

04



Australian Government

Fair Work
OMBUDSMAN

Best Practice Guide A guide for young workers

A best practice guide for young workers

Looking for your first job or a new job? This can be an exciting time.

To help ensure you get a proper deal when you start your job, it is important to find out about your rights and entitlements and what responsibilities you may have in the workplace.

This Best Practice Guide explains:

- things you need to know about your employment conditions

- things you need to know before you start work

- things you need to know when you start work

- what protections you have against harassment and discrimination

- union membership, and

- the importance of workplace health and safety.

There is also a checklist and some helpful hints at the end of this guide.

This guide illustrates what best practice is when it comes to getting your first job. For specific information regarding your minimum legal entitlements and obligations, contact the organisations listed under the 'For more information' section at the end of this guide.

Am I allowed to work?

Some state and territory governments have minimum age restrictions about when you can get a job and when you are allowed to work. To find out whether any restrictions apply to you, contact the relevant government department in your state or territory. You can find their contact details under the 'For more information' section at the end of this guide.



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What are my employment conditions?

When you accept a job you will agree to work for your employer under certain terms and conditions. Generally, those terms and conditions will be set out verbally, in a letter of offer, a registered agreement or instrument (such as an enterprise agreement) and/or an award. While there are a number of documents that can set out the terms and conditions of your employment, most of them are likely to be set out in an award or instrument that applies to you. Contact the Fair Work Infoline on 13 13 94 for information on what award or instrument applies to you.

Generally you will be employed either on a casual, permanent part-time or full-time basis (refer to 'What is my employment status', below).

You should remember that:

- if your employment is subject to an award or an enterprise agreement, you should ask your employer for confirmation as to which award or agreement applies to you (and if possible obtain a copy)

- from 1 January 2010, if you are a new employee you must be provided with an information statement concerning the terms and conditions of employment (the Fair Work Information Statement)

- it is unlawful for you to be forced into signing any agreement.

Minimum conditions

From 1 January 2010 under the *Fair Work Act 2009* (FW Act) you are entitled to the following 10 minimum entitlements, wherever you work. Some of these 10 minimum entitlements do not apply to casual employees. You can call the Fair Work Infoline on 13 13 94 to find out more about your entitlements. These minimum entitlements are called the National Employment Standards (NES) and they are:

- a maximum standard working week of 38 hours (plus reasonable additional hours from time to time)

- 4 weeks paid annual leave each year. Part-time employees get a proportion of this depending on how much they work

- 10 days paid personal / carer's leave each year for full-time employees. Part-time employees get a proportion of this depending on how much they work. Once this paid leave has been used up, employees can take 2 days unpaid carer's leave per occasion

- community service leave for certain community service activities such as voluntary emergency management activity, voluntary fire-fighting or jury service.

- the right to accrue long service leave

- 8 prescribed public holidays each year, as well as any additional public holidays prescribed by state or territory law

- a minimum amount of notice prior to termination of the employment (or payment in lieu of notice)

- provision of an information statement at the commencement of your employment.

Where you have at least 12 months continuous service, you are also entitled to:

- the right to request flexible work arrangements if you are a parent or carer, until your child reaches school age and for parents of a disabled child, until the child reaches 18 years of age, and

- a right to 12 months of unpaid parental leave after the birth or adoption of a child (and the right to request to extend this period by a further 12 months which can only be refused on reasonable business grounds).

- redundancy pay if your employment is terminated by the employer because the employer no longer requires your job to be done by anyone, or because of the employer's insolvency or bankruptcy. The obligation to provide redundancy pay does not generally apply to employers with less than 15 employees.

Prior to 1 January 2010, the minimum employment conditions were set out in the Australian Fair Pay and Conditions Standard (AFPCS). In summary, the AFPCS included:

- minimum wage rates which are determined by the Australian Fair Pay Commission

- a minimum 20% loading for casual employees

- a maximum 38 hour week plus reasonable additional hours

- 4 weeks of paid annual leave per year for full-time employees. Part-time employees get a percentage of this depending on the hours they work

- 10 days of personal leave (this includes carer's and sick leave) per year. Part-time employees get a percentage of this depending on the hours they work

- 2 days of unpaid carer's leave per occasion

- 2 days of compassionate leave per occasion

- 12 months of unpaid parental leave.

Some of these minimum entitlements do not apply to casual employees. You can contact the Fair Work Infoline on 13 13 94 for more information.



Reasonable business grounds for refusing a request from an employee may include, for example: the effect on the workplace and the employer's business of approving the request, including the financial impact of doing so and the impact on efficiency, productivity and customer service; the inability to organise work among existing staff; and, the inability to recruit a replacement employee or the practicality or otherwise of the arrangements that may need to be put in place to accommodate the employee's request.

What is my employment status?

Generally, employees can be classified into the following groups:

Full-time permanent employees

Full-time employees normally work 38 hours per week (plus reasonable additional hours) and have an ongoing contract of employment. As a full-time employee, you are entitled to benefits such as sick leave, holiday pay, long service leave and carer's or other types of leave. You are also entitled to a period of notice on termination in most cases, and can usually access unfair dismissal laws once you have completed the minimum employment period.

Part-time permanent employees

Part-time employees are engaged for less than full-time hours but with similar entitlements to full-time employees. If you work part-time you will most likely receive an amount of annual leave and personal/carer's leave calculated according to the number of hours you work each week.

Casual employees

If you are employed as a casual employee, you do not normally have guaranteed hours of work each week and may be called to work at short notice. Casuals are not usually entitled to permanent employment entitlements, such as sick leave and annual leave, and notice periods do not apply to casuals upon termination of employment. However, as a casual employee, you will normally be paid a casual loading instead of getting the permanent employee entitlements.

Fixed term employees

Fixed term employees are employed as full-time or part-time employees for a specific period of time and have a set date for the end of their employment. This can include seasonal workers. For example, employees engaged as full-time employees for a fixed term during the ski season would be entitled to benefits such as annual leave and sick leave.

If you are unsure about your employment status you can contact the Fair Work Infoline on 13 13 94 for more information.

What do I have to do before starting work?

After you have accepted a position, and before you commence working, your employer should ask you to:

- complete a tax declaration form - if your employer does not provide you with this form you can obtain one from a post office or the Australian Taxation Office, and
- provide details for your employee records.

The details usually required are:

- full name
- residential address
- phone number
- emergency contact details
- superannuation fund details
- tax file number
- bank details including your bank account number
- your date of birth if you are under 21, so that your employer can determine the date you may become entitled to any applicable pay increases
- your parent or guardian's contact details if you are under 18.

You should always try to keep these details up to date. This will help to ensure that payments and any important communications get to you as quickly as possible. It is also very important in case of emergencies.

It is particularly important that you provide your employer with your tax file number. If you do not provide your employer with your tax file number you risk having tax deducted at a higher rate.

Probationary or qualifying periods

So that you and your employer can decide whether you can satisfactorily do a job, you may be subject to a probationary or qualifying period when you start employment.

You are always entitled to be paid for all the work you do during a probationary or qualifying period.

Pre-employment medicals

An employer is entitled to know if you have a condition that may affect your ability to work or a condition that may require them to make some adjustments in the workplace to protect your health and safety. However, employers are not entitled to your full medical history. If you sign an authorisation for an examining doctor, be aware of what information this releases.

Getting paid!

Now, let's talk about the major reason why most of us are at work - to get paid! Your employer should pay you at least the minimum rate shown in your award, agreement or industrial instrument. Depending on your age, you may be paid a junior rate. Different rates apply for apprentices and trainees. You may also be paid allowances for doing certain tasks or loadings for working at certain times, such as weekends, late nights or public holidays. You should be paid for all of the hours you work, including:

- team and individual meetings at the employer's request

- trial periods

- opening and closing the business

- training sessions, courses or days

- travelling during work hours in association with your employment

- compulsory attendance at a function.

You should be paid on a set day - usually weekly, fortnightly or monthly. So that you know what you are being paid for, you must also get a pay slip from your employer within one day of being paid. Your pay slip must include:

- your name and classification

- your employer's full name and Australian Business Number (ABN)

- date of payment of wages

- period covered

- date you were paid on

- number of hours being paid for

- ordinary and overtime rates and the amounts paid at that rate

- if you are paid an annual rate of pay, that rate as at the last day in the pay period

- all deductions made

- details about superannuation

- gross wages (the amount before tax) paid

- net wages (the amount after tax) paid, and

- allowances, loadings, penalty rates and other amounts paid.

Hours of work

Your hours of work will depend on the industry in which you work and the award or agreement you work under. There may be minimum hours that you will be required to work. If you work hours outside of your agreed hours, then you may be entitled to overtime.

Overtime and weekend penalty rates

If overtime or weekend work is required, you should be aware of what conditions are offered. You should ask your employer the following questions.

- What counts as overtime in this job?

- What will the rate of overtime pay be?

- Should I be receiving penalty rates for working overtime (such a time and a half or double time)?

- Do penalty rates apply for weekend or late night work?

Most awards and agreements set out penalty rates. However, an employee may be able to negotiate with their employer to have paid time off instead of getting payment for overtime.

Breaks

You should check your award or agreement to find out what rest breaks and meal breaks apply to you. Most employees are entitled to at least a 30 minute unpaid break after 5 hours work.

Public holidays

Generally, employees who are required to work on a public holiday are entitled to be paid for that public holiday with penalty rates. This may vary according to your award or agreement.

You can say no to working on a public holiday if you have reasonable grounds. Whether you can say no depends on the type of work you do, whether you get extra pay for working on public holidays, how much notice you are given, your reasons for refusing or your personal circumstances (including family responsibilities).

Superannuation

If you are 18 years of age or older, and you earn \$450 or more (before tax) in a calendar month, your employer must make superannuation contributions on your behalf.

If you are under 18 years of age and you earn \$450 or more (before tax) in a calendar month and you work more than 30 hours in a week, your employer must make superannuation contributions on your behalf.

For more information on superannuation entitlements you should contact the Australian Taxation Office.

Deductions from pay

An employer should not deduct any amount from your wages unless required by law or you have agreed to it in writing and the deduction is principally for your benefit. If you are under 18, your parent or guardian must also agree to the deduction in writing.

Union membership

You have the choice to join or not join a union. All employees have the right to join the union that covers their type of employment. Your union may:

- assist in developing an award or agreement for your sector or employer in order to improve your wages and conditions

- provide you with advice and assistance on how to handle workplace negotiations on pay and conditions, and

- represent you in workplace issues.

Membership of a union is confidential and you do not have to inform your employer or work colleagues. It is against the law for a person to discriminate against you because you are or are not a member of a union.

Harassment and discrimination

It is against the law for anyone to harass you or discriminate against you at work or when you are seeking work because of your sex, race, colour, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, social origin or because you are temporarily absent from work because of an illness or injury. It is also against the law for a worker to sexually harass another in the workplace.

If you believe you have been harassed or discriminated against, you should contact:

- the Fair Work Ombudsman

- your employer or human resources manager

- an equal opportunity officer or grievance officer

- a union (if you are a member)

- Fair Work Australia or

- an equal opportunity or anti-discrimination body in your state.

Bullying

It is against the law for a worker to be bullied in the workplace. Bullying is behaviour or language that can scare, degrade or humiliate somebody.

If you believe you have been bullied, you should contact the occupational health and safety body in your state or territory.

Workplace health and safety – don't risk it!

Your employer has an obligation to ensure that you have safe systems of work, safe equipment and proper training. However, *you also* have an obligation to follow appropriate workplace health and safety procedures. It is important that you follow these procedures, because the last thing you want to do is to risk your own health and safety or the safety of your workmates.

If you find problems like faulty equipment, slippery floors or a lack of safety gear, tell your employer immediately. You should also tell your employer if you are unhappy with your training and, if nothing happens, see your occupational health and safety representative.

You must always:

- follow safety procedures

- report safety hazards

- correctly wear safety gear, and

- not put other people (including fellow workers) at risk.

Always remember that working after drinking alcohol or taking drugs is dangerous, especially if other people are relying on you.

Finishing up or termination of employment

In most cases, you or your employer can end your employment at any time by giving notice according to your award or agreement. If you resign you should check your award or agreement to determine how much notice you must give your employer, otherwise your employer can keep wages to cover the notice period. Generally, if you are a casual employee your job may be terminated at one hour's notice.

Unless you are a casual, you should be paid out any annual leave owing to you when your employment ends.

If the business changes so that your job no longer exists then you may be offered another job or be made redundant. If your employment contract has finished (if you are a fixed-term employee), then your employment ends.

If you are dismissed during the probation or qualifying period in the first 6 months of your employment (or the first 12 months of employment with a small business employer) you cannot access unfair dismissal laws. A small business employer is an employer with less than 15 full time employees (or their equivalent) at the time of the dismissal.

If you are dismissed at any time during the probation or qualifying period *because* of the fact that you are entitled to a workplace right (for instance a right to join a union) or your dismissal is for an unlawful reason (such as discrimination) you have the right to bring a claim to Fair Work Australia or lodge a complaint with the Australian Human Rights Commission.

Once you have worked for a six month period for your employer (or a 12 month period for a small business employer), the law also protects you from being unfairly dismissed from your employment.

Take all warnings from your employer seriously. If you don't do your job properly, you can be dismissed, however you should be given a warning before any dismissal (except in the case of serious misconduct). Three warnings are not necessarily required.

If you are given a warning, remember to ask your employer what you need to do to improve your performance. Seek advice and request any work related training that would help you to perform your duties properly. You may want to consider taking a support person with you to meetings about your performance.

You may be dismissed *without notice* if you have:

- acted dishonestly (for instance, lying to your employer)

- refused to follow reasonable instructions from your employer or person in charge, or

- behaved so badly that instant dismissal is justified (for instance, stealing or fighting).

You cannot be dismissed because of things like your race, sex, age, physical or mental disability, sexual preference, or for filing a complaint against your employer for breaching a law.

The case study on the following page is a practical example of a workplace issue.



A guide for young workers

Sharyn is 17 years old and has been employed at Nathan Inc coffee shop for over a year. Nathan, the store owner and manager, tells Sharyn that she needs to be at work 15 minutes before the shop opens to prepare the shop for customers. He also told Sharyn that she would not be paid for the time before the shop opened because it was “set up time” and not “work time”.

Sharyn’s friend, Amira, works at a nearby bakery. Amira was also required to be at work 15 minutes before the shop opened to put the bread and cakes on display. Amira tells Sharyn that she is paid for the time spent putting the food on display and preparing the shop for customers.

What do you think?

Should Sharyn have been paid for the time she was required to prepare the shop for customers?

The answer

Yes. Sharyn was entitled to be paid for all time that she worked. She could speak to the Fair Work Ombudsman for assistance to get the money that Nathan owes her.

Sharyn explained to Nathan that she felt it was not fair that she was not being paid for the full time that she had worked. She also said that she was considering making a complaint about her concerns. Nathan then said: *“Fine, well if you make a complaint, you’re sacked.”* Two days later, even before Sharyn had made the complaint, Nathan sacked Sharyn.

Sharyn was very upset about being sacked and went to the Fair Work Ombudsman to lodge a claim.

What do you think?

Could the employer do what he did in this case?

The answer

No. Sharyn was entitled to make a complaint to the Fair Work Ombudsman about her employer’s actions. Nathan was acting against the law by threatening to dismiss Sharyn for making a complaint. Sharyn has a right under a workplace law to make the complaint, and Nathan’s threat to dismiss Sharyn, and his actual dismissal of Sharyn, are both against the law. Penalties can apply to employers who act like this. Also, if Sharyn had chosen to bring an unfair dismissal claim before Fair Work Australia, she may have received compensation for any lost wages and possibly also an order reinstating her back to her position at the coffee shop.

Checklist for young workers and helpful hints

Although exciting, starting your first job or going into a new industry can also be a challenge, so it is important as a young worker to understand:

- ✓ what your rights and entitlements are on issues about your conditions of employment, rates of pay, working hours, breaks and public holidays

- ✓ what information you should have before you accept a job

- ✓ the things you should expect from your employer in terms of the workplace environment (for example, a workplace free from unlawful discrimination and harassment)

- ✓ your obligations in the workplace as to health and safety and also your employer's obligations

- ✓ your right to join, or not join, a union

- ✓ what happens when you are leaving a job.

Helpful hints

- keep a diary of days and hours worked

- keep copies or records of your employment details, pay slips, your agreement or award and your superannuation and tax documents

- ask your employer questions if you are unsure

- take up any offers or opportunities for additional training or education within the workplace

- remember there are always Government contacts that can help you if you get stuck. See the 'For more information' section at the end of this guide for a list of organisations that can help.

For more information

Fair Work Online

www.fairwork.gov.au

For employment issues

Fair Work Ombudsman

13 13 94

www.fwo.gov.au

For termination of employment issues

Fair Work Australia

1300 799 675

www.fwa.gov.au

For tax or superannuation issues

Australian Tax Office

13 10 20

www.ato.gov.au

For information on the minimum age of employment in your state or territory:

Australian Capital Territory
Office for Children, Youth
and Family Support
(02) 6205 9461

www.dhcs.act.gov.au/ocyfs

New South Wales Office
of Industrial Relations
131 628
www.industrialrelations.nsw.gov.au/Young_workers.html

Northern Territory
Department of
Education and Training
(08) 8999 5659
www.det.nt.gov.au

Queensland Department
of Industrial Relations
1300 369 945
www.wageline.qld.gov.au/youngworkersrights/starting_work.html

SafeWork SA
1300 365 255
www.safework.sa.gov.au

Workplace Standards
Tasmania

1300 366 322

www.wst.tas.gov.au

Workforce Victoria

1800 287 287

www.business.vic.gov.au

Labour Relations

– Western Australia

1300 655 266

www.commerce.wa.gov.au/LabourRelations

For information about discrimination contact:

Fair Work Ombudsman

13 13 94

www.fwo.gov.au

Australian Human
Rights Commission

1300 369 711

www.humanrights.gov.au

Australian Capital Territory
Human Rights Commission
(02) 6205 2222

www.hrc.act.gov.au

New South Wales
Anti-Discrimination Board

(02) 9268 5544

www.lawlink.nsw.gov.au/adb

Northern Territory
Anti-Discrimination
Commission

(08) 8999 1444

www.adc.nt.gov.au

Anti-Discrimination
Commission Queensland
1300 130 670

www.adcq.qld.gov.au

South Australian Equal
Opportunity Commission
(08) 8207 1977

www.eoc.sa.gov.au

Tasmanian Office of
the Anti-Discrimination
Commissioner
(03) 6233 4841

www.antidiscrimination.tas.gov.au

For more information

Victorian Equal Opportunity
& Human Rights
Commission
(03) 9281 7111
www.equalopportunity.commission.vic.gov.au

Western Australian Equal
Opportunity Commission
(08) 9216 3900
www.eoc.wa.gov.au

For information on
occupational health
and safety in your state
or territory

ACT Work Safety
Commissioner
(02) 6205 0333
www.worksafety.act.gov.au

WorkCover NSW
13 10 50
www.workcover.nsw.gov.au

NT WorkSafe
1800 019 115
www.worksafe.nt.gov.au

Queensland Workplace
Health and Safety
1300 369 915
www.deir.qld.gov.au/workplace/index.htm

SafeWork SA
1300 365 255
www.safework.sa.gov.au

WorkCover Tasmania
(03) 6233 7657
(From outside Tas)
1300 366 322
(From within Tas)
www.workcover.tas.gov.au

WorkSafe Victoria
(03) 9641 1444
www.workcover.vic.gov.au

WorkSafe Western Australia
1300 307 877
www.commerce.wa.gov.au/WorkSafe

For information on
apprenticeships

Australian Apprenticeships:
13 38 73
www.australianapprenticeships.gov.au

Acronyms used in this guide

ABN Australian Business Number

AFPCS Australian Fair Pay and Conditions Standard

ATO Australian Tax Office

FWA Fair Work Australia

FW Act Fair Work Act 2009

Disclaimer

This information has been provided by the Fair Work Ombudsman (FWO) as part of its function to provide education, assistance and advice (but not legal or professional service advice). The FWO does not provide this information for any other purpose. You are not entitled to rely upon this information as a basis for action that may expose you to a legal liability, injury, loss or damage. Rather, it is recommended that you obtain your own independent legal advice or other professional service or expert assistance relevant to your particular circumstances. Produced August 2009.

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