



Changes to state employment laws in WA

Employment entitlements to apply to domestic employees employed by household employers

Minimum employment entitlements are being extended to state industrial relations system domestic employees employed by household employers.

This change has been introduced by the *Industrial Relations Legislation Amendment Act 2021* and will commence early in 2022.

Previously, employees in Western Australia who were employed in domestic work in private homes ('domestic employees') were excluded from the definition of 'employee' in the *Industrial Relations Act 1979* (IR Act) and, by extension, the definition of 'employee' in the *Minimum Conditions of Employment Act 1993* (MCE Act). The 'domestic employee' exclusion applied to people who were employed directly by a home owner or occupier to provide services of a domestic nature in the home, for example: personal care, child care, cleaning, or assistance with other household tasks.¹

The definition of employee in the IR Act will be amended and therefore, from early in 2022, the IR Act and the MCE Act will cover domestic employees employed by household employers.

It is important to note that whether a particular person who performs a domestic service in a private home – for example, cleaning – is an employee or independent contractor will depend upon the nature of the person's engagement. The amendment to the IR Act will not change a particular person's engagement from being a contractor (engaged under a contract for service) to an employee (engaged under a contract of service).

Domestic employees were not previously excluded from the *Long Service Leave Act 1958* (LSL Act). This leave entitlement for domestic employees will not change.

State employment laws are changing

This fact sheet is part of a suite of information on the changes to state employment laws that will commence early in 2022. For details on the changes visit www.dmirs.wa.gov.au/new-employment-laws.

¹ Unless there were more than six paying boarders or lodgers residing in the premises, or the person was engaged by someone other than the owner or occupier of the home.

Employment entitlements

Minimum Conditions of Employment Act

Domestic employees will now be entitled to minimum conditions under the MCE Act including the:

- minimum wage;
- annual leave, personal leave, bereavement leave, and family and domestic violence leave,² and
- provisions relating to public holidays, reasonable hours of work, authorised deductions from pay, and unreasonable requirements to spend or pay money to an employer.

Wageline's **Award free minimum pay rates and entitlements summary** provides the current minimum rates of pay and an overview of the current key employment entitlements for award free employees, including entitlements under the MCE Act and the LSL Act, as well as record keeping obligations of employers. View the summary at www.dmir.wa.gov.au/awardfree.

More information about each of the current minimum conditions of employment is available on the Wageline website at www.dmir.wa.gov.au/wageline.

Industrial Relations Act

Domestic employees will be able to make a claim for unfair dismissal or denial of contractual benefits to the Western Australian Industrial Relations Commission (WAIRC), and potentially be covered by a WA award.

Unfair dismissal

When the WAIRC is determining an unfair dismissal claim made by a domestic employee, it will be required to have regard to the fact that the employee was employed in a private home to provide services directly to the employer or a member of the employer's family or household.

WA awards

Award coverage is based on the type of work an employee performs and/or the industry of their employer, and each WA award contains a clause which specifies who that award covers. If an employee is covered by a WA award, they must receive its rates of pay and employment entitlements.

The amendment to the IR Act means it will be possible for a WA award to cover a domestic employee. However, whether there is an award that applies to a particular employee will depend on the type of work the employee is doing.

Domestic employees who mainly perform cleaning duties are likely to be covered by the WA Cleaners and Caretakers Award.

For child care, disability and aged care support work, there is not currently a WA award which would apply to an employee employed directly by a household employer.

Independent contractors

The changes will not affect domestic services which are provided in the home by independent contractors e.g. cleaners or gardeners. Whether a worker is an employee or an independent contractor depends upon the nature of the worker's engagement. More information on this topic is available on the Wageline website at www.dmir.wa.gov.au/employee-or-contractor.

² The leave an employee is entitled to will depend on whether they are a full time, part time, or casual employee. Casual employees are not entitled to annual leave or paid personal leave (personal leave will replace sick and carer's leave under the new provisions that will commence in early 2022). Unpaid family and domestic violence leave is a new entitlement that will commence in early 2022.

Unchanged employee entitlements and employer obligations

There are a range of existing entitlements which continue to apply to domestic employees under state and federal employment laws.

State legislation

Domestic employees are entitled to long service leave under the LSL Act and employers must keep employment records in accordance with the LSL Act. Visit www.dmirs.wa.gov.au/longserviceleave for information.

Domestic employees are covered by the *Workers' Compensation and Injury Management Act 1981* and the *Occupational Safety and Health Act 1984*.

Federal legislation

Under the federal *Fair Work Act 2009*, eligible state system domestic employees are entitled to:

- unpaid parental leave;
- notice of termination; and
- protection from unlawful termination.

Visit the Fair Work Ombudsman website at www.fairwork.gov.au for information on these topics.

More information

Visit the Wageline website at dmirs.wa.gov.au/wageline for information on state employment laws.

Specific information for householder employers on their new employment obligations will be published on the Wageline website in early 2022.

Disclaimer

The Department of Mines, Industry Regulation and Safety has provided this fact sheet as a general guide only and it is not designed to be comprehensive or to provide legal advice. The department does not accept liability for any claim which may arise from any person acting on, or refraining from acting on, this information.