



## Changes to state employment laws in WA

# Employment entitlements to apply to employees paid wholly by commission

Minimum employment entitlements are being extended to state industrial relations system employees who are paid wholly by commission.

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

Previously, employees in the state industrial relations system who were paid wholly by commission or percentage reward ('commission only employees') were excluded from the definition of 'employee' in the *Minimum Conditions of Employment Act 1993* (MCE Act). 'Commission only employees' means employees who are paid commission according to the amount they sell (for example, a percentage of their total sales) without also receiving a retainer or minimum weekly payment.

This exclusion meant that commission only employees were not entitled to the state minimum wage and other minimum conditions of employment provided in the MCE Act.

The definition of employee in the MCE Act will be amended and, early in 2022, commission only employees will be covered by that Act.

Commission only employees were not previously excluded from the *Industrial Relations Act 1979* (IR Act) and some commission only employees may be currently covered by a WA award. The employment conditions of these employees will not change.

Commission only employees were also not previously excluded from the *Long Service Leave Act 1958* (LSL Act).

### 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](http://www.dmirs.wa.gov.au/new-employment-laws).

## Employment entitlements

Commission only employees will 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;<sup>1</sup> 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** at [www.dmirs.wa.gov.au/awardfree](http://www.dmirs.wa.gov.au/awardfree) provides the current minimum rates of pay and an overview of 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.

More information about each of the minimum conditions of employment is available on the Wageline website at [www.dmirs.wa.gov.au/wageline](http://www.dmirs.wa.gov.au/wageline).

## Unchanged employee entitlements and employer obligations

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

### State legislation

Commission only 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](http://www.dmirs.wa.gov.au/longserviceleave) for information.

Commission only employees can make an unfair dismissal or denial of contractual benefit claim to the Western Australian Industrial Relations Commission.

Commission only 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 commission only state system 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](http://www.fairwork.gov.au) for information on these topics.

### Disclaimer

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<sup>1</sup> 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.