



Employment entitlements for support workers

A guide for household employers

June 2022

This publication is for people in Western Australia (WA) who directly employ a support worker in a private home, for example, a support worker for a person with a disability or an elderly person. In this publication, people who directly employ a support worker are called **household employers**.

This publication is **not** relevant to businesses or organisations that employ support workers, and is only designed for household employers. This publication is **not** relevant to people who directly employ workers to perform work that is predominately cleaning or child care work. Different employment obligations may apply in these circumstances.

2022 changes to state employment laws

On 20 June 2022, state employment laws changed and coverage of the *Industrial Relations Act 1979* (IR Act) and *Minimum Conditions of Employment Act 1993* (MCE Act) was extended to domestic employees employed by household employers.

From 20 June 2022 onwards, household employers have a range of additional employment obligations under the IR Act and MCE Act.

This publication is a summary of what household employers need to know about their employment obligations. The publication covers:

- additional employer obligations under the IR Act and the MCE Act;
- existing obligations under the *Long Service Leave Act 1958* (LSL Act) and the *Fair Work Act 2009*; and
- where to find further information.

The information in this guide does not apply to the period before 20 June 2022.

Disclaimer

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WA state industrial relations system

Two different industrial relations systems operate in WA, the state system and the national fair work system. Individual household employers in WA are covered by the state industrial relations system. However, some provisions of the national *Fair Work Act 2009* apply to state system employers, including household employers. This guide provides an overview of key aspects of both state and national employment laws.

WA awards

Many occupations and industries in the state industrial relations system are covered by a WA award. Awards are legal documents which set minimum pay rates and conditions for employees in certain industries or jobs.

At present there is no award for support workers employed by household employers in WA. However, if you employ someone in the home whose main role is **not** support work, there could be a WA award that applies. For example, if you employ someone mainly to perform **cleaning** duties, your employee may be covered by the WA Cleaners and Caretakers Award, and the information in this publication will not apply.

Types of work arrangements

There are different types of work arrangements and people have different entitlements depending on their type of arrangement.

Visa holders and migrant workers have the same workplace entitlements as other employees working in WA.

Some workers may be contractors rather than employees. A contractor is a worker running their own business, and is not an employee. If a person is a contractor then many employment laws **do not apply** to that person and the information in this publication is not relevant. Visit www.dmirs.wa.gov.au/employee-or-contractor for information on the differences between an employment arrangement and a contracting arrangement.

Full time, part time and casual employees

Full time and part time employees usually work on a regular ongoing basis for a set number of hours. A full time employee usually works 38 hours per week, and a part time employee usually works less than 38 hours per week. Full time and part time employees are entitled to be paid annual leave, personal leave, bereavement leave and long service leave, as well as unpaid parental leave. Part time employees get the same entitlements as full time employees, but on a proportionate basis.

A casual employee is an employee employed on a casual basis who is not guaranteed regular, ongoing work, can refuse shifts and may work on an irregular basis as needed. Casual employees do not receive paid personal or paid annual leave. They are entitled to paid long service leave, paid bereavement leave, unpaid personal leave for caring purposes and unpaid parental leave.

Visit www.dmirs.wa.gov.au/worktypes for more information about the difference between full time and part time employees and casual employees.

Pay rates

Support workers employed by household employers must be paid at least the state minimum wage.

The minimum pay rate depends on the employee's age and whether they are a full time, part time or casual employee. The minimum pay rates for casual employees include a 20% loading.

It is unlawful to pay your employee **less** than the minimum pay rate that applies to them. You can agree to pay your employee a rate **higher** than the minimum rate. You must pay your employee at least the minimum pay rate for every hour that they work.

Visit www.dmirs.wa.gov.au/awardfree for the current minimum rates of pay.

Household employers do not have to pay a support worker a higher hourly rate if they work more than 38 hours per week or more than their normal working hours, unless this is something that has been agreed to in a contract of employment (see information on reasonable additional hours in the working hours section). However, an employee must still be paid for each hour worked, so any additional hours worked by your employee will need to be paid for at the employee's normal rate of pay.

There is also no requirement for household employers to pay a support worker a higher hourly rate if they work outside normal business hours, such as at night or on weekends and public holidays, unless this is something that has been agreed to in a contract of employment.

Subscribe to the Wageline News at www.dmirs.wa.gov.au/wageline-news, or follow [Wageline on social media](#) to stay informed about increases in minimum rates of pay and other key employment issues.

How must employees be paid?

You must pay your employees in money. This money can be paid in cash (if it meets the employment records obligations for cash payments) or other ways like cheque or electronic bank transfer. You cannot pay your employee in goods, services or accommodation instead of money. You cannot require your employee to spend any part of their pay in a particular way.

Deductions from pay

You will only be able to make deductions from your employee's pay if:

- you are required by a court order or a state or federal law to make the deduction (e.g. tax you must withhold from your employee's pay); or
- your employee has authorised the deduction in writing (as part of a written employment contract or otherwise) and the deduction is paid on behalf of your employee.

Deductions or requirements to pay an amount of money to the employer or another person in relation to an employee under the age of 18 are not permitted unless the deduction or payment is agreed to in writing by the employee's parent or guardian.

An employer cannot directly or indirectly compel an employee to accept goods, accommodation or other services instead of money as part of the employee's pay.

Keeping employment records

You are required to keep employment records about your employee's hours of work, leave taken, superannuation payments and other employment details.

Visit www.dmirs.wa.gov.au/employmentrecords for details on what employment records you are required to keep.

Pay slips

You are required to provide your employee with a pay slip that sets out specific information about what you have paid your employee each pay period.

Visit www.dmirs.wa.gov.au/payslips for more details about pay slip requirements.

Working hours

You and your employee can agree how working hours will be spread throughout the week and the times and days your employee will work. This could be in a written contract of employment.

A full time employee usually works 38 hours per week. Part time or casual employees may work less than 38 hours per week, as agreed with you.

Employees can only be asked or required to work more than 38 hours per week if the additional hours are **reasonable**. The factors to be considered when determining whether additional hours are reasonable include, but are not limited to:

- any risk to the employee's health and safety that might reasonably be expected to arise if the employee worked the additional hours;
- the employee's personal circumstances (including family responsibilities);
- the reasons why the employee is required or requested to work the additional hours;
- any notice given by the employer of the requirement or request that the employee work the additional hours;
- any notice given by the employee of the employee's intention to refuse to work the additional hours;
- whether any of the additional hours are on a public holiday; or
- the employee's hours of work over the previous 4 weeks.

Public holidays

If your full time or part time employee would normally work on a certain day, but they are not working solely because that day is a public holiday, then you need to pay them for the hours they would normally work on that day. A casual employee does not have to be paid for a public holiday if they do not work on that day.

If your employee works on a public holiday, then you need to pay them for the hours they work. There is no requirement to pay a higher hourly rate for work performed on a public holiday, unless this is something that has been agreed to in an employment contract.

Visit www.dmirs.wa.gov.au/publicholidays for dates and employment entitlements for public holidays.

Leave entitlements

The types of leave your employee is entitled to will depend on whether they are a full time, part time, or casual employee. The table below summarises leave entitlements for different types of employees.

Domestic employees were already covered by the LSL Act and entitled to long service leave prior to the changes to state employment laws in 2022. Unpaid parental leave is also a pre-existing entitlement that has not changed for support workers.

The leave entitlements explained in this guide are the minimum leave entitlements. You cannot give your employee **less** leave than the minimum leave entitlements, but you can agree to give your employee **more** leave than the minimum leave entitlements.

Quick reference guide

Leave entitlement	Full time	Part time	Casual
Annual leave	✓	✓	✗
Paid personal leave	✓	✓	✗
Unpaid personal leave (for caring purposes)	✓	✓	✓
Bereavement leave	✓	✓	✓
Unpaid parental leave	✓	✓	✓
Long service leave	✓	✓	✓
Unpaid family and domestic violence leave	✓	✓	✓
Unpaid pandemic leave	✓	✓	✓

Annual leave

Full time and part time support workers are entitled to paid annual leave. Casual employees are not entitled to annual leave. Full time and part time employees accrue four weeks' of paid annual leave for each year of work they have completed. Annual leave is a cumulative entitlement, and any leave not taken in one year is carried over to the next year.

Annual leave accrues on a weekly basis:

- a full time employee working 38 hours per week accrues 2.923 hours of annual leave for each completed week of work; and
- a part time employee accrues the relevant proportion of 2.923 hours annual leave for each completed week of work.

The amount employees are paid for annual leave is based on the number of hours they ordinarily work. For example, if your employee ordinarily works 20 hours per week then they are entitled to 4 weeks of annual leave paid at 20 hours per week. The maximum amount of annual leave an employee can accrue in one year is 152 hours.

Visit www.dmirs.wa.gov.au/annual-leave for information on annual leave and Wageline's *Annual Leave Calculation Guide*.

Personal leave

Full time and part time support workers are entitled for each year of service to paid personal leave for the number of hours the employee is required ordinarily to work in a two week period during that year, up to 76 hours. Personal leave is a cumulative entitlement, and any leave not taken in one year is carried over to the next year.

An employee can take any period of paid personal leave they have accrued:

- because the employee is not fit for work due to a personal illness or personal injury; or
- to provide care or support to a member of the employee's family or household who requires care or support because of:
 - a personal illness or personal injury affecting the member; or
 - an unexpected emergency affecting the member.

All employees, including casual employees, can also take unpaid personal leave of up to two days per occasion when a member of the employee's family or household requires care or support because of a personal illness or personal injury affecting the member; or an unexpected emergency affecting the member.

An employee cannot take unpaid personal leave if the employee could instead take paid personal leave. This means that full time and part time employees will need to take any paid personal leave they have available before accessing unpaid personal leave.

An employee may take unpaid personal leave as a single continuous period of up to two days; or any separate periods to which you and the employee agree.

You can require your employee to provide reasonable evidence before they take personal leave.

More information about personal leave entitlements is available at www.dmirs.wa.gov.au/personal-leave.

Bereavement leave

Full time, part time and casual employees are entitled to paid bereavement leave. Employees can take up to two days' of paid bereavement leave each time there is a death of a member of their family or household. A member of the family or household means any of the following people:

- the employee's spouse or de facto partner;
- a child, step child or grandchild of the employee (including an adult child, step-child or grandchild);
- a parent, step parent or grandparent of the employee;
- a sibling of the employee; and
- any other person who, at or immediately before the relevant time lived with the employee as a member of the employee's household.

Visit www.dmirs.wa.gov.au/bereavement-leave for more information.

Parental leave

Parental leave allows an employee to take time off after they or their spouse/partner gives birth, or after the adoption of a child. If your employee has worked for you for at least 12 months they may be entitled to unpaid parental leave. Full time, part time and eligible casual employees can take unpaid parental leave.

If your employee is eligible they can take up to 12 months of unpaid parental leave. This can be extended by up to 12 months.

Your employee can also ask for special working arrangements when they come back to work after a period of parental leave. For example, they may request to work fewer days or hours, or on different days or at different times. There are rules around how you need to handle requests like this.

Visit www.dmirs.wa.gov.au/parental-leave for more information.

Unpaid pandemic leave

An employee who is required to self-isolate due to COVID-19 is entitled to take up to two weeks' unpaid pandemic leave. An employer and employee may agree that the employee may take more than two weeks' unpaid pandemic leave.

Visit www.dmirs.wa.gov.au/pandemic-leave for more information.

Long service leave

Long service leave is a paid leave entitlement for employees who have continuous employment with an employer for a specified period. This section provides information on the provisions of the state LSL Act.

A household employer will be covered by the state LSL Act unless they make a written agreement with an employee to provide an alternative long service leave benefit that provides a better or at least equivalent entitlement.

The LSL Act has always applied to household employers. If you have an employee who has worked with you for a relevant qualifying period, they may already be entitled to long service leave.

The entitlement to long service leave for full time, part time and casual employees is:

- after 10 years of continuous employment with the one and the same employer – $8^{2/3}$ (8.667) weeks of leave on 'ordinary pay'; and
- for every 5 years of continuous employment with the one and the same employer after the initial 10 years – $4^{1/3}$ (4.333) weeks of leave on ordinary pay.

If an employee's employment ends after at least 7 years of continuous employment with the same employer, in most instances they are entitled to payment for pro rata long service leave.

To be entitled to long service leave under the LSL Act, an employee's employment with their employer must be continuous. The amount of their long service leave is determined by the employee's period of continuous employment.

There are a range of paid and unpaid absences or interruptions to an employee's employment that count towards the employee's period of employment for the purposes of accruing long service leave. Some other types of absences do not break an employee's continuous employment, but do not count towards an employee's period of employment for the purposes of accruing long service leave.

Visit www.dmirs.wa.gov.au/longserviceleave for comprehensive information on long service leave, and Wageline's [WA long service leave calculator](#) which provides an estimate of an employee's long service leave entitlement when employment ends as a result of resignation, dismissal, death or redundancy.

Family and domestic violence leave

All full time, part time and casual employees may take up to five days' unpaid family and domestic violence leave in each 12 month period. The five days' leave is available in full to part-time and casual employees at the start of each 12 month period of employment, and does not accumulate from year to year. An employee may take unpaid family and domestic violence leave if:

- the employee is experiencing family and domestic violence; and
- the employee needs to do something to deal with the impact of the violence; and
- it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

More information about family and domestic violence leave is available at www.dmirs.wa.gov.au/fdv-leave.

When employment ends or changes significantly

You have obligations if you dismiss an employee or your employee resigns. There are also things you must do if you want to make **significant changes** to your employee's job. Significant changes could be changes to the work your employee does or changes to the hours they work.

This section covers the main things you need to know.

Resignation by the employee

Employees can resign from their job at any time and for any reason. Employees should provide reasonable notice of resignation. Notice is the time between when your employee tells you they are resigning, and when their employment actually ends. You can choose to put the required notice period in an employment contract when the employee commences work.

If your employee resigns you will need to pay your employee for any wages or leave entitlements they are owed when they resign.

Visit www.dmirs.wa.gov.au/employment-ending for more information on resignation obligations.

Introduction of changes with significant effect

If you are going to introduce changes that are likely to have significant effects on your employees, there are things you must do. Significant changes could be changes to the work your employee does or changes to the hours they work. You must notify your employees about the change in writing and consult with them about the decision.

More information about **Introduction of changes with significant effect** is available on Wageline's **When employment ends** webpage at www.dmirs.wa.gov.au/employment-ending.

Termination by the employer

When you are ending an employee's employment due to dismissal or redundancy you must provide the required notice periods and meet other obligations, as detailed in the sections below.

Notice periods and other requirements

If you have made a decision to dismiss an employee, you must also provide the required notice period to the employee. A notice period is the time between when you tell your employee their employment is ending, and when their employment actually ends. There are **minimum** notice periods required for full time and part time employees based on how long the employee has been employed and the employee's age.

Notice periods for dismissal

Employee's period of continuous service	Minimum 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

If the employee is **aged 45 years or older** and has at least two years' continuous service, they are entitled to one extra week of notice on top of the above notice periods – for example, a 50 year old employee who has worked continuously for 3½ years' must receive 4 weeks' notice (3 weeks' plus 1 week).

The notice periods also do not apply if the employee:

- is being dismissed for serious misconduct; or
- was employed for a specific period of time or task (e.g. a fixed term contract).

Visit www.dmirs.wa.gov.au/employment-ending for more information about dismissal notice periods.

You must also:

- pay out any unpaid wages and leave owing to the employee; and
- provide a separation certificate if the employee requests it (a written statement stating the period of employment and type of job or work performed).

Unfair dismissal

Domestic employees are protected from unfair dismissal. This means you cannot dismiss your employee for an unfair reason or in an unfair way. Unfair dismissal is where the dismissal of an employee is harsh, oppressive or unfair.

An employee who believes they have been unfairly dismissed can make a claim for unfair dismissal to the Western Australian Industrial Relations Commission (WAIRC). When the WAIRC is determining an unfair dismissal claim, it is required to have regard to whether an employee was employed by a household employer.

Visit www.dmirs.wa.gov.au/employment-ending for more general information about dismissal and FAQs (frequently asked questions) about unfair dismissal.

Managing employee performance

Sometimes you might feel that your employee's work is not meeting the required standard. Before you dismiss an employee, you should consider if anything can be done to help improve their performance.

Visit www.dmirs.wa.gov.au/employment-ending for information about **Managing employee performance**.

Serious misconduct

Serious misconduct is different to poor work performance. Serious misconduct is behaviour that is inconsistent with the employment contract – for example, causing a serious safety risk; committing theft, fraud or assault; or being intoxicated at work.

If, after considering all the evidence, you conclude that your employee has engaged in serious misconduct, you may then terminate the employee without giving them notice. This should be done in writing, and the employee should always be informed why they are being terminated.

Visit www.dmirs.wa.gov.au/employment-ending for information about serious misconduct.

Unlawful termination

Unlawful termination is different to unfair dismissal. Unlawful termination is when an employee is dismissed for one or more prohibited reasons which are not allowed under federal laws, including the *Fair Work Act 2009*. These laws apply to employees of household employers. The prohibited reasons include when an employee is dismissed because of:

- race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- trade union membership or activities; and
- temporary absence from work due to illness or injury.

Further information is available on the Fair Work Commission website at www.fwc.gov.au.

Redundancy

Redundancy occurs when an employer decides that they no longer want to employ anyone to do the job their employee has been doing. It is not a redundancy if the employee is dismissed and replaced with another employee.

If you make an employee redundant you will need to provide the correct notice period and pay out any unpaid wages and accrued leave. You do not need to pay redundancy payments unless you employ 15 or more employees. Visit www.dmirs.wa.gov.au/employment-ending for more information.

Stop workplace bullying and sexual harassment orders

A worker who reasonably believes that they have been bullied or sexually harassed at work may make an application to the WAIRC for a stop bullying or sexual harassment order.

Visit www.dmirs.wa.gov.au/workplace-orders for more information.

Damaging action

An employer must not take damaging action against an employee because the employee is able to make an employment-related inquiry or complaint to their employer or another person or organisation.

Damaging action includes dismissing an employee, altering an employee's position to their disadvantage, refusing to employ a prospective employee, or threatening to do these things.

An employment-related inquiry or complaint is one that an employee is able to make based on an employment entitlement or right that the employee has.

Visit www.dmirs.wa.gov.au/employee-protections for more information.

Advertising lawful wages

It is unlawful to advertise employment at a rate of pay that is less than the minimum wage applicable to the job.

Visit www.dmirs.wa.gov.au/employee-protections for more information.

Other employment obligations

Household employers have a number of obligations under other laws.

Workplace safety

You must provide a safe workplace for your employees. For more information about workplace health and safety, phone WorkSafe on 1300 307 877 or visit the website at www.dmirs.wa.gov.au/worksafe.

Workers' compensation

For information about workers' compensation and injury management, phone WorkCoverWA on 1300 794 744 or visit the website at www.workcover.wa.gov.au.

Equal opportunity laws

For information about equal opportunity and discrimination, phone the Equal Opportunity Commission on 9216 3900 or visit the website at www.eoc.wa.gov.au.

Tax and superannuation

You must comply with Commonwealth tax and superannuation laws. For more information about tax and superannuation, phone the Australian Taxation Office on 13 28 65 or visit the website at www.ato.gov.au.

Contact Wageline

Wageline at the Department of Mines, Industry Regulation and Safety provides information about WA employment laws. You can get more information about the topics in this publication on the Wageline website at www.dmirs.wa.gov.au/wageline or by calling Wageline on 1300 655 266.