

Employment Law in Australia: What You Need to Know

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Australian Employment Law

You're in good hands with our team of
workplace lawyers

This employment law guide will give you an understanding
about employment law in Australia.

Both employees and employers need to be well-informed
about their rights, responsibilities, and legal obligations. This
comprehensive guide will provide an overview of Australian
employment law.

From employment contracts to workers' compensation, we've
got you covered.

If you want employment law advice, contact us today.

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Key Aspects of Employment Law in Australia

In Australia, employment is governed by the Fair Work Act, as well as some State and Territory laws.

Employment contracts

Types of employment agreements

Full-Time contract: This is the most common type of employment contract in Australia. Full-time employees work a standard number of hours each week and are entitled to benefits such as paid leave, sick leave, and superannuation.

Part-Time contract: Part-time employees work fewer hours than full-time employees. They have similar entitlements but on a pro-rata basis.

Casual employment contract: Casual employees work irregular hours and do not have guaranteed ongoing work. They receive a higher hourly rate to compensate for the lack of job security but have limited entitlements.



Fixed-Term contract: In this type of contract, employment is for a specified period or until a specific project is completed. Fixed-term employees have the same entitlements as permanent employees for the duration of their contract.

A fixed-term employment contract can be an upper-limit contract or for a fixed term. There are subtle but important differences between the two.



Employment contracts

What should be included in an employment agreement?

Describe the employer and the employee

The employing entity (including an ABN) and the employee's name should be clearly stated as well as their respective addresses.

We recommend that the job description be contained in a different document

It is recommended that employers do not incorporate a job description into the employment contract. This enables flexibility around the employee's duties so that a new contract may not be required if their duties change.

Describe the type of employment

Is the employment full-time, part-time, casual or fixed-term?

An overview of an employee's duties

Aside from a job description, the agreement should provide an overview of an employee's obligations. For example, a requirement to delegate the whole of their time and attention to their role while they are at work.

Probationary period

We recommend that a probationary period of 6 months is stated in a permanent employment agreement.

Complying with workplace policies

Workplace policies enable employers to set certain workplace standards. They should not be incorporated into the contract.

Set off clauses

Set-off clauses need to be worded carefully. They are important to ensure that annual salaries encompass all entitlements.

Termination of employment

A termination clause describes how and when the employment contract can be terminated.

Restraints of trade

A restraint of trade clause is also known as a non-compete clause and can protect employers.



The National Employment Standards

What are the National Employment Standards?

The National Employment Standards (NES) encompass a set of fundamental employment entitlements mandated by the Fair Work Act 2009 in Australia. This NES applies to most employees, regardless of their specific industry or employment type.

The NES covers various employment aspects including but not limited to maximum weekly working hours, annual leave, personal/carer's leave, parental leave and public holidays. They also encompass entitlements such as notice of termination, redundancy pay, and the right to request flexible working arrangements.

Other workplace rights, on the other hand, can vary widely. Those may be included in enterprise agreements or individual contracts and may provide additional or different entitlements tailored to specific employment situations.

In essence, the NES serves as a baseline for employment conditions in Australia, regardless of an employee's specific employment agreement, industry, or individual circumstance, and employers are required to comply with these standards as a minimum requirement. While other workplace rights may offer more specific or customised benefits based on different employment arrangements.

Where can I find the NES?

The Fair Work Commission is the central authority responsible for overseeing and administering workplace relations in Australia.

Their official website is a primary resource for accessing relevant information and materials regarding the NES, including fact sheets, and the full text of the Fair Work Act 2009, which outlines the NES.



Fair Work Commission

What is the Fair Work Commission?

The Fair Work Commission is an independent statutory authority established under the Fair Work Act 2009. It has many responsibilities including industrial relations, setting the national minimum wage and dealing with unfair dismissal claims.

What powers does the FWC have?

The FWC has significant powers and responsibilities.

It has the authority to approve, vary, or revoke modern awards and enterprise agreements. If a dismissal is found to be unfair, the FWC can order remedies such as reinstatement or compensation.

The FWC can also issue orders to stop or suspend industrial action or make determinations regarding its legality.

Does the FWC offer legal advice?

While the FWC provides assistance and guidance, its role is to facilitate the resolution of disputes between parties rather than to provide legal advice.

Parties involved in disputes may be encouraged to seek their own legal representation.

Individuals seeking legal advice on employment-related matters, including their rights and obligations under workplace laws should consult with an employment lawyer.

The difference between the FWC and the FWO

The FWC primarily handles industrial relations and dispute resolution, while the FWO primarily deals with compliance, education, and enforcement of workplace laws to protect employees' rights.



Redundancy

What is redundancy?

Redundancy under the National Employment Standards (NES) happens when an employer decides that a particular job or role is no longer required. It's often due to changes in the business. When a job becomes redundant, the employee may be let go and receive a redundancy payment.

Employers must follow legal and ethical guidelines when implementing redundancies, which may include providing notice to affected employees and offering assistance with finding alternative employment. Redundancy is different from firing someone for performance issues; it's about the job, not the employee's performance.

Who is entitled to redundancy?

In Australia, you're eligible for redundancy pay if your job falls under an agreement or contract with redundancy terms, you've been with your employer for typically one year, and you're a permanent or full-time/part-time employee (not casual). The redundancy should be initiated by your employer, such as job cuts or business closure.

When does redundancy have to be paid?

Redundancy pay is typically made when an employee's job becomes redundant, and the employee meets the eligibility criteria under their work agreement. It is usually paid on the last day of employment in the redundant role, but the exact timing can vary based on individual employment conditions.

Can I reduce the amount of redundancy pay?

An employer can make an application to the FWC to vary redundancy pay if the employer:

1. finds alternative employment for the employee; and/or
2. cannot afford the redundancy pay.

The terms of an employment agreement may also set limits or conditions on the amount of redundancy pay that an employee can receive.



Unfair dismissal

What is unfair dismissal?

Unfair dismissal occurs when an employer terminates the employment relationship in a way that is harsh, unjust or unreasonable.

Harsh: A dismissal is considered "harsh" if it is unduly severe or disproportionate to the alleged misconduct or performance issues of the employee. In other words, if the penalty (dismissal) is too severe, it may be deemed harsh.

Unjust: A dismissal is "unjust" if it is not based on a valid reason, lacks procedural fairness, or doesn't follow the correct legal process. If an employee is terminated without a justifiable cause or the proper investigation and consideration of all relevant factors, it may be considered unjust.

Unreasonable: A dismissal is "unreasonable" if it is not a reasonable response to the circumstances surrounding the employee's conduct, performance, or any other relevant factors. The Fair Work Commission assesses whether a reasonable employer, considering the same circumstances, would have made the same decision to terminate the employee.

What is not considered unfair termination?

An employee resigning is not unfair dismissal. Termination may also not be considered harsh, unjust or unreasonable where the employer had valid grounds to terminate and the termination was done in a procedurally fair way.

Making an unfair dismissal claim

Employees must apply to the Fair Work Commission within 21 days of the termination of their employment. The application must be provided using the [approved form](#).

To claim unfair dismissal, an employee must meet certain eligibility criteria. These include having completed a minimum employment period with the employer and earning less than the high-income threshold. The eligibility criteria can vary depending on the size of the employer.



General protections

What are general protections?

In the context of Australian employment law, general protections refer to a set of rights and protections provided to employees to ensure their workplace rights are safeguarded.

The Fair Work Act 2009 outlines these general protections, and it includes the following key elements:

Protection from Unlawful Termination

Employees are protected from unfair termination due to workplace rights, like discrimination or engaging in industrial action.

Protection from Adverse Action

They're also protected from adverse actions, such as threats and discrimination, when they exercise workplace rights or make complaints.

Freedom of Association

Employees have the freedom to choose whether or not to join a union, without facing discrimination.

Protection for Industrial Activities

Legal protection exists when employees participate in lawful industrial activities like strikes.

Prohibition of Coercion

Coercion and undue influence on workplace rights and union membership are prohibited.

Right to Compensation

Employees who experience adverse actions due to exercising their rights can seek compensation and remedies through legal channels.

Making a general protections claim

1. Identify the issue: Recognise the breach of your workplace rights.
2. Gather evidence: Collect proof, like documents and statements.
3. File the claim: Submit it to the Fair Work Commission within time limits.
4. Commission process: They'll mediate, investigate, or hold a hearing, possibly leading to compensation.



Work health and safety

Work health and safety obligations

In Australia, work health and safety (WHS) obligations are governed by various legislation, primarily the Work Health and Safety Act 2011 (Cth) and relevant State and Territory WHS Acts.

The key WHS obligations include:

1. Providing a Safe Work Environment

Employers must ensure a safe and healthy workplace, which includes safe equipment, premises and systems of work.

2. Training and Information

Appropriate training and information on safety, as well as supervision, must be provided to employees.

3. Consultation

Involve employees in safety decisions and consult with employees on WHS matters.

4. Reporting Incidents and Hazards

Both parties must report workplace incidents, hazards, and close calls to facilitate investigations and fix the issue.

5. Compliance with Regulations

Employers and employees must adhere to the relevant WHS regulations for their industry.

6. Duty of Care

Employers have a primary duty of care to ensure the health and safety of their workers, as well as a duty to others who may be affected by the workplace, such as visitors or contractors.

7. Protection from Discrimination

Workers have the right to raise safety concerns without facing discrimination, harassment, or adverse actions.

Breaching WHS obligations

Breaches can lead to any of the following:

- facing legal actions, like fines and penalties.
- injured employees seeking financial compensation for their losses.
- WHS authorities conducting investigations into safety concerns.
- reputational damage for the company.
- ongoing scrutiny by regulatory authorities and more serious enforcement actions.
- safety risks and the increased likelihood of accidents in the workplace.



Workplace investigations

When is a workplace investigation required?

A workplace investigation is not required by law. However, action taken by an employer in the absence of a proper workplace investigation can lead to legal issues.

A workplace investigation is typically carried out to address and resolve issues that affect the work environment, employee relations, and compliance with laws and regulations.

Investigating workplace complaints

Investigating workplace complaints is a process aimed at addressing employee concerns, ensuring a fair and safe working environment, and maintaining legal compliance. It involves gathering relevant information, interviewing involved parties, and assessing evidence to determine the validity of the complaint.

Gathering evidence

Gathering evidence in a workplace investigation involves collecting all relevant information and data pertaining to the complaint or issue at hand. This may include documents, emails, witness statements, surveillance footage, and any other relevant records.

Thorough evidence collection is essential to ensure a fair and comprehensive assessment and to support informed decision-making.

Decisions and outcomes

A well-conducted investigation can lead to appropriate corrective actions, conflict resolution, and the prevention of future issues, ultimately fostering a healthier and more productive workplace.

Decisions and outcomes could range from taking no action up to termination of employment or demotion.