



Proposed reforms to the definition of employee:

Domestic employees

On 25 June 2020, the *Industrial Relations Legislation Amendment Bill 2020* (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).

Current situation

At present, employees engaged in domestic service in private homes are excluded from the definitions of ‘employee’ set out in the IR Act and the 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 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;
- covered by the IR Act, meaning they would have the ability to make a claim for unfair dismissal or contractual benefits, and potentially to 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.

Independent contractors

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 on this topic is available on the [Wageline website](#).

Employee entitlements and employer obligations under the MCE Act

An overview of key employee entitlements and employer obligations under the MCE Act is available in Wageline’s Summary of minimum pay rates and entitlements for award free employees at www.dmirs.wa.gov.au/awardfree. A full copy of the MCE Act can be obtained at www.legislation.wa.gov.au

The MCE Act currently requires employers to keep specific employment records for each employee. The Bill provides for the record keeping requirements that are currently in the MCE Act to be deleted, and would establish new record keeping and pay slips obligations in the IR Act for all employers in the state system.

More information about each of the existing minimum conditions is available on the [Wageline website](#).

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.

Employee entitlements and employer obligations under the IR Act

Unfair dismissal

Under the IR Act, employees can make a claim for unfair dismissal or 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

Employees covered under the IR Act can be covered by a WA award. Award coverage is based on the type of work an employee performs and 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 award rates of pay and employment entitlements.

At present, domestic employees are excluded from the IR Act and therefore cannot be covered under a WA award. Removal of the exclusion in the IR Act would mean that it would be possible for a WA award to cover a domestic employee. However, for some common types of domestic work, there is not currently any WA award which would apply to an employee employed by a domestic employer, even if the exclusion in the IR Act was removed.

Existing employee entitlements and employer obligations

Existing requirements in relation to domestic employees under various State and Federal laws will continue to apply.

State legislation

There is no exclusion of domestic employees under the *Long Service Leave Act 1958* (LSL Act). Domestic employees are entitled to long service leave 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*.

Federal legislation

Under the federal *Fair Work Act 2009*, domestic employees in Western Australia are entitled to:

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

The Fair Work Ombudsman can provide information about requirements in the *Fair Work Act*, visit www.fairwork.gov.au. Employers also have obligations in relation to superannuation and taxation – visit www.ato.gov.au for more information.

More information

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

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