

Fact Sheet 1

Your Rights at Work

All people working in Australia are entitled to basic rights and protections in the workplace. This includes foreign workers and people who are not Australian citizens or permanent residents (which include people seeking asylum).

Do you have 'permission to work'?

If you are a foreign worker, you must have 'permission to work' before working. This means that there must be no condition on your visa which prohibits you from working in Australia. Some visas also have a limit on the number of hours you may work. If you are unsure about whether you are allowed to work, you can check by using VEVO, a free online service. See the link below:

online.immi.gov.au/evo/firstParty?actionType=query

Australian workplace laws

Employers must comply with the following workplace rights:

National Employment Standards (NES)

All employers must follow the national workplace relations standards (known as the NES) and provide, with some exceptions, the following ten basic minimum entitlements:

1. Not more than 38 hours of work per week unless the additional hours of work are reasonable.
2. Employees can request a change in their working arrangements if they are carers, are older than 55 years old, or have any disability.
3. Employees are entitled to unpaid parental leave if they have worked for their employer for at least 12 months.
4. Employees accumulate four weeks of paid annual leave for each year they work for an employer.
5. Employees are entitled to leave due to caring responsibilities, personal illness, family emergencies, and domestic violence.

6. Employees are entitled to community service leave for volunteering in emergencies or natural disasters (unpaid) or for jury duty (paid).
7. Paid long service leave for those who have worked for the same employer for a long time.
8. A paid day off on public holidays (casual employees get a day off but are not paid).
9. An employer must not terminate an employee from his employment unless, a minimum period of notice is given, or employee is paid instead of such notice.
10. All new employees must be given the Fair Work Information Statement when they start their work. This outlines what you can expect from your employer. Note that some of these entitlements are reduced or changed for "casual" employees. We discuss this matter below.

Am I an employee or independent contractor?

An important issue is whether you are working as an employee or as an independent contractor. Your rights and responsibilities depend on this. Employees work for an employer under a contract or agreement. An independent contracting is someone who works for themselves or as a business on their own. Some employers try to treat employees as if they are independent contractors because this allows them to avoid responsibilities such as paying the minimum pay, paying tax, and paying you for your annual leave. This is against the law.

What is the national minimum wage?

The national minimum wage is currently \$19.84 per hour or \$753.80 per 38-hour week, before tax. In some areas of work, such as construction or the restaurant industry, the minimum wage is set by an Award or an Enterprise Agreement and will typically be above the national minimum wage. Additionally, casual employees are to be paid a 25% "casual loading" above the normal wage for a regular employee.

Can my employer deduct money from my wages?

Your employer cannot deduct money from your wages unless you agree in writing and it benefits you, or it is authorised by a law, or court order.

Can my employer pay me in cash?

Your employer can pay you in cash. If this happens, make sure that your employer is paying tax for you by sending this money to the Australian Tax Office. You should also be paid superannuation – check your payslip to make sure that your employer is doing this.

Unlawful discrimination

Employers cannot discriminate against you due to your race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibility, pregnancy, religion, political opinion, or national extraction or social origin.

There are other ways in which employers cannot discriminate against you. One important way is through sexual harassment. Sexual harassment is unwelcome sexual behaviour that causes you to feel offended, humiliated or intimidated in circumstances where an ordinary person would have also felt that way. Sexual harassment is illegal.

If you believe that your employer has discriminated against you, contact the Victorian Equal Opportunity & Human Rights Commission on **1300 292 153**.

Bullying at work

Another way in which you can have your rights violated is if you are bullied at work. A worker is bullied at work if a person or group (your employer or another worker) repeatedly treats you badly and creates a risk to your health and safety; this is against the law.

Industrial activities

You are free to participate in lawful industrial activities, such as joining a union or taking part in protected industrial action such as a strike or work slow-down. You are also free to refuse to join a union.

Is it legal for someone to work and not get paid?

It is generally unlawful for a person to work and not get paid. As an employee, you are entitled to a minimum wage under the NES.

The only exception to this is if you are doing work as part of a "vocational placement" in connection with an educational or training course. If you are doing one of these placements, you will not be paid.

What are the differences between full-time, part-time and casual work?

If you are a full-time worker, you will generally work for 38 hours a week. You are entitled to paid annual leave, sick leave and to get notice about the end of your job.

If you are a part-time worker, you will work for less than 38 hours per week. You still must get some paid annual and sick leave and notice about the end of your job.

If you are a casual worker, you work on an hourly or daily basis and may not have regular hours of work. You will not get paid annual and sick leave. Your rate of pay is higher than full-time or part-time employees to make up for the things you do not get. You also do not have to be given notice about the end of your job. However, you should get 2 days unpaid carer's leave; and 5 days unpaid family violence leave in a 12-month period.

Are there other protections at work?

There are many other protections for you at work. It is important to know that your employer cannot force you to give up your rights.

Record keeping and pay slips

Your employer must give you a 'pay slip'. This is a document that records important information such as the hours you have worked and your rate of pay.

When should I contact Fair Work Ombudsman?

You may telephone the Fair Work Ombudsman on **13 13 94** for free information or advice if you believe that you are not getting your rights at work. Call **131 450** if you need a translator.

Workplace health and safety

Employers must provide and maintain a working environment that is safe and without risks to the health of their workers. Employers fail to comply with this requirement if they fail to provide the following:

- a safe 'system of work'
- a workplace that is safe and without risks to health; and
- necessary training, information and supervision to you to enable you to work safely.

If you have a physical or mental injury at work, you can talk about this with your employer. If they do not help, you can contact WorkSafe Victoria on **13 23 60**.

Other resources for help:

JobWatch Employment Rights Legal Centre

JobWatch is an independent, not-for-profit employment rights Community Legal Centre which provide assistance to Victorian, Queensland, and Tasmanian workers about their rights at work.

For help, call **9662 1933** if you are from metropolitan Melbourne. Call **1800 331 617** if you are from Rural Victoria, Queensland and Tasmania.

Victoria Legal Aid (VLA)

Victoria Legal Aid help people with their legal problems including with the legal problems related to their employment. Contact VLA on **1300 792 387**.

Deakin CREATE

Deakin CREATE aims to support people from a refugee background to rebuild their careers through obtaining employment and accessing vocational training and education. See the link: **deakincreate.org.au**



CREATE

Centre for Refugee Employment, Advocacy, Training and Education

deakincreate.org.au

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