



Proposed extension of coverage of state employment laws to domestic employees

On 20 October 2021, the *Industrial Relations Legislation Amendment Bill 2021* (the Bill) was introduced into State Parliament. The Bill provides for changes to the definition of 'employee' in two key pieces of state industrial relations legislation: the *Industrial Relations Act 1979* (IR Act) and the *Minimum Conditions of Employment Act 1993* (MCE Act).

The Bill is currently being considered by State Parliament and the proposed changes to state employment laws will not come into effect until the Bill is passed by Parliament and proclaimed to come into operation.

Current situation

At present, employees engaged in domestic work in private homes are excluded from the definitions of 'employee' set out in the IR Act and MCE Act and are therefore not covered by these laws.

The 'domestic employee' exclusions currently apply to employees who are 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

Proposed changes

The Bill provides for the removal of the current exclusions, so that domestic employees would be:

- entitled to be paid at least the applicable minimum wage under the MCE Act, and entitled to the other WA minimum conditions of employment such as annual leave and sick leave;
- covered by the IR Act, meaning they would have the ability to make a claim for unfair dismissal or denied contractual benefits, and potentially be covered by a WA award.

All employers of domestic employees would be required to ensure that their employment arrangements comply with the IR Act and MCE Act, as well as existing employment entitlements and obligations under other relevant legislation.

Information on the other proposed changes in the Bill is available at www.dmirs.wa.gov.au/ir-reform.

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

The proposed changes would not affect domestic services which are provided in the home by independent contractors. Whether a worker is an employee or an independent contractor depends upon the nature of the worker's engagement. More information is available at www.dmirs.wa.gov.au/employee-or-contractor.

Key employee entitlements under the MCE Act

Extending coverage of the MCE Act to domestic employees means these employees must be paid at least the applicable minimum wage under the MCE Act, and are entitled to the other WA minimum conditions of employment such as annual leave and sick leave.

The current minimum rates of pay are available at www.dmirs.wa.gov.au/minimumpayrates and Wageline's summary of employee entitlements under the MCE Act is available at www.dmirs.wa.gov.au/awardfree.

The proposed amendments to the MCE Act in the Bill are detailed at www.dmirs.wa.gov.au/ir-reform.

Key employee entitlements under the IR Act

Unfair dismissal

Under the IR Act, employees can make a claim for unfair dismissal or denied contractual benefits in the Western Australian Industrial Relations Commission (WAIRC). The Bill provides that when the WAIRC is determining an unfair dismissal claim, it will be required to have regard to whether an 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

Extending coverage of the IR Act to domestic employees means that there is potential for an existing WA award to cover a domestic employee, or for a new award to be made to cover them. Awards are legal documents which set minimum pay rates and conditions for employees in certain industries or jobs.

Award coverage is based on the type of work an employee performs and/or the industry of their employer. At present there is no award for support workers employed by household employers in WA, however there could be a WA award that applies for domestic employees whose main role is **not** support work. For example, someone who mainly performs **cleaning** duties may be covered by the WA Cleaners and Caretakers Award.

Existing employee entitlements

The existing entitlements of domestic employees under various state and national laws will continue to apply.

State legislation

Eligible domestic employees are currently entitled to long service leave under the *Long Service Leave Act 1958* (LSL Act) and employers of domestic employees must keep employment records in accordance with the LSL Act. Visit www.dmirs.wa.gov.au/longserviceleave for information.

There is no exclusion of domestic employees from the *Workers' Compensation and Injury Management Act 1981* or the *Occupational Safety and Health Act 1984*² so these laws currently apply.

Federal legislation

Domestic employees in Western Australia may have an entitlement to unpaid parental leave, notice of termination and protection from unlawful termination under the federal *Fair Work Act 2009*. Visit the Fair Work Ombudsman website at www.fairwork.gov.au for information on these entitlements.

Employers also have superannuation and taxation obligations – visit www.ato.gov.au for more information.

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² The *Work Health and Safety Act 2020* is expected to come into force in January 2022.