



Government of Western Australia
Department of Commerce
Labour Relations

Employing someone

An easy guide for
small business employers



How to use this guide

This publication provides an overview of the key employment matters that small business owners must consider when employing someone.

It is intended as a guide only – and should not be considered as legal advice.

This guide contains a number of useful checklists and notes to help you develop a fairer, flexible and more productive workplace.

A reference guide to agencies offering assistance in employment matters is inside the back cover.

For further information on any of the issues raised in this publication, small business owners are encouraged to contact Wageline on 1300 655 266.

Important

State versus federal jurisdiction

Western Australian businesses and their respective employees are covered by either the state or federal labour relations systems.

This depends entirely on whether the business concerned is a constitutional corporation, a partnership or a sole trader.

It is important that you identify which system applies to your business - this will determine the relevant legislation and employment obligations.

The information provided in this publication deals primarily with the State labour relations system (unless otherwise stated).

Contact Wageline on 1300 655 266 for further assistance.



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How to use this guide

This book covers key issues you need to know as a small business employer.

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Which set of workplace laws applies to your business?

There are two different systems of employment laws operating in Western Australia. Your business is covered by only one of these – you need to know which one.

This publication is for employers in the **state industrial relations system**.

Generally, the state system includes employers which are sole traders (eg Bob Smith trading as Bob's Deli) and some partnerships (eg Bob and Mary Smith trading as Bob's Deli) and trust arrangements. Larger businesses that are 'constitutional corporations' (eg Smith Nominees Pty Ltd trading as Bob's Deli) are covered by the national system.

Contacting Wageline

If you don't know which system applies to you – call Wageline 1300 655 266 before you read this book.

Wageline

'It always pays to call Wageline'

Wageline is your first stop for all private sector employment matters. Wageline provides free information on state workplace law, including:

- rates of pay;
- leave entitlements and conditions of employment; and
- termination obligations

Wageline can provide fact sheets with detailed information on the topics in this guide.

Call Wageline on **1300 655 266** from 8.30am to 5.00pm weekdays (from 9am on Wednesdays) for the cost of a local call.

All you need to know about changes in pay rates and conditions can be emailed to you through the free electronic Wageline Award Update Newsletter. Simply register by calling Wageline or online at www.commerce.wa.gov.au/labourrelations

Wageline also provides education services to private sector employers on rights and obligations in the workplace. These services are provided through workplace seminars, one-on-one consultancy services to small business owners and a range of publications.

Topic 1 - Offering employment

When you offer someone a job, you are entering into an employment contract with that person. This is a legal relationship under which both the employer and employee have rights and obligations.

An employment contract is made between the employer and a new employee when:

- there is an offer of employment, verbally or in writing and the offer is accepted by the employee; and
- each party has accepted an obligation to perform his or her part of the agreement, and the employee will receive a wage in return for working.



Does the employment contract have to be in writing?

No. However, it is very useful to have in writing what you agreed with the employee about pay, hours and other conditions. If there is ever a dispute, it is difficult to prove what was agreed without a written contract.

If you choose to create a written employment contract for an employee, you can include information on the employee's pay and conditions and other issues relevant to your workplace.

Paying correct entitlements

Employers are required to pay employees their correct employment entitlements, including rates of pay, leave and allowances. Past and present employees may choose to pursue a claim for unpaid entitlements any time within six years from the time of the alleged underpayment.

Get it right in the beginning

The best way to avoid an employee making a claim for unpaid wages and entitlements is to know your obligations when you first employ someone. Call Wageline on **1300 655 266** to get the correct wages and conditions of employment.

Suggested information to include in a written employment contract

Basic information

- Name and details of the employer and employee
- Job title
- Place of work
- Date employment commenced
- If a fixed term contract, end date of employment
- Length of probationary period
- Employment status eg full time, part time or casual
- Who the employee reports to in the organisation

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Employment conditions

- Rate of pay
- Flexible work arrangements
- Hours of work
- Rosters and/or shift work
- Additional hours worked
- Meal breaks
- Penalty rates
- Performance bonuses
- Leave entitlements
- Allowances
- Notice periods for termination of employment
- Travel arrangements eg car expenses or accommodation

Other issues

- Key job duties
- Performance standards
- Training and development
- Uniform or dress standards
- Workplace safety and duty of care
- Provision of parking or use of a company vehicle
- Customer service requirements
- Confidentiality
- Email and internet policies
- Company policies and rules
- Use of work equipment
- Date of birth of employee if under 21 years of age

Important

You cannot make a contract with an employee for pay rates and working conditions that are lower than the minimum standards that apply to that type of work.

Employment Contract Checklist

- Establish whether an award or agreement applies to the employee.
- If unsure call Wageline on **1300 655 266**. Wageline will advise the most relevant award and the correct classification and wage rate.
- Determine the employment conditions appropriate to the job.
- Ensure that there are no conditions (such as pay rates, penalties and allowances) that are less than any award, agreement, minimum conditions or other legislative provisions.
- Draft the contract of employment in simple terms.
- Discuss the contract with the new employee to make sure each party understands all conditions, pay and obligations.
- Ensure both parties sign the contract.
- Give the employee a copy of the contract and keep the original on file.



Topic 2 - Understanding the different types of employment

Employees can be employed on a full time, part time, casual or fixed term basis. Getting it wrong can be costly – employing someone as a casual when they are in fact a part time employee can result in underpayment of leave entitlements and penalty rates of pay.

Full time employment

Full time employees work on a regular, ongoing basis, generally for 38 hours per week, or hours as set by their relevant award or contract of employment. Full time employees are eligible for paid annual, bereavement, sick and carer's leave, plus paid public holidays. Full time employees are entitled to unpaid parental leave if they have completed 12 months of service.

Part time employment

Part time employees work on a regular, ongoing basis but work fewer hours than full time employees. Part time employees generally work a set number of hours on specific days.

Part time employees are eligible for the same entitlements as full time employees on a pro rata basis, based on the average number of hours worked per week.

Part time employment is also a useful option for businesses that experience regular peaks and troughs in the weekly or daily workload.

A job sharing arrangement occurs when two or more part time employees share a full time position. This is a great way to provide workplace flexibility.

Casual employment

Casual employees are engaged on an hourly, daily or weekly basis. Generally, casual employment is short term or irregular, and there is no guarantee of ongoing work or a requirement for the employee to be available for work.

Many awards specify minimum and maximum periods of engagement for casual workers.

Casual employees receive a loading in addition to the ordinary rate of pay to compensate for lack of other employment benefits such as security of employment, sick leave, annual leave and payment for public holidays. Long term casuals may be entitled to unpaid parental leave.

Casual employment may be an appropriate option:

- at busy times or peak periods that require a larger work force;
- for seasonal work;
- when other employees are sick or on leave for short periods of time; or
- if the business has variable demand.

Important

Simply calling an employee a casual does not make them a casual employee. Many factors are taken into consideration in determining an individual's correct employment status.



Fixed term

Fixed term employees are generally hired for an agreed length of time to do work on a specific task or project.

Fixed term employees are entitled to the same wages and conditions as full time and part time employees, but on a proportionate basis for the period of their employment. When fixed term employees are hired, it is important that the length of employment is agreed to in advance and formalised in writing.

Fixed term employment may be an appropriate option when replacing staff absent for a set period of time such as on long service leave or parental leave.

Probationary employment

A probationary period may be used at the commencement of employment to assess whether or not an employee is suitable and capable of doing the work for which they were employed.

During this time (often between one and three months), both the employer and employee have all the rights and duties associated with the employment relationship.

To gain maximum benefit from a probation period, it is important that employers and employees negotiate and agree, preferably in writing, on issues such as:

- the length of the probationary period;
- how employee performance will be assessed; and
- the employer's expectations and obligations.

Apprenticeship/Trainee

An apprentice/trainee is employed on a fixed term contract that allows the person to become qualified in a particular trade or skill through a combination of work and structured training.

An apprentice/trainee can be full time, part time or school based, depending on the kind of work that is being done and the training required.

Apprenticeships and traineeships are co-ordinated by ApprentiCentre at the Department of Training and Workforce Development. An apprenticeship can be suspended, transferred or cancelled with approval from ApprentiCentre.

The employer and the apprentice/trainee sign a training contract for a nominal term which is the expected time it should take to complete the apprenticeship /traineeship. The training contract outlines the rights and responsibilities of the employer and the apprentice/trainee. The contract must be lodged with ApprentiCentre within 21 days of commencing work. There is a probation period of between one and three months from the start date, depending on the length of the apprenticeship/traineeship.



Sub-contractor or employee?

A sub-contractor provides a service that usually includes their labour, tools and expertise. The product or service provided is under their own discretion, direction and control and they may delegate tasks to others.

It is important when assessing whether a worker is an employee or a sub-contractor to consider all the relevant factors in the employment arrangement. The totality of the working arrangement, including working under the control and direction of the employer, is the key consideration. If workers who are legally employees are treated as sub-contractors, the employer may be liable for unpaid leave entitlements, penalty rates and superannuation.

The Wageline publication *Sub-contractor or employee?* provides more detail to assist in determining the correct working relationship and also provides a checklist. This is available from Wageline on **1300 655 266** or at www.commerce.wa.gov.au/labourrelations.

Commission

Employees working on commission receive payment when they sell or achieve a specific target rather than a set wage. Employees who are paid wholly by commission are excluded from the minimum wages and minimum leave provisions.

An employee can also be paid on a 'commission and retainer' basis, where they receive a fixed wage each week with an additional commission paid if specific targets are achieved. In this situation, the employee is eligible for minimum wage and leave entitlements.

Important

Non-employment arrangements

There is a range of work options available that do not form an employment relationship / contract between an employer and employee, including:

- trial work;
- work experience;
- labour hire; and
- subcontracting.

Employers should seek independent advice when considering any of these options.



Topic 3 - Minimum conditions of employment

There are minimum standards of pay and conditions for employees in the state industrial relations system which are outlined in the *Minimum Conditions of Employment Act* (MCE Act). These minimum conditions must be provided to all employees, and lesser arrangements than the minimum conditions (such as providing a full time employee with only 2 weeks annual leave) have no effect.

Awards generally provide conditions equal or superior to the MCE Act.

The following minimum conditions apply:

- minimum wage;
- reasonable working hours;
- annual leave;
- sick leave;
- carer's leave;
- bereavement leave;
- parental leave;
- public holidays;
- significant effect and redundancy;
- record keeping;
- long service leave;
- superannuation;
- jury service; and
- termination entitlements.

Minimum conditions of employment publication

The Wageline publication *Minimum conditions of employment* provides more detail on the minimum conditions. This is available from Wageline on **1300 655 266** or at www.commerce.wa.gov.au/labourrelations



Topic 4 - Awards and agreements

This topic provides an overview of state awards and agreements. Awards are the most common type of employment instrument for small business employees.

State awards

Awards are legal documents that outline the wages and conditions of employment for groups of employees in a particular industry or class of work. The most common state awards that apply to small business are:

- Clerks (Commercial, Social and Professional Services) Award
- Contract Cleaners Award
- Hairdressers Award
- Hotel and Tavern Workers Award
- Restaurant, Tearoom and Catering Workers Award
- Transport Workers (General) Award
- Metal Trades (General) Award
- Security Officers Award
- Shop and Warehouse (Wholesale and Retails Establishments) Award

If employees are covered by an award, the award is legally binding on the employer and employee. The employer must provide the entitlements outlined in the award including wages and penalty rates, hours of work, allowances and a range of other provisions.

Employers and employees cannot agree to lesser conditions or agree to ignore the award. Arrangements providing for pay and conditions above the award are legal.

Wageline has summaries of the 50 most common state awards, outlining wage rates and major conditions. These are available from Wageline on **1300 655 266** or www.commerce.wa.gov.au/labourrelations

Employer-employee agreements

Employer-employee agreements (EEAs) are formal registered individual agreements between an employer and an employee that deal with the terms and conditions of employment. EEAs can override the provisions of the relevant award.

These agreements:

- must be registered with the Western Australian Industrial Relations Commission;
- must meet a 'no disadvantage test' to ensure the employee is not disadvantaged in comparison with a relevant or comparable award;
- cannot be offered as a condition of employment, promotion or transfer; and
- operate for up to three years.

Industrial agreements

Industrial agreements (often referred to as enterprise agreements) are collective arrangements establishing conditions of employment for specific businesses. Industrial agreements are negotiated between unions and employers. Once registered, the agreement's provisions apply to all employees in the workplace who perform work covered by the industrial agreement.

Need more information?

To determine which award or agreement applies to your business, call Wageline on **1300 655 266**.



Topic 5 - Employing children

Before employing children, it is important that you understand how and when children can be employed in Western Australia.

Children are considered to be employed when they are engaged to carry out work in a business, trade or occupation carried on for profit, whether or not they are paid or receive any other kind of reward.

Employing school aged children

School aged children generally cannot be employed during normal school hours. In certain circumstances children can leave school for full time employment earlier than the year they turn 17.

Children of different ages are allowed to work outside of school hours in particular types of employment and at particular hours. For example, in the retail industry children between 13 and 15 can be employed between 6.00am and 10.00pm (but not during school hours). Written permission from the child's parent must be provided and should be retained by the employer.

Comprehensive information on the industries and allowable working hours for employment of children is detailed in the Wageline publication Employment of children laws. This is available at www.commerce.wa.gov.au/labourrelations or from Wageline on **1300 655 266**.

Getting it wrong can be costly

There are significant penalties for breaching the requirements for employing children and both employers and parents should ensure they understand their legal obligations.

Need more information?

Because the Children in employment laws are complex and the penalties severe, we recommend that you call Wageline to check that you are observing these laws. A five minute chat to Wageline could save you time, money and provide assurance you that you are meeting your employment obligations.



Topic 6 - Record keeping and pay slips

All employers are legally required to keep time and wages records. Time and wages records are a written or electronic record of information about employees, including personal information, details of hours worked and wages paid, and leave entitlements accrued and taken. Failure to keep correct time and wages records may result in significant penalties.

How should this information be recorded and kept?

Records can be kept either in written form or electronically. If kept in writing, records must be legible and made in indelible ink. Written records must be on a separate page for each employee.

Electronic records must be in an electronic form that is capable of being reproduced in a legible printed format, and be able to be printed out on separate pages for each employee.

Employers must keep all time and wages records for at least seven years – even for employees who have left the company. Any records relating to the calculation of an employee's entitlement to long service leave must be kept for at least 10 years.

Who can look at the records?

Employees (past and present) are able to access their own time and wages records. Records can also be accessed to ensure that employers are complying with their obligations by industrial inspectors and by union representatives.

Payslips

Most awards require employers to provide pay slips. It is good practice to issue pay slips, as they enable employees to be fully informed about what they are being paid.

Need more information?

Refer to the Wageline publication Time and wages records which is available at www.commerce.wa.gov.au/labourrelations or from Wageline on **1300 655 266**.

Wageline also provides templates on its website to assist employers in keeping correct records for :

- employment details;
- annual and long service leave;
- fortnightly time and wages records;
- payslips; and
- personal and other leave.



Topic 7 - Termination of employment

Termination of employment occurs when the employment relationship comes to an end. This can be when the employee resigns, when a fixed term contract comes to an end, or when an employee is dismissed for a particular reason.

This is a complex area. You should seek professional advice if you are unsure of your obligations when terminating employment. The following information provides an overview of some of the key issues.

Resignation

An employee has the right to resign at any time and for any reason. The employee must provide the correct notice to their employer, as set out in their contract of employment or the relevant award. There may also be a requirement to provide notice of termination in writing.

Dismissal

A dismissal occurs when the employer terminates the employment contract. The employer should ensure they have a valid reason for dismissing the employee and take steps to ensure procedural fairness in the dismissal process.

Unfair dismissal

Valid reasons for dismissing an employee include their capacity to do the job, their conduct or the operational requirements of the business.

An employee may be able to make a claim to the Western Australian Industrial Relations Commission that they have been harshly, oppressively or unfairly

dismissed from employment. Each claim will be determined on its merits.

The principles of natural justice or procedural fairness should be followed to ensure the decision making is fair and reasonable. The employer should base their decisions on evidence that can be substantiated if required.

Unlawful termination

It is unlawful for an employer to dismiss an employee for reasons that are considered to be discriminatory such as age, marital status, family or carer's responsibilities, membership or non membership of a trade union, or being absent from work during maternity leave or other parental leave.

An employee may be able to make a claim for unlawful termination to Fair Work Australia.

Notice periods and other termination entitlements

Where the employment is terminated by the employer, except in cases of serious misconduct, the employer must provide the employee with:

- the appropriate notice period or pay in lieu of notice;
- payment of any unpaid wages, redundancy pay if applicable, and any unused annual or long service leave entitlement;
- up to one day's paid time off during each week of the notice period to seek other employment; and
- on request, a written statement detailing the period of employment and the type of work performed.



How much notice is required?

Full time and part time employees must be given written notice of termination. The minimum required notice periods are in the table below. Payment in lieu of notice can be provided to the employee if you do not wish the employee to remain in the workplace during the notice period.

Employee's period of continuous service	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years*	At least 2 weeks
More than 3 years but not more than 5 years*	At least 3 weeks
More than 5 years*	At least 4 weeks

*Employees over 45 years of age with at least two completed years of continuous service are entitled to one additional week of notice.

The required notice periods override any lesser period required by an award or contract of employment, but any longer notice period in an award or contract must be complied with by the employer.

Exclusions from notice periods

The employer does not have to give the above periods of notice to the following types of employees:

- casual employees – however, casual employees must receive any period of notice specified in their award or agreement;
- contract workers who have reached the end of their contract;
- apprentices or trainees who have completed their period of training; or
- employees terminated due to serious misconduct.

Redundancy

An employee's job is made redundant when the employer has made a definite decision that the employee's job will no longer be done by anyone.

An employer who has decided to make an employee redundant must inform the employee and any relevant unions and discuss the likely effects of the redundancy. This must occur as soon as practical after the employer

decides to make the employee redundant.

Employers should also not use the redundancy to dismiss an employee whose work performance or conduct is unsatisfactory as this could result in a successful claim of unfair dismissal.

Redundancy entitlements

When an employee is being made redundant the employer must provide:

- the appropriate notice period or pay in lieu of notice;
- payment of any unpaid wages and any unused annual or long service leave entitlement;
- up to one day's paid time off during each week of the notice period to seek other employment;
- on request, a written statement detailing the period of employment and the type of work performed; and
- severance pay if required.



Severance pay

A redundant employee may be entitled to severance pay. The amount of severance pay depends on the number of years of service an employee has worked. A table outlining severance pay requirements is available from Wageline on **1300 655 266**.

Employers with fewer than 15 employees are not required to make severance payments to employees.

An employer does not generally have to provide severance pay to:

- employees terminated due to serious misconduct;
- employees with less than one year of service;
- probationary employees;
- apprentices and trainees; or
- casual and contract employees.

Where an employer is not required to provide severance pay, any other relevant redundancy entitlements must still be provided to employees. Some awards and employment contracts may require severance payments for the excluded employees listed above.

Termination, dismissal and redundancy guidelines

The Wageline publication Termination, dismissal and redundancy provides detailed information and guidelines for employers on how to terminate the employment contract lawfully and in a procedurally correct manner. The publication covers:

- Resignation
- Dismissal
- Procedural fairness
- Capacity and conduct
- Operational requirements
- Termination entitlements and notice periods
- Claiming unfair dismissal
- Unlawful termination
- Serious misconduct
- Redundancy and severance pay

The publication is available from Wageline on **1300 655 266** or at www.commerce.wa.gov.au/labourrelations

Need more information?

Because termination, dismissal and redundancy are complex issues, you may wish to book a free and confidential consultation with an experienced Education Officer.

Call Wageline on **1300 655 266** to arrange a consultation.



Topic 8 - Buying and selling a business

When a business or part of a business is sold or transferred (known as a transmission of business) both the buyer and seller have obligations towards the employees.

Seller obligations

An employee's contract of employment with the seller of the business is terminated when a transmission of business occurs. See topic 7 - Termination of employment for information on notice periods and other termination obligations.

Buyer obligations

The buyer is not required to employ the staff of the previous owner. However, the buyer may choose to take on all or part of the seller's employees. Buyers need to check any relevant awards and workplace laws to understand the obligations they take on as the new employer.

Need more information?

Wageline's publication *Buying and selling a business* provides more information and a checklist to assist in meeting employment obligations. It is available from Wageline on **1300 655 266** or at www.commerce.wa.gov.au/labourrelations



Topic 9 - Electronic surveillance in the workplace

Employers may sometimes use electronic surveillance in the workplace. This could include monitoring of email and internet use as well as use of listening devices or video recording.

The Surveillance Devices Act 1998 regulates the use of listening devices, video surveillance devices and tracking devices. This Act may apply to workplaces where security cameras, closed circuit TV, telephone monitoring and GPS systems are used.

Email and internet monitoring

The use of email and the internet are integral to many workplaces. Employers should determine what is reasonable use and the rights and responsibilities of their employees. Developing clear policies for use of electronic mail and social media can protect both the employer and employee.

Video surveillance

Video surveillance may be used for security purposes. The use of surveillance cameras for private activities is strictly prohibited. If you are using surveillance cameras in the workplace it is advisable to use signs notifying employees and clients.

Telephone monitoring

Any telephone monitoring system should be disclosed to both employees and clients. Clients should have the option not to have the call monitored if they wish. Employees should be made aware of policies related to the personal use of business telephones and the circumstances in which telephone use may be monitored.

Need more information?

Wageline's publication *Electronic surveillance in the workplace* provides more detail on the issue of electronic surveillance. It is available from Wageline on **1300 655 266** or at www.commerce.wa.gov.au/labourrelations

Where to go for help on other issues

There is a range of government agencies that deal with employment related issues. This topic is a quick reference guide to key contacts.

Your first stop for all employment matters is Wageline - 1300 655 266

www.commerce.wa.gov.au/wageline

Other agencies that may be able to assist you include:

Workplace safety

WorkSafe

1300 307 877

www.commerce.wa.gov.au/worksafe

Full copies of awards and agreements Western Australian Industrial Relations Commission

(08) 9420 4444

www.wairc.wa.gov.au

Workers' compensation

WorkCover WA

1300 794 744

www.workcover.wa.gov.au

Superannuation

Australian Tax Office - Superannuation

Hotline

13 10 20

www.ato.gov.au/super

Workplace discrimination

Equal Opportunity Commission

(08) 9216 3900

1800 198 149 (regional callers)

www.equalopportunity.wa.gov.au

Income tax

Australian Tax Office

13 28 66

www.ato.gov.au

Apprenticeships and traineeships

ApprentiCentre

Department of Training and Workforce Development

(08) 9238 2400

www.dtwd.wa.gov.au

Small business support

Small Business Development Corporation

131 BIZ

www.sbdc.com.au

Payroll tax

Office of State Revenue

(08) 9262 1300

1300 368 364 (regional callers)

www.dtf.wa.gov.au



Government of Western Australia
Department of Commerce
Labour Relations

Wageline 1300 655 266

8.30 am – 5.00 pm weekdays
except Wednesdays 9.00 am – 5.00 pm
(for the cost of a local call statewide)

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221 St Georges Terrace
Perth Western Australia 6000
Administration: 9222 7700
Email: labourrelations@commerce.wa.gov.au
Internet: www.commerce.wa.gov.au/LabourRelations

Regional Offices

Goldfields/Esperance (08) 9026 3250
Great Southern (08) 9842 8366
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Mid-West (08) 9920 9800
North-West (08) 9185 0900
South-West (08) 9722 2888

National Relay Service: 13 36 77
Quality of service feedback line: 1800 30 40 59
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