial instruments

Modern awards

Modern awards started on 1 January 2010 and cover most workplaces. They won't apply to employees covered by an EA, but will still underpin wages, so it's important to check modern award coverage for all employees (see 'Pay Rates' below).

Modern awards apply on top of the NES and can include:

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

Some awards cover an industry (for example, the General Retail Industry Award 2010), while others cover an occupation (like the Clerks – Private Sector Award 2010). To find out if a modern award covers your employees, check the coverage clause. If you're not sure whether the award covers a particular role, you can also read the job descriptions in the classification schedule.

Modern awards may not apply to some managers or high income employees (who have an appropriate written guarantee of annual earnings).

Note: employment contracts are underpinned by modern awards. This means a contract can have extra entitlements, but can't remove or reduce those in a modern award that applies.

For more information about awards visit fairwork.gov.au/awards.

Enterprise Agreements (EAs)

You and your employees can make an EA³ to cover the wages and conditions that apply to your business. EAs can benefit a business because they're tailored to a workplace's needs. To apply, an enterprise agreement has to be voted on by employees and approved by Fair Work Australia (FWA).

EAs are underpinned by the NES. They can have extra entitlements, but can't remove or reduce those under the NES.

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

If you offer a separate employment contract to an employee, it will be underpinned by any EA that applies. A contract can provide extra entitlements but can't remove or reduce those in an EA that applies.

³ Also formerly known as a 'workplace agreement' or a 'collective agreement'.

An EA will operate until it is replaced or terminated. An EA won't operate unless it has been lodged and approved by FWA. There are rules about how to negotiate, lodge and approve an EA.

For more information about EAs visit fairwork.gov.au/employment.

Note: if you purchased an existing business, your employees may be covered by an EA with their former employer under transfer of business rules. For more information, download the 'Transfer of business' fact sheet from fairwork.gov.au/resources.

Other employment arrangements

Individual Flexibility Arrangements

You and an individual employee can agree to change the effect of certain terms of a modern award or EA. 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 fairwork.gov.au/resources.

Note: Australian Workplace Agreements (AWAs) and Individual Transitional Employment Agreements (ITEAs) can no longer be made. AWAs and ITEAs lodged before 31 December 2009 will continue to operate until they are terminated.

Employment contracts

An employment contract can be in writing, oral or simply inferred from the conduct of the parties. It's a good idea to record an 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 can provide more generous conditions than the NES and any modern award or EA that applies, such as performance bonuses. A contract can't undercut an employee's minimum entitlements, such as unpaid parental leave under the NES.

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

Pay rates

An employee's minimum rate of pay is set by the modern award or EA that applies. If no modern award or EA applies, they're entitled to be paid at least the National Minimum Wage.

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

- age (most modern awards and EAs have different rates for junior employees)
- job classification, duties, qualifications and level of responsibility
- type of employment (full-time, part-time or casual)

- hours and times of work (e.g. an employee working on Sunday may be entitled to a penalty rate).

Every year, FWA conducts an annual wage review which can result in an increase to minimum wages. Changes to pay rates usually start from the first pay period on or after 1 July each year.

To check your employees' minimum pay rates, you can use our tool PayCheck Plus, available from fairwork.gov.au/pay. PayCheck Plus calculates minimum rates of pay, allowances, overtime and penalty rates. You can also calculate rates for entire shifts worked over a week.

Changes to an employee's position will often change their pay rate. For example, if the employee takes on more responsibility or gets a new qualification, their classification under the modern award or EA is likely to change.

Base rates of pay in a modern award underpin base rates in an enterprise agreement (including agreements made before 1 January 2010). Where there is no modern award, pay rates in an EA 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 EA.

Note: employment contracts are underpinned by any modern award or EA that applies. This means that a contract can't give the employee less than the wages and conditions in the modern award or EA, even if the employee agrees. Where an employee is paid a salary under a contract, you need to make sure the amount covers all the employees' entitlements under the modern award or EA that applies.

Transitional provisions in modern awards and EAs

Most modern award pay rates are being phased in from 1 July 2010 until 1 July 2014. During this time, you will need to take extra care to check pay rates, as the minimum pay rate that applies is likely to be different to the rate published in the modern award.

You can use PayCheck Plus to check your employees' minimum pay rates and penalties, available at fairwork.gov.au/pay.

Pay slips & record-keeping obligations

Employees need to be issued a pay slip within 1 working day of being paid. Pay slips can be issued electronically or in hard copy.

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 fairwork.gov.au/resources. You can also access pay slip and record-keeping templates.

Employing staff

Hiring employees

When employing staff, you should:

- find out the modern award or EA that will apply to the employee. If you're not sure which modern award applies, use our Award Finder tool, available from fairwork.gov.au/awards.
- check which classification in the modern award or EA applies to the employee (i.e. Grade 2, Level 1). You can use this information when drafting a position description.
- decide whether the position will be full-time, part-time or casual.
- check the modern award or EA for conditions that will apply (e.g. whether the hours and days of work need to be agreed in writing or if penalty rates of overtime will apply).
- find out the minimum rates of pay, penalties, loadings and allowances. You can use PayCheck Plus, available from fairwork.gov.au/pay.
- write a position description, including its duties and responsibilities, the skills and experience the employee will need and the hours you want the employee to work. This can also include the award, classification and status. You can use this to find a suitable person to do the job and also to give employees your expectations for the job.
- give new employees a Fair Work Information Statement. You can download the Fair Work Information Statement from 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 fairwork.gov.au/resources.

Note: unpaid trials are unlawful. Potential employees have to be paid for any work they perform to find out whether they are suited for a job. For more information about unpaid trials and unpaid work, visit fairwork.gov.au/pay.

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, visit fairwork.gov.au/employment.

Handling Workplace Disputes

Many workplace problems are the result of poor communication. If problems arise in the workplace, it is 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.

Modern awards and EAs have processes to help resolve disputes about matters about one of their terms or in relation to the NES. Check the modern award or EA that applies to confirm the process for handling disputes.

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

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

For more information download the 'Effective Dispute Resolution' Best Practice Guide from fairwork.gov.au/resources.

Managing underperformance

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, the employee and the rest of the workplace.

There are a number of resources available at fairwork.gov.au/resources to help you, including:

- the 'Managing Underperformance' Best Practice Guide
- template warning letters.

General Workplace Protections

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

- are protected from employers taking adverse action against them because of their race, colour, sex, sexual preference, 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.

Adverse action includes when the employer:

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

For more information, download the 'General protections fact sheet and the Unlawful discrimination self-assessment checklist' from fairwork.gov.au/employment.

Ending employment

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

There are a number of things to remember when ending an employment relationship.

Give them notice in writing

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.

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 are entitled to an extra week of notice.

Note: some classes of employees aren't entitled to notice of termination.

For more information download the 'Notice of termination and redundancy pay' fact sheet from fairwork.gov.au/resources.

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'. For more information about unfair dismissal visit fairwork.gov.au/termination.

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 from fairwork.gov.au/termination.

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 filing a complaint or participating 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 preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Check whether redundancy entitlements apply

If you no longer require anyone to do the job, your employee may be entitled to redundancy pay. For more information about redundancy (including exceptions to the entitlement) visit fairwork.gov.au/termination.

Keep records

You have to keep a record of the termination, including who ended the employment and how it happened - e.g. with notice, summarily (on the spot), or in some other manner.

Template employment records can be downloaded from fairwork.gov.au/resources.

Pay outstanding entitlements

At the end of the employment, you need to pay:

- any outstanding wages, pay in lieu of notice or other entitlements owing
- any accrued annual leave, annual leave loading and long service leave entitlements
- any redundancy entitlements.

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

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 fairwork.gov.au/pay.

For more information about terminations, visit fairwork.gov.au/termination.

What to do if the Fair Work Ombudsman contacts you

We're responsible for ensuring compliance with national workplace laws. To do this, we conduct audits and investigate complaints.

If you are contacted by us, you should:

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

For information about what to do if someone makes a complaint about your business, visit fairwork.gov.au/complaints.