



FACT SHEET: BASIC RIGHTS AT WORK

This fact sheet provides information about workplace rights and obligations:

- Employment Conditions
- Awards, agreements and contracts
- Before Starting Work
- Employment status
- Probation periods
- Payment of Wages
- Disciplinary Procedures
- Unpaid Trials

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Important notice:

Significant changes to the federal industrial relations legislation have occurred in recent years and will continue to change and develop until 2010. These changes may affect your employment conditions and your rights and entitlements as an employee. In order to know what many of your rights at work are, you will need to determine whether you are covered by the federal or state industrial/workplace relations legislation. Employees who work in 'constitutional corporations' that is engaged in trading or financial activity (often 'Pty Ltd' companies) will generally be covered by federal legislation. Employees who do not work for such 'constitutional corporations' (for example a sole trader or a partnership) may be covered by the state legislation. Your employer should be able to inform you which system covers your workplace. To find out more about the current federal workplace relations system visit www.workplace.gov.au or call the Workplace Infoline (1300 363 264). For State awards and agreements contact Wageline on (1300 369 945) or visit www.wageline.qld.gov.au.

What are my employment conditions?

When you accept a job you will agree to work for your employer under specified conditions. These conditions depend on industrial laws (federal and state) as well as any relevant **award** or **agreement** or **contract** that covers your work.

There are a variety of **agreements** that can set out your working conditions. They are:

1. Certified agreements (also called Enterprise Bargaining Agreements (EBAs) or Collective Agreements)
2. Queensland Workplace Agreements (QWAs)
3. Interim Transitional Employment Agreements (ITEAS)

Note: All employees also have a 'contract' under common law. This contract may be verbal or written. The complete terms of that contract come from legislation, case law, Certified Agreements or Awards and workplace policy and practices.

MINIMUM CONDITIONS (STATE)

(Industrial Relations Act (Qld) 1999)

Under State Government legislation, all State system employees in Queensland are entitled to:

- Equal pay for work of equal value;
- 12 months unpaid parental leave;
- Long service leave; **Note:** Short-term casuals may be excluded from access to certain leave)
- Protection from unfair dismissal; and
- notice periods (on termination)
- A minimum wage (determined by the Queensland Industrial Relations Commission each year)
- maximum working hours per week and per day
- penalty rates for overtime work
- rest pauses
- sick leave
- casual loading

If you are employed by a sole trader or partnership or a non-constitutional corporation, call Wageline on 1300 369 945 to find out more about your conditions of employment.

MINIMUM CONDITIONS (FEDERAL)

(Workplace Relations Act (Cth) 1996)

Under the Workplace Relations Act all federal system employers must provide the following **five minimum conditions** called the Australian Fair Pay and Conditions Standard (AFPCS),

- Four weeks paid annual leave
- Minimum wage (set by the Australian Fair Pay Commission)
- 10 days paid personal/carers leave and 2 days unpaid carers leave (including for casuals)
- 52 weeks unpaid parental leave after birth/adoption of child
- Standard working week of 38 hours, averaged over a year.

The AFPCS over-rides minimum wage standards contained in awards and agreements if it is better than them. and for employees in constitutional corporations.

If you are employed by a 'constitutional corporation' and are covered by a Certified Agreement or Award, call the Workplace Ombudsman on 1300 724 200 to find out more about your conditions of employment.

If you are employed under a State or Federal Award or Agreement (a Certified Agreement or an ITEA) it may provide terms and entitlements over and above the legislative minimums.

WHAT IS MY EMPLOYMENT STATUS?

Your type of employment should fall into the following categories:

- **Permanent full-time employees:** work full time (usually 38 hours a week or as set out in agreement) and has a continuing contract of employment. Benefits such as sick leave, holiday pay, long service leave, and carers or other types of leave usually apply. Permanent full time employees are entitled to a period of notice upon termination and in some circumstances can access unfair dismissal laws.
- **Casual employees:** are generally engaged for short-term, irregular or seasonal work. Casuals do not have access to permanent employment entitlements (eg. paid sick leave, annual leave etc). Casuals are usually paid loading of 23% to compensate for not having paid leave. Some types of leave such as unpaid parental leave or carers leave apply in specific situations. Notice periods do not apply to casuals upon termination of employment.
- **Fixed term employees:** are employed for a specific period of time or for a specific task and have set end date for their employment.
- **Permanent part-time employees:** are engaged for less than full time hours but with the same basic entitlements as full time employees on a pro-rata basis.

What do I have to do before starting work?

After you have accepted a position and before you commence working (or shortly after) your employer should ask you to complete a tax declaration form and provide details for your employee records. If your employer doesn't provide you with a tax file declaration form, you can obtain one from a post office or an Australian Taxation Office.

The details usually required for employee records are:

- your full name,
- residential address,
- phone number,
- the name and contact details of a person who can be contacted in an emergency,
- your superannuation fund details and membership number,
- your bank/financial institution details including your account number.

- If you are under 18, your parent/guardian's contact details.
- It is up to you to keep your employer up to date if this information changes

These records remain in the property of the employer.

PROBATION/ QUALIFYING PERIODS

If you have been offered a permanent position, unless otherwise agreed in writing, you are automatically deemed to be on probation for the first three (3) months of your employment. Employees in the federal system are also subject to a qualifying period of 6 months.

Probation is a period on full pay during which you and your employer decide whether you suit the job. An employee dismissed during a probationary period cannot access unfair dismissal laws, and there are no notice requirements unless these are contained in your Award or Agreement. However, if the dismissal is for an invalid or unlawful reason (such as discrimination), employees on probation may have the right to lodge a complaint regarding the dismissal.

Probation periods do not apply to casual employment.

PAYMENT OF WAGES

Your wages should be paid on a set day - usually weekly, fortnightly or monthly. You may need to fill out a time sheet of the hours you have worked and your employer is required to provide a pay slip (or 'pay summary') with your pay.

Your pay slip must include:

- Your name and classification;
- 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 (both ordinary and overtime hours);
- Ordinary and overtime rates and the amounts paid at the different rates;
- All deductions made;
- Amount of superannuation paid;
- Gross wages paid;
- Net wages paid;
- Allowances paid;
- Leave accrued and taken.

NB: Any deductions from your wages must be agreed by you in writing first. Deductions made without your agreement may be unlawful.

HOURS OF WORK

Under most awards and agreements, normal hours of work are usually not more than 8-10 hours in any one day. Under the AFPCS your normal hours per week are averaged out over 12 months. A worker may be entitled to be paid overtime for work outside of these hours.

These arrangements will depend on your industry and the agreement you work under. There may also be minimum hours that you will be required to work, again this will depend on your agreement or industrial instrument.

OVERTIME

It is important to be aware if overtime work is required what conditions are offered. For instance:

- Does overtime commence if you work more than 8 hours in a day or more than 40 hours in a week?
- What will the pay rate be?
- Should I be receiving penalty rates (payment at (eg) time or double time for working overtime?)

Under most Awards and Agreements, penalty rates are specified, however you may be able to negotiate with your employer to have time off in lieu (often referred to as 'TOIL') instead of payment for overtime at these rates, but your employer is under no legal obligation to do this.

Note: Penalty rates may be expressly excluded when new agreements are made under the federal system so check if this applies to you. If you are offered an AWA, ITEA or contract of employment, you should compare the hours of work and penalty rates to any existing award in your industry. You can negotiate with the employer (before you sign) if you are unhappy with the terms. The Queensland Department of Industrial Relations has a tool called "Compare What's Fair" to assist employees to make relevant comparisons.
Visit: www.wageline.qld.gov.au/cwf/index.html

BREAKS

If you are working for 4-5 consecutive hours in one day you are generally entitled to a paid rest break of 10-minutes within that time. Federal workers and most state workers are required to have a meal break of at least 30 minutes unpaid after 5 hours of work.

Note: Rest breaks may be expressly excluded when new agreements are made under the Federal jurisdiction so check if this applies to you.

ANNUAL LEAVE

Permanent employees are generally entitled to 4 weeks paid annual leave (pro rata if part-time). Some Federal employees are entitled to 'cash out' some of their personal or annual leave.

State employees are entitled to a 17.5% 'loading' when they get holiday pay. Loading is additional money on top of your normal hourly rate of pay. This is not guaranteed under the Federal legislation (but many Federal legislation employees are still entitled to holiday loading under their Awards or Agreements).

SICK / PERSONAL LEAVE

Unless your Award of Agreement provides for more, full time workers under federal legislation are entitled to ten days sick leave for each year of employment and employees under state legislation are entitled to eight days per year (pro rata for part-time employees). Casual employees are not entitled to paid sick leave.

Federal employees may legally be requested to provide a certificate after 1 day's sick leave. State employees may legally be requested to provide a certificate after more than 2 days sick leave. An employer is not entitled to details of your condition, only evidence that you are not fit for work.

A pregnant employee is entitled to use sick leave for any pregnancy-related incapacity.

An employer must not terminate an employee because of temporary absence from work due to illness or injury. An absence is not temporary if the total period of unpaid absence within a 1 year period is more than 3 months. However, discrimination laws may still apply even if your absence has exceeded 3 months.

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. Your entitlement to penalty rates may vary subject to your award or agreement.

DEDUCTIONS FROM PAY

Any deductions from your pay must be agreed to in writing. You are required to exercise due care, skill and diligence in the workplace, and the employer may seek to recover deliberate reckless, or

negligent activities resulting in business losses through appropriate avenues such as the police, debt recovery or legal action.

If your employer deducts money from your pay without written consent, you should seek advice.

UNPAID WORK

If you are required to work you must be remunerated (paid) at the applicable rate. This includes:

- Meetings (team and individual) at the employer's request.
- Trial periods once you have commenced employment.
- Training sessions, courses or days.
- Traveling during work hours, in association with your employment.
- Compulsory attendance at a function.

If you are unsure about whether you should be paid contact Wageline on 1300 369 945 or the Workplace Information Line on 1300 363 264.

Note: Some organisations (particularly not for profit) provide for voluntary work. For more information on the rights and obligations of volunteers contact Volunteering Queensland on (07) 3002 7600.

APPRENTICESHIPS AND TRAINEESHIPS

If you are employed as an apprentice or trainee you will also be covered by the provisions of the *Vocational Training and Employment Act (Qld) 2000* and the *Order for Apprentices and Trainees Wages and Conditions* cover other areas such as registration, training, wage progressions and payment for supervised training. Please refer to our fact sheet for apprentices and trainees for more information.

SUB-CONTRACTORS/ INDEPENDENT CONTRACTORS

Sub-contractors, or 'independent contractors' are not traditionally employees and are responsible for their own taxation, business registration, insurance, workers compensation, replacement and purchasing of equipment and superannuation. Please refer to our fact sheet on 'Independent Contractors'.

TERMINATION OF EMPLOYMENT

For information on Termination of Employment or unfair dismissals please refer to the "Termination of Employment" fact sheet.

DISCRIMINATION

Under State and Federal legislation it is against the law to discriminate against employees at work or seeking work. For more information about discrimination please contact the Anti-Discrimination Commission or refer to our "Anti-Discrimination" information sheet.

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. However, they are not entitled to your full medical history. If you sign an authorisation for the examining doctor, be aware of what information this releases. Seek further information if you are concerned about this issue.

UNION MEMBERSHIP

You have the choice to join or not to 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/Agreement for your sector/organisation in order to improve your wages and conditions;
- Provide you with advice and assistance on how to handle workplace negotiations on pay and conditions.
- Represent you in industrial relations issues.

Note: membership of a union is confidential and your employer and work colleagues are not required to be informed. It is also against the law to dismiss or discriminate against you because you are a member or not a member of a union. Contact your union or the Queensland Council of Unions (3846 2468) for more information.

WORKPLACE HEALTH AND SAFETY

There are minimum standards and codes of practice for specific work areas and jobs under the Workplace Health and Safety Act (Qld)1997. Employers have an obligation to ensure that employees are not exposed to risks to their health and safety in the conduct of their work. Employees also have a mutual obligation to follow appropriate workplace health and safety procedures.

FOR MORE INFORMATION & ADVICE:



Queensland Working Women's Service Inc:

1800 621 458
(07) 3211 1440

www.qwws.org.au

OTHER SERVICES:

Young Workers Advisory Service (ages 25 and under):

Ph: 1800 232 000 OR: www.ywas.org

Queensland Council of Unions:

Ph: 3846 2468

Wageline:

Ph: 1300 369 945 (for state award employees)

Queensland Workplace Rights Ombudsman:

1300 737 841

Anti-Discrimination Commission Queensland:

Ph: 1300 130 670

Workplace InfoLine (Federal employees):

Ph: 1300 363 264

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