



Understanding employment obligations

A guide for new employers in the state industrial relations system

Two systems of employment law operate for the private sector in WA, the state industrial relations system and the national fair work system. Which system covers a particular employer depends on the business structure of the employer, and the two systems have different employment rights and obligations.

This publication is only for employers in the state industrial relations system.

Before you start - work out if you are covered by the state or national industrial relations system. Watch our video on this topic at www.dmirs.wa.gov.au/irsystemguide.

The state system covers:

- Private sector businesses and their employees that operate as:
 - sole traders.
 - unincorporated partnerships where none of the partners in the business are Pty Ltd entities.
 - unincorporated trust arrangements where none of the trustees or other entities in the trust arrangement are Pty Ltd entities.
 - incorporated associations and other not-for-profit organisations (including sporting clubs and school P&C's) that are not trading or financial corporations.

National system employers are those that are:

- Pty Ltd businesses that are trading or financial corporations.
- incorporated partnerships where one or more of the partners in the business is a Pty Ltd entity.
- incorporated trust arrangements where one or more of the trustees or other entities in the trust arrangement is a Pty Ltd entity.
- incorporated associations and other not-for-profit organisations that are trading or financial corporations.

If you are not sure which system covers your business, you can contact Wageline on 1300 655 266 and provide the name of the business and the ABN and Wageline can assist with a business search over the phone.

Disclaimer

The Department of Mines, Industry Regulation and Safety has prepared this document to provide general information. It is intended as a general guide only and 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.

About this guide

This guide provides an overview of key employment obligations for state system employers. It does not include all obligations that may be required by a relevant WA award or state employment laws.

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 employment laws **do not apply** to that person and the information in this publication is not relevant.

Comprehensive information on your employment obligations is available on the Wageline website www.dmirs.wa.gov.au/wageline or by contacting Wageline on 1300 655 266.

If you employ a disability or aged care support worker in a private capacity (that is, not as part of a business), you should consult Wageline's "Employment entitlements for support workers – a guide for household employers" publication, available at www.dmirs.wa.gov.au/householdemployers.

Terms used in this guide

This section explains the meaning of some key words used in this guide.

- **Entitled** means an employee has a legal right to something.
- **Entitlements** means the things an employee is legally entitled to. For example: **entitlements** for an employee include the minimum wage. An employee is **entitled** to be paid at least the minimum wage.
- **Obligations** means things you must do because the law says so.
- **Accrue** means build up over time.
- **Pro-rata** means "in proportion".

Introduction

Employers in the state industrial relations system have obligations under state laws including:

- the *Industrial Relations Act 1979* (IR Act);
- the *Minimum Conditions of Employment Act 1993* (MCE Act); and
- the *Long Service Leave Act 1958* (LSL Act).

Some provisions of the national *Fair Work Act 2009* also apply to state system employers. This guide provides an overview of key aspects of both state and national employment laws that are relevant to state system employers, and highlights where different requirements may apply for employees covered by a WA award.

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

Contact Wageline

Contact Wageline on 1300 655 266 if you have questions about your employment obligations. Follow Wageline on social media to keep informed:



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WA awards

WA awards are legal documents that set the legal minimum pay rates, allowances, working hours, and leave entitlements for employees in a particular industry or occupation. Many employees in the state system are covered by a WA award. Visit the Understanding WA awards page to learn more or watch our video on this topic.

Award coverage is based on the type of work an employee performs and the industry of their employer. Each WA award contains a clause which specifies who that award covers. For example, the *Restaurant, Tearoom and Catering Workers Award* generally applies to counter hands, wait staff and kitchen staff working in restaurants, cafes and take away food businesses.

Wageline's **WA awards for common jobs** webpage at www.dmirs.wa.gov.au/commonjobs lists some of the most common jobs and the relevant WA awards that apply to employees in state system businesses. You can also contact Wageline on 1300 655 266 for information about WA awards.

If an employee is covered by a WA award, the pay rates, leave entitlements, allowances and penalty rates (such as higher pay for working on the weekend or a public holiday) outlined in the WA award must be provided to the employee, and it is unlawful to provide pay rates or leave conditions below the WA award provisions. You can find pay rates and an overview of employment conditions for many WA awards in Wageline's **WA award summaries**, available at www.dmirs.wa.gov.au/awardsummaries.

Employees not covered by a WA award

If an employee is not covered by a WA award, the current minimum rate of pay and the leave entitlements in the MCE Act are the minimum legal entitlements of the employee. It is unlawful to provide pay rates or leave conditions below these standards.

Types of employment arrangements

There are different types of employment arrangements, and employees have different entitlements depending on their type of employment 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 a week.

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.

Many WA awards specify a minimum number of hours a casual employee can work in a shift, as well as restrict how long an employee can be employed as a casual. Such restrictions do not apply to award free casuals. Please check any specific requirements in the relevant WA award summary.

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

Employment of children

There are restrictions on the type of job and working hours for children under 15 years of age. These laws apply to all Western Australian businesses and employers in the state and national industrial relations systems.

Visit www.dmirs.wa.gov.au/whenchildrencanwork for more information.

Pay rates

Pay rates for employees covered by a WA award

If an employee is covered by a WA award, the pay rates outlined in the relevant WA award must be provided to the employee.

It is unlawful to pay an employee **less** than the WA award pay rate that applies to them. You can agree to pay an employee a rate **higher** than the relevant WA award pay rate.

Employees covered by an award may have an entitlement to a higher than normal rate of pay if they work more than 38 hours each week or more than their normal working hours. There may also be an entitlement to penalty pay rates if they work at certain times, such as at night or on the weekend or on public holidays.

Wageline's **WA award summaries** detail the pay rates and main employment obligations for the most used WA awards. These award summaries are available at www.dmirs.wa.gov.au/awardsummaries. Complete versions of WA awards are on the Western Australian Industrial Relations Commission website at www.wairc.wa.gov.au.

Pay rates for award free employees

If an employee is not covered by a WA award, the current minimum rate of pay under the MCE Act is the minimum legal pay rate for the employee. The minimum pay rate will depend 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 an employee **less** than the legal minimum pay rate that applies to them. You can agree to pay an employee a rate **higher** than the legal minimum rate.

Award free employees must be paid for every hour worked, but do not have an entitlement to a higher rate of pay if they work more than 38 hours each week or more than their normal working hours.

Visit www.dmirs.wa.gov.au/minimumpayrates for the current minimum rates of pay for award free employees.

Apprentice and trainee pay rates

There are specific pay rates for employees who are undertaking an apprenticeship or a traineeship. Visit www.dmirs.wa.gov.au/apprenticepayrates or www.dmirs.wa.gov.au/traineepayrates for more information.

WA award and minimum pay rates usually increase each year. Subscribe to the Wageline News www.dmirs.wa.gov.au/wageline-news, or [follow Wageline on social media](#) to stay informed.

Deductions from pay

An employer may **only** make a deduction from an employee's pay if:

- the employer is required by a court or a state or federal law to make the deduction (e.g. tax that must be withheld from the employee's pay);
- the employee has authorised the deduction in writing (as part of a written employment contract or otherwise) and the deduction is paid on behalf of the employee; or
- the employer is authorised by the WA award to make the deduction, and the deduction is paid on behalf of the 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.

A term of a WA award or employment contract providing for a deduction from an employee's pay will be of no effect if it is for the benefit of the employer or a party related to the employer and is unreasonable in the circumstances.

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.

Visit www.dmirs.wa.gov.au/payroll-essentials for more information about deductions from pay.

Pay slips

Employers need to provide a pay slip to each employee within **one** working day of paying the employee for work performed.

Visit www.dmirs.wa.gov.au/pay-slips for details of the information that must be included on a pay slip.

Public holidays

Employment entitlements for public holidays will vary based on an employee's award coverage and employment arrangements.

If a full time or part time employee would normally work on a certain day, but they are not working 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. Most WA awards specify rates of pay for working on a public holiday.

Visit www.dmirs.wa.gov.au/publicolidays for the dates of Western Australian public holidays and www.dmirs.wa.gov.au/publicolidaypay for information on employment entitlements for public holidays.

Keeping employment records

It is compulsory for all employers to keep employment records which detail a range of specific information. Visit www.dmirs.wa.gov.au/employmentrecords for details of record keeping requirements.

Working hours

Requirements around working hours will vary based on an employee's award coverage.

Working hours for employees covered by a WA award

Most WA awards regulate the number of hours employees can work and when these hours can be worked. A 38 hour week is the normal hours for a full time employee under the majority of WA awards. A part time or casual employee can work less hours per week, and many WA awards establish minimum and/or maximum numbers of hours for part time and casual employees.

Most WA awards establish a span of hours during which an employee must work their 38 hours per week (or appropriate part time or casual hours).

Working hours for employees not covered by a WA award

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.

If an employee is not covered by a WA award, you and the employee can agree how working hours will be spread throughout the week and the times and days the employee will work. This could be in a written contract of employment.

Reasonable hours of work

There is a minimum condition of employment relating to reasonable hours of work that applies to both employees covered by WA awards and award free employees. Employees can only be asked or required to work more than their ordinary hours if the additional hours are **reasonable**.

Visit www.dmirs.wa.gov.au/workinghours for more information.

Leave entitlements

An employee's leave entitlements will depend on whether they are a full time, part time, or casual employee.

The leave entitlements detailed here are the minimum leave entitlements. WA awards may specify additional 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 family and domestic violence leave	✓	✓	✓
Unpaid parental leave	✓	✓	✓
Long service leave	✓	✓	✓

Annual leave

Full time employees are entitled to a minimum of four weeks of paid annual leave for each year of completed service, up to 152 hours. **Part time** employees are entitled to a minimum of four weeks of paid annual leave per year paid on a pro rata basis according to the number of hours they are required ordinarily to work in a four week period. **Casual** employees are not entitled to annual leave.

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

Personal leave

Personal leave entitles a full time or part time employee to paid time off work due to either illness or injury to themselves, or because they have to care for a member of their family or household who requires care or support because they are sick, injured or affected by an unexpected emergency.

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

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.

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

Family and domestic violence leave

Full time, part time and casual employees are entitled to five days' unpaid family and domestic violence leave in each 12 month period.

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

Parental leave

Parental leave allows an employee to take time off to care for a new baby or newly adopted child. If an employee has worked for you for at least 12 months they may be entitled to unpaid parental leave. Full time, part time and casual employees can take unpaid parental leave. If an employee is eligible they can take up to 12 months of unpaid parental leave. This can be extended by up to 12 months.

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

Long service leave

Long service leave is a paid leave entitlement for full time, part time and casual employees.

The entitlement to payment of long service leave under the *Long Service Leave Act* depends on the length of the employee's continuous employment, which may include service with a previous employer where there has been a [change of business ownership](#).

An employee will be covered by the state *Long Service Leave Act 1958* unless they have an alternative entitlement that provides a better or at least equivalent long service leave entitlement, for example, under an award, agreement, law or contract of employment. Employees who work on site in the construction industry may be covered by the *Construction Industry Portable Paid Long Service Leave Act 1985*.

A new employer who buys or takes over a business and retains the existing employees, will take on the long service leave obligations for those employees when business ownership changes.

Visit www.dmirs.wa.gov.au/longserviceleave for more information or watch our videos at www.dmirs.wa.gov.au/lsl-videos.

When employment ends or changes significantly

You will have obligations if you are dismissing an employee or an employee is resigning. There are also things you must do if you want to make significant changes that will affect an employee.

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 may need to provide notice of resignation. Notice is the time between when an employee tells you they are resigning, and when their employment actually ends. The required notice period may be specified in an employment contract or in a WA award that applies to the employee.

Visit www.dmirs.wa.gov.au/employment-ending for more information on employer obligations when an employee resigns.

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.

Managing employee performance

Sometimes you might feel that an 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.

Notice periods and other requirements

If you have made a decision to dismiss an employee, you must provide the required notice period to the employee. A notice period is the time between when you tell an 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.

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

Unfair dismissal

Employees are protected from unfair dismissal. This means you cannot dismiss an employee for an unfair reason or in an unfair way. Unfair dismissal is when an employee is dismissed from their job in a harsh, unjust or unreasonable manner. An employee who believes they have been unfairly dismissed can make a claim for unfair dismissal to the Western Australian Industrial Relations Commission.

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

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.

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 specific reasons which are not allowed under federal laws. The reasons include when an employee is dismissed because of:

- race, colour, sex, sexual orientation, age, family or carer's responsibilities;
- 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 an employee has been doing. It is not a redundancy if an 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.

The entitlement to redundancy payments can depend upon the WA award that applies. Severance pay does not generally apply to businesses with less than 15 employees (including casual and part time employees). However, some WA awards have specific severance pay requirements that apply regardless of the number of employees in a business.

Visit www.dmirs.wa.gov.au/employment-ending for more information about redundancy.

Introduction of changes with significant effect

If you are going to take action that is likely to have a significant effect on an employee, there are things you must do. Significant actions could include changes to the work an employee does or changes to the hours they work. You must notify an employee about the change in writing and consult with them about the decision.

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

Other employment obligations

Employers have a number of obligations under other laws. Contact the relevant agency for more information.

- Work health and safety - WorkSafe on 1300 307 877 or visit www.dmirs.wa.gov.au/worksafe.
- Workers' compensation - WorkCoverWA on 1300 794 744 or visit www.workcover.wa.gov.au.
- Equal opportunity – the Equal Opportunity Commission on 9216 3900 or visit www.eoc.wa.gov.au.
- Tax and superannuation - the Australian Taxation Office on 13 28 65 or visit www.ato.gov.au.
- Apprenticeships and traineeships - the Department of Training and Workforce Development Apprenticeship Office on 13 19 54 or visit www.dtwd.wa.gov.au.