



Wageline Newsletter

December 2017 Edition

Wageline Newsletter provides information for employers in the state industrial relations system. It is relevant to businesses which operate as:

- sole traders (eg Jane Smith trading as Jane's Cafe)
- unincorporated partnerships (eg Jane and Bob Smith trading as Jane's Cafe)
- unincorporated trust arrangements (Jane and Bob Smith as trustees for Jane's Cafe).

Wageline Newsletter is not relevant for businesses and organisations in the national industrial relations system which operates as:

- Pty Ltd businesses that are trading or financial corporations (eg Smith Pty Ltd trading as Jane's Cafe)
- incorporated associations and other not-for-profit bodies (that are trading or financial corporations)

If your business or organisation is a national system employer please visit the [Fair Work Ombudsman website](#) for information on employment obligations.

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Christmas New Year 2017/18 public holiday information

The Christmas / New Year period is rapidly approaching and it is important to understand public holiday obligations for the festive season.

This season's public holidays are:

- Christmas Day, Monday 25 December 2017
- Boxing Day, Tuesday 26 December 2017
- New Year's Day, Monday 1 January 2018

Employers and employees should be aware of their employment obligations on these public holidays.

The [Christmas New Year 2017/18 public holiday arrangements page](#) on the Wageline website provides:

- An overview of the Christmas / New Year public holiday payment arrangements
- Detailed information on public holiday arrangements for:
 - State system award free employees
 - Shop and Warehouse Award
 - Restaurant, Tearoom and Catering Workers Award
 - Hairdressers Award

For information about employment obligations and entitlements on the upcoming public holidays contact Wageline on 1300 655 266.

Opening hours for Wageline over the festive season

Over the festive season Wageline's opening hours will be:

Monday 25 December	Closed
Tuesday 26 December	Closed
Wednesday 27 December	10am - 4.30pm
Thursday 28 December	8.30am - 4.30pm
Friday 29 December	8.30am - 4.30pm
Monday 1 January	Closed
Tuesday 2 January	8.30am - 4.30pm

Employment of children during the school holidays

During the school holidays some older children decide to take on a summer job. Employers, parents and young workers need to be aware that there are restrictions on which type of businesses can employ children under the age of 15 and restrictions on working hours for children under 15 that apply at all times, including during school holidays. Read more about [When children can work in WA](#) on the Wageline website.

Christmas casuals

The festive season has arrived! In preparation for the Christmas New Year period many businesses often employ extra staff as Christmas casuals to manage the increase in trading hours and customers over this time. Employers need to be aware of their obligations when hiring employees in this type of employment arrangement.



If an employee is only to be employed over the Christmas/ New Year period for a fixed term, it is important that employers define how long this period is with the employee before they commence working.

A common misconception about the employment of casual employees is that an employee can be a 'full time casual' or a 'permanent casual.' A casual employee is an employee employed to work on an irregular basis with no expectation of ongoing work. There is no type of employment which is 'full time casual' or 'permanent casual.'

Employers need to be aware that if a casual employee is working regular and consistent hours each week, it is likely this employee should be considered full time or part time, instead of casual. The consequences of getting this wrong can be costly for an employer who may be obligated to back pay an employee for unpaid leave entitlements they would have accrued had they been classified correctly.

Read more about [Types of Employment arrangements](#) on the Wageline website

Doctor fined for failing to produce employee records

A Greenwood medical practitioner has been fined \$6280 (and ordered to pay costs of \$1067) for failing to comply with a court order to supply an employee's records to an industrial inspector. Dr Patrick Allan Nugawela was found guilty of failing to comply with an order of the Industrial Magistrate's Court to produce records to an industrial inspector, and was fined in the Industrial Magistrate's Court yesterday.

In September 2016, a receptionist made a formal complaint to the Department of Commerce that she had not been paid wages for up to two weeks. An industrial inspector investigated, and in October and November served notices upon Dr Nugawela to produce records pertaining to the employee who lodged the complaint. The records requested included tax information and records that demonstrated when employment commenced, what hours were worked, the level of pay, leave entitlements and so on. On neither occasion did Dr Nugawela comply with the requirement to produce the records by the due date.

On February 9 2017, the Industrial Magistrates court found that Dr Nugawela had contravened the Industrial Relations Act by failing to comply with the requirement to produce the records imposed on him in October and November 2016. The court then ordered Dr Nugawela to produce the records within 14 days. He did not comply with the order and continues not to produce any of the records.

Magistrate Flynn convicted Dr Nugawela and imposed a general fine of \$1000 for the breach, plus a daily penalty of \$20 per day for every day since the commencement of the offence (a period of 264 days).

Labour Relations Director Private Sector Lorraine Field said the case should serve as a reminder to all employers of the importance of taking their employment obligations seriously.

"This decision sends a clear message that employers cannot simply ignore lawful requests by an industrial inspector to produce employment records," Ms Field said.

"Dr Nugawela's disregard for the law has resulted in a \$6280 fine, which comes on top of a \$4000 civil penalty imposed earlier this year for obstructing an industrial inspector.

"It is a serious issue not to comply with requests made by an industrial inspector or a court, and this Department will continue to take all necessary steps to ensure compliance with State employment laws, including prosecution action."

Wageline's frequently asked questions

WA award coverage

A common question Wageline is asked by both employers and employees is 'which WA award applies to the employee?'

WA awards are legal documents that cover many businesses and employees in the state industrial relations system and these awards set the minimum pay rates and entitlements for an industry or occupation.

Correctly identifying which WA award applies can be complex. Wageline strongly recommends that employers and employees contact us for information on WA award coverage.

Wageline has developed a list of common jobs and identified the relevant WA award that may apply to these jobs to assist employers and employees. This information is a general guide only. Visit the [WA awards for common jobs page](#) on the Wageline website.

Annual leave on termination

Wageline often receives calls about the requirements for paying out annual leave when an employee resigns or is terminated.

Under the *Minimum Conditions of Employment Act 1993* employees who leave their employment lawfully, or who are dismissed by the employer through no fault of their own, must receive payment for all annual leave (including pro rata annual leave) on termination.

Under this Act, employers are not required to pay out pro rata leave if an employee does not lawfully leave their employment (they do not provide the required notice period).

Where an employee is terminated for misconduct, the *Minimum Conditions of Employment Act* requires employers to pay out any untaken annual leave that relates to completed years of service, unless the untaken leave relates to a year of service that was completed after the misconduct occurred.

If an employee is covered by a WA award, the award may specify more favourable arrangements for the pay out of annual leave on termination. For instance, an award may entitle an employee to be paid out pro rata annual leave on termination even if they have not lawfully left their employment.

Employers covered by a WA award may also be required to pay annual leave loading when paying out accrued annual leave. Some WA awards also require this loading to be paid on pro rata annual leave. Employers should check the relevant WA award summary for specific requirements for annual leave and leave loading paid out on termination.

Award free employees will not receive any annual leave loading unless a contract of employment provides otherwise.

Read more about [Termination and dismissal](#) and [Annual leave](#) on the Wageline website.

Wageline Campaigns

Children working in fast food campaign extends to the regions

Since March this year the Department has been conducting a proactive compliance campaign about the employment of children in the fast food industry. The campaign has been aimed at fast food businesses in the Perth metropolitan area and is about educating employers about the employment of children laws under the *Children and Community Services Act 2004*.



The Department is now extending this campaign into the regional areas of Western Australia, starting with the South West in the major regional towns throughout the State.

Employers will be provided with the Employer Information Pack Employment of This is also available on the Wageline website and contains:

- A fact sheet for employers on employment of children laws.
- A self-audit checklist to help employers operating a shop or restaurant, (including a fast food or takeaway food business) to conduct a self-audit of compliance with the child employment laws.
- A template form for gaining written parental permission for employing children who are 13 or 14 years of age. The template form is provided in both Word and editable PDF format.

The minimum age for the employment of children in a shop, restaurant, fast food or takeaway food business is 13 years. Children aged 13 or 14 must have written permission from a parent and must not work during school hours, start work before 6.00am or finish after 10.00pm. children laws in WA - shop, restaurant, fast food or takeaway food business.

Website Updates

New fact sheet - Wageline's making a complaint process

Wageline often receives calls from employees who believe they have not been paid the correct wages or entitlements and Wageline advises clients on the process for resolving an underpayment issue.

Wageline has developed a new fact sheet about this process which outlines the steps for an employee to follow if they are concerned about underpayment of wages or entitlements.

Wageline is able to assist with alleged underpayments of:

- WA award pay rates and leave entitlements
- minimum pay rates and leave entitlements under the Minimum Conditions of Employment Act
- long service leave entitlements under the Long Service Leave Act.

The fact sheet is now available on the [Making a complaint about underpayment of wages and entitlements page](#).

Updates to termination and dismissal web information

Nearly all employers running their own business will at some stage have to deal with the termination of employment of one of their employees.

The termination and dismissal section of the Wageline website has been revamped to provide information specific for employers about the obligations they are required to meet when an employee's employment is terminated by dismissal or redundancy or when an employee resigns.

Read more on the [Termination and dismissal section](#) of the Wageline website.