

04



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.



- 01 Work & family
- 02 Consultation & cooperation in the workplace
- 03 Use of individual flexibility arrangements
- 04 A guide for young workers
- 05 An employer's guide to employing young workers
- 06 Gender pay equity
- 07 Small business & the Fair Work Act
- 08 Workplace privacy
- 09 Managing underperformance
- 10 Effective dispute resolution
- 11 Improving workplace productivity in bargaining
- 12 Parental leave

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, or instrument such as an enterprise agreement 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. Visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94 for information on what award or enterprise agreement 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 enterprise agreement applies to you (and if possible obtain a copy)

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

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

Minimum conditions

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 visit www.fairwork.gov.au or 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)

- four 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 up to two 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

- eight 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 employment (or payment in lieu of notice)

- provision of the Fair Work Information Statement at the commencement of employment.

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

- make a written request for flexible working arrangements if you:
 - are the parent, or have responsibility for the care, of a child who is of school age or younger
 - are a carer (within the meaning of the *Carer Recognition Act 2010*)
 - have a disability
 - are 55 or older
 - are experiencing violence from a member of your family or
 - provide care or support to a member of your immediate family or household, who requires care or support because they are experiencing violence from their family

A request for flexible working arrangements can only be refused on reasonable business grounds.

- 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).
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- 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.
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Some of these minimum entitlements do not apply to casual employees. You can visit www.fairwork.gov.au or 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 cost of accommodating the request

- capacity to reorganise the work

- practicality of the arrangement or the impact on efficiency, productivity or customer service of the business.

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 visit www.fairwork.gov.au or 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 your full rate of pay 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.

Unpaid trials

Sometimes you might be asked or required to perform work or undertake a trial to be evaluated for a vacant position. This skill demonstration is used for the purposes of determining your suitability for a job. It is often referred to as a work trial.

A brief work trial can be legally unpaid if it is necessary to evaluate your suitability for the job, and:

- it involves no more than a demonstration of your skills, where they are relevant to a vacant position
- it is only for as long as needed to demonstrate the skills required for the job. This will be dependent on the nature and complexity of the work, but could range from an hour to one shift
- you are under direct supervision of the potential employer (or other appropriate individual) for the entire trial

Any period beyond what is reasonably required to demonstrate the skills required for the job must be paid at the appropriate minimum rate of pay. If an employer wants to further assess your suitability, they could employ you as a casual employee and/or for a probationary period and pay you accordingly for all hours worked.

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 or agreement. 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, your employer's full name and Australian Business Number (ABN)
- date of payment of wages
- pay 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 as 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 five 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's Superannuation Guarantee Hotline on 13 10 20.

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)
- the Fair Work Commission, or
- an equal opportunity or anti-discrimination body in your state.

Bullying

Everyone has a right not to be bullied at work. A worker is bullied at work if:

- a person or group of people repeatedly act unreasonably towards them or a group of workers
- the behaviour creates a risk to health and safety.

Unreasonable behaviour includes victimising, humiliating, intimidating or threatening a person.

There are national anti-bullying laws and state or territory health and safety bodies that can help people with bullying in the workplace.

For more information on the national anti-bullying laws, who can take action, and applying for an order to stop workplace bullying, contact the Fair Work Commission at www.fwc.gov.au.

For information on the state or territory laws about workplace health and safety, contact the workplace health and safety body in your state or territory. You can find their contact details under the 'For more information' section at the end of this guide.

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 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 workplace 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 six 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 employees (based on a simple headcount) 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 the Fair Work Commission 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.



Case study

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 is 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 complaint.

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 the Fair Work Commission, 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

Employment

Fair Work Ombudsman
13 13 94
www.fairwork.gov.au

Termination of employment and bullying

Fair Work Commission
www.fwc.gov.au

Tax or superannuation

Australian Tax Office
13 10 20
www.ato.gov.au

Minimum age of employment in your state or territory

Australian Capital Territory
Office for Children, Youth
and Family Support
13 34 27
www.communityservices.act.gov.au/ocys

New South Wales Office
of Industrial Relations
13 16 28
www.industrialrelations.nsw.gov.au

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

Queensland Department of
Justice and Attorney-General
(07) 3225 2299
www.justice.qld.gov.au

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

Workplace Standards
Tasmania
(03) 6233 7657
www.wst.tas.gov.au

Business Victoria
13 22 15
www.business.vic.gov.au

Labour Relations
– Western Australia
1300 655 266
[www.commerce.wa.gov.au/
LabourRelations](http://www.commerce.wa.gov.au/LabourRelations)

Discrimination

Fair Work Ombudsman
13 13 94
www.fairwork.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
1800 813 846
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

Victorian Equal Opportunity &
Human Rights Commission
1300 891 848
www.humanrightscommission.vic.gov.au

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

For more information

Workplace health and safety and bullying 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.worksafe.qld.gov.au/

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

WorkCover Tasmania
(03) 6233 5343 (from outside Tas)
1300 776 572 (from within Tas)
www.workcover.tas.gov.au

WorkSafe Victoria
1800 136 089
www.workcover.vic.gov.au

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

Apprenticeships and traineeships

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

Be MoneySmart

The Australian Securities and Investments Commission (ASIC) have free Be MoneySmart online training modules to help apprentices and VET school students manage their money and learn skills that will help them in the future.

For more information refer to their website at www.moneysmart.gov.au

Acronyms used in this guide

ABN Australian Business Number

NES National Employment Standards

FW Act *Fair Work Act 2009*

Disclaimer

The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this Best Practice Guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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