



Employment of children laws in Western Australia

Shop, restaurant, fast food or takeaway food business

Fact sheet for employers

The *Children and Community Services Act 2004* regulates the employment of children under the age of 15 years in Western Australia.

This fact sheet answers frequently asked questions about the employment of children specifically in a shop, restaurant, fast food or takeaway food business.

There are different child employment laws which apply to other types of businesses. This information is available at www.commerce.wa.gov.au/wageline

Do these child employment laws apply to my business?

Yes. These child employment laws apply to all Western Australian employers. This includes employers covered by the state industrial relations system and WA awards and agreements, and employers covered by national industrial relations system and national modern awards and agreements.

Do the child employment laws apply if I employ my own child or a relative's child in my business?

No. WA's child employment laws do **not** apply if a child is employed in a family business.

- A **family business** means a business, trade or occupation carried on by a parent or other relative of the child.
- A **parent** is a person who has responsibility for the long-term or the day-to-day care, welfare and development of the child.
- A **relative** of a child is the child's grandparent, step parent, sibling, uncle or aunt, or cousin.

What is the minimum age of employment for a child to work in a shop, restaurant, fast food or takeaway food business?

The minimum age is 13 years.

Do I need a parent's permission before I can employ their child?

Yes. You may only employ a child aged 13 or 14 in your business once you have a parent's written permission. A parent is a person who has responsibility for the long-term or the day-to-day care, welfare and development of the child.

A template parental permission form is included in this information pack.

What work can a child do in a shop, restaurant, fast food or takeaway food business?

The *Children and Community Services Act* does not specify the type of work a child may do in a shop, restaurant, fast food or takeaway food business.

However, the Department for Child Protection can issue a notice to an employer placing limits on what work a child is allowed to do, if it is considered that the work or the nature of the work carried out is harmful to the child's wellbeing, including their health and safety. Such a notice can be issued in relation to the employment of any child under the age of 18 years.

Do the child employment laws apply if I do not pay a child for the work they perform?

Yes. For the purpose of the child employment laws, the word 'employ' includes engaging a child to carry out work for which they do not receive any payment or other reward.

There are also laws regarding the requirement to pay any employee, including children, for work performed. Visit the Wageline website for details www.commerce.wa.gov.au/wageline

Do the child employment laws apply if I engage a child as a contractor rather than an employee?

Yes. For the purpose of the child employment laws, the word 'employ' includes engaging a child as a contractor.

Are there penalties for not complying with WA's child employment laws?

Yes. The penalties are:

- employing a child without the permission of a parent – a fine of up to \$24,000 or \$120,000 for a corporation
- employing a child before 6am or after 10pm – a fine of up to \$24,000 or \$120,000 for a corporation
- continuing to employ a child in contravention of a notice from the Department of Child Protection which has placed limits on what work a child is allowed to do in your business – a fine of up to \$36,000 or \$180,000 for a corporation, and 3 years' imprisonment.

What are the employment record keeping requirements?

You should keep:

- a record of the time a child aged under 15 years started and finished work each day so you can demonstrate that they have not been employed before 6am or after 10pm
- a copy of a parent's written permission for their child aged under 15 years to work for your business so you can demonstrate that they have been employed with a parent's permission.

The following Acts contain general employment record keeping requirements:

- *Industrial Relations Act 1979* – these requirements apply to employees covered by WA awards and agreements
- *Minimum Conditions of Employment Act 1993* – these requirements apply to employees in the state industrial relations system who are not covered by a WA award or agreement
- *Fair Work Act 2009* – these requirements apply to employees covered by the national industrial relations system and by national modern awards and agreements.

Visit www.commerce.wa.gov.au/wageline for information on record keeping requirements under the *Industrial Relations Act* and the *Minimum Conditions of Employment Act* for state system employers. Visit www.fairwork.gov.au for information on record keeping obligations under the *Fair Work Act* for national system employers.

Are there laws regulating the employment of children during school hours?

Yes. Under the *School Education Act 1999* a person must not employ a child of compulsory school age during the hours when the child is required to attend school or otherwise participate in an educational program of a school.

There are certain exceptions where a child can be working, or working and studying and the school the child attends or the relevant regional education office can be contacted for more information.

Are there laws regulating the employment of children on licensed premises?

Yes. Please visit the Department of Racing, Gaming and Liquor website www.rgl.wa.gov.au for information on employing children on licenced premises.

How do I ensure my business complies with children in employment laws?

Conducting a self-audit will assist retail and food industry employers to ensure all employment arrangements comply with the child employment laws and may avoid significant penalties for breaching the *Children and Community Services Act*.

Wageline's Self-Audit Checklist is a tool to help employers operating a shop or restaurant (including a fast food or a takeaway food business) to conduct a self-audit of compliance with the child employment laws and implement strategies to improve compliance.

The checklist is included in this information pack and available at www.commerce.wa.gov.au/wageline

Where do I get more information?

You can contact Wageline on 1300 655 266 with queries about Western Australia's child employment laws.

Disclaimer

The Department of Commerce has prepared this fact sheet to provide information on Western Australia's child employment laws. It is provided as a general guide only and is not designed to be comprehensive or to provide legal advice. The Department of Commerce does not accept liability for any claim which may arise from any person acting on, or refraining from acting on, this information.