

Your Rights at Work in Australia

Prepared by Labor Council of NSW

www.labor.net.au

For more information call our hotline 1800 688 919

HOW PAY AND CONDITIONS ARE SET IN AUSTRALIA

ACTS OF PARLIAMENT

- Legislation setting out laws is determined by Parliament
- In Australia there is a federal system of government with a national (called the Federal) government and six state and two territory governments
- The Australian Constitution sets out the powers of the national parliament to make laws
- The State and Territory Parliaments can also make laws but where these are inconsistent with the federal laws then the federal laws apply
- When the Australian Constitution was made it gave the federal parliament power to make laws about workers pay and conditions in certain circumstances
- The major federal law about work is called the Workplace Relations Act
- The State Governments also have the power to make laws about workers pay and conditions
- In NSW the major law about work is called the Industrial Relations Act
- **The Australian trade union movement has successfully campaigned for laws that promote many benefits to Australian workers, eg holiday pay, long service pay etc**

AWARDS

- Australia has a system of conciliation and arbitration which establishes a tribunal to determine pay and conditions
- The federal and State laws both establish tribunals called Commissions
- The Commissions consider disputes between workers and their employers and make decisions. The workers are represented by Trade unions
- These decisions set out pay and conditions that both the workers and employers must abide by and are called awards
- Awards set out the minimum pay and conditions for those workers and employers covered by the awards
 - You cannot be paid less or receive conditions that are less than those set out in the award
- Different awards cover specific industries or occupations (jobs)

- Trade unions frequently make applications to improve wages and conditions in awards. When employers under pay workers, trade unions take legal action to recover back pay for workers
- Federal Awards will only apply to employers named as respondents and to those workers employed by those particular employers
- NSW awards apply to all employers and workers in a particular industry and/or doing particular jobs
- Where you have a dispute with your employer about the award you can go to the Commission to settle the dispute: contact your trade union for assistance

AGREEMENTS

- Sometimes workers and their employer agree to different pay and conditions than what is in the award
- When this happens it is called an agreement
- Agreements can't have pay and conditions that are less than what is in the award unless it can be shown that overall there is no disadvantage to those the agreement will apply to
 - This means that if any condition or pay is less than in the award other conditions must be better so that no one is worse off
 - The value of all of the provisions in the agreement must be no less than the value of all of the provisions in the award
 - This is called the no disadvantage test
- Agreements can be registered with the Federal or NSW Commission
- When agreements are registered they take the place of awards and are legally binding
- Agreements do not have to be registered
 - These are sometimes called over award agreements
 - Where agreements are not registered it is important to have some record of what they are so people understand their obligations and so that there is evidence of what has been agreed if there is a dispute about it later
- Where you have a dispute with your employer about the agreement then you can go to the Commission or a court to settle the dispute
- If your employer seeks to negotiate an agreement at your workplace it is important to contact your union to represent your interests

INDIVIDUAL CONTRACTS

- Not all workers or workplaces are covered by awards or agreements
- Where there is no award that applies to a worker that worker will have an individual contract of employment
- These contracts may be written documents which outline the pay and conditions that will apply
 - The contracts may be quite simple or very detailed
- Sometimes there is not even a written contract
 - When this happens terms and conditions will be determined using a number of factors such as :-
 - Verbal discussions about what the conditions will be

- Any documents like a job description or job advertisement that have been used
- Certain things that have been determined over many years by courts when considering employment cases
 - This is called “common law” and will be used if there is a dispute to determine what should happen when there is no other award, agreement or written contract that sets out what the conditions should be
- Some individual contracts can be registered under the federal Workplace Relations Act
 - These are called Australian Workplace Agreements (AWA's)
- If you are covered by an individual contract and you have a dispute with your employer then you will have to go to a court to settle the dispute
- You should not sign any individual contract unless you have sought advice from your trade union

GETTING A JOB

- Employers use many different ways to employ workers
 - Advertisement in a newspaper or on a notice
 - Asking friends or other workers if they know someone who would like a job
 - Using an employment agent
- There is no laws that say employers must use specific steps when employing people
- There are laws that say employers cannot discriminate against people when deciding who gets a job
 - This means that whatever way an employer uses to decide who to employ it must be fair
- When you apply for a job you are entitled to know
 - what the job involves
 - what hours you are being asked to work
 - what pay you can expect to receive
 - any special requirements of the position
- When you apply for a job you should provide evidence that you can do the job (have the necessary qualifications)
 - This may also mean that you have the right to work in Australia
- If you are offered a job you should make sure you understand what will be expected from you
 - This might be in a letter from the employer offering you the job
 - If you are unsure about anything in the letter or you do not agree you should ask the employer
 - Even where you don't get a letter make sure you have understood what is expected
- It is quite common for people starting a job to have a period of “probation”

- This is a short period of time where the employer can make sure you are able to do the job and you can also make sure you are happy with the job
- A probation period must be for a reasonable period of time – 3 months is common but a longer time may be necessary for very complex jobs
- An employer should tell you if you aren't doing the job properly and help you so that you can be better
- During the probation period if the employer feels you are not able to do the job even with support you can be dismissed
- Some trade unions provide employment services and assistance to unemployed members

TYPES OF EMPLOYMENT

PERMANENT EMPLOYMENT

- A permanent worker is one that has ongoing work

FULL TIME EMPLOYMENT

- A full time worker is one that works an average of 35 or 38 hours each week

PART TIME EMPLOYMENT

- A part time worker works less hours than a full time worker

CASUAL EMPLOYMENT

- A casual worker is one that does not have ongoing work
- A casual worker is employed by the hour
- A casual worker has no guarantee that they will work on any given day or week
- A casual worker usually receives a loading to compensate them for the unpredictable nature of their work
- A casual worker can be full time or part time

TEMPORARY EMPLOYMENT

- A temporary worker is one that works for a defined period of time
- A temporary worker can be full time or part time
- A temporary worker is entitled to the same pay and conditions as permanent workers for the period of their employment

AGENCY EMPLOYMENT

- Employers sometimes get workers from another organization to do certain jobs
- These workers are called agency hire or body hire workers
- These workers may work at different places each week or month depending on where they are required

- While they may work alongside you they are not employed by your employer and may not have the same pay and conditions
- Employers often use these workers to reduce their costs
- These workers often don't have the same pay, conditions or job security of other workers although they are doing the same sort of work and have the same skills

CONTACT EMPLOYMENT

- Some employers require workers to work on contact, eg payment according to results, sales etc
- Contract workers are sometimes paid a set amount of money per m2 or per line meter of work done or per hour
- Often employers advise contact workers they have no rights, eg to superannuation or to workers compensation, but this is often not true.
- Contract workers should contact their union to ensure they understand their rights

BASIC CONDITIONS

PAY SLIPS

- Employers are required to provide workers each pay period with written details of :-
 - how much they have been paid
 - what hours they worked and whether penalty rates have applied
 - how much tax has been taken out
 - how much superannuation has been paid on their behalf
 - what other deductions have been taken from their pay

RATES OF PAY

- Minimum rates of pay are set by Awards – to find out about the minimum rate of pay in your industry you should contact your union, the Office of Industrial Relations or Wage line
 - To contact you union call the Labor Council Hotline: 1800 688 919 or visit www.labor.net.au
 - To contact the Office of Industrial Relations call either a Contact Centre on 13 20 05 or the DIR Award Enquiry Service on 131 628
 - To find award rates online go to <http://www.dir.nsw.gov.au/awards/index.html>
 - To contact Wage line (for Federal Awards) call 1300 363 264
- Unions negotiate wage increases and other benefits in excess of minimum award rates of pay

PAY INCREASES

- If an award is changed to increase pay rates then the employer must pay whatever the increase is

- If your pay is already above what is in the award then the employer doesn't have to increase your pay (provided your pay is not less than what is in the award)
- Sometimes awards set out increases for achieving certain skill levels or because you have been in the job for a certain period of time. These must be paid by the employer if you meet the conditions set out in the award
- If you are covered by an agreement and it provides for pay increases then the employer must pay them
- If your individual contract provides for pay increases then the employer must pay them
- The best way to improve your wage is to join a trade union

ANNUAL LEAVE

- In NSW there is a law that gives workers 4 weeks annual leave each year
- Employers must allow you to take the leave and you must take the leave within 6 months of it falling due (12 months after you first started)
- By agreement with your employer you can take your holidays when it is convenient to you both
- If your employment has an annual close down you may be required to take part of your annual leave at this time
- By agreement with your employer you can take your holidays in more than one break
- You can also use single days of your annual leave to take care of family emergencies
- Some awards and agreements also provide an extra payment when you take holidays
 - This is called an annual leave loading and is usually an additional 17.5% on top of your normal pay

SICK LEAVE

- Most awards and agreements say that workers can take days off without loss of pay when they are sick
- Different awards have different entitlements as to how many days you can have
- Some awards and agreements say that if you don't use all your sick leave in one year you can carry those days over to the next year and use them then
- Employers can ask you for a doctors certificate saying you were sick as evidence that you are entitled to paid sick leave
- Workers who are sick need to tell their employer they won't be able to work as soon as they can
- If you run out of paid sick leave you can take unpaid leave or you can ask your employer to use some other type of paid leave (annual leave) so that you don't lose any pay

PARENTAL (paternal or maternal) LEAVE

- Parents are entitled to 12 months shared unpaid leave (that is combined both parents can take in total 12 months leave)
- Some awards allow for some paid maternity leave, normally of a maximum of 12 weeks

HOURS OF WORK

- Awards and agreements usually set out what are the normal hours of work and when those hours can be worked
- Most awards and agreements say that if you work extra hours (called overtime) you are entitled to an extra payments
- If you work on days or at times that are not the normal hours of work you may also be entitled to an extra payment
- If you regularly work outside the normal hours and/or days of work this is called shift work and will usually mean you are entitled to an extra payment
- Employers have to provide reasonable notice in advance of when you are required to work. This is called a roster.
- Employers are required to consult with workers if they wish to change the hours or days which people are required to work
- For health and safety reasons there must be a reasonable break between shifts to allow workers to rest (usually 10 hours)
- For health and safety reasons there must be a reasonable break to allow people to have meals
- Trade unions often campaign for reduced hours of work and paid leisure days (sometimes called flexi days or rostered days off)

SUPERANNUATION

- There is a federal law that requires all employers to pay superannuation on behalf of their workers
- Superannuation is a scheme of savings for workers to use when they retire
- Employers are required to pay an additional 9% of what each worker earns to an approved superannuation scheme
 - Where workers earn below a certain amount of money the employer does not have to pay superannuation for those workers
- Workers can also make voluntary payments towards superannuation
- If you have not been receiving superannuation payments you should contact your union (call 1800 688 919), a claim can be made for superannuation payment to an industrial magistrate
- Workers are able to choose their own superannuation investor, contact your union for advice as to which superannuation firm is best
- It was the trade union movement that campaigned for and won superannuation for Australian workers

<h2>OCCUPATIONAL HEALTH AND SAFETY</h2>

- Employers must provide a safe place and method of work
- This means that employers must take all reasonable steps to reduce the chance of accidents or illness in the workplace
- Workers also have to take all reasonable steps to reduce the chance of causing accidents or illness in the workplace

- This means that workers must
 - Wear protective clothing where it is provided
 - Follow safety procedures
 - Report any situation or practice that is unsafe
- Employers must consult with their workers and trade union representatives to identify risks and hazards and to take appropriate steps to make the workplace safe
- There are some specific laws that must be followed about particular hazards (using certain chemicals for example)
- Employers and workers can be prosecuted if they don't take reasonable steps to reduce the chance of accidents or illness at work
- Most trade unions have safety experts that can visit workplaces and help improve safety

WORKERS COMPENSATION

- Where a worker is injured at work they are entitled to workers compensation (this can include if you are injured on your way to work or home from work, it is called a journey claim)
- This means that they are paid their normal pay and any medical expenses while they are off work
- The aim is to have the worker return to work as soon as possible
- Where the worker cannot do the full range of duties that their job requires the employer is required to provide suitable duties for a worker when they return to work. This is called rehabilitation.
- Where a worker is injured at work they must notify the employer as soon as possible so that workers compensation payments can be made
- Where there is a dispute about workers compensation the Workers Compensation Court will determine the matter
- Trade unions have solicitors that provide free legal advice and assistance for injured workers

DISCRIMINATION AND HARASSMENT

- There are also laws that say you cannot treat a worker less favourably because of their :-
 - Sex
 - pregnancy
 - Marital status
 - Race
 - Sexual preference
 - disability
 - Age
 - Carer's responsibility

- Union membership
- There are discrimination tribunals that will deal with cases where someone has been discriminated against

MIGRANT WORKERS

- Migrant workers face many obstacles at work, they can range from discrimination to bullying, difficulty with language barriers
- Some employers may take advantage of migrant workers by assuming that they do not know their rights at work
- Trade unions provide migrant workers with support by ensuring they are not on their own in knowing and enforcing their rights at work – to find out information about which union you should join call 1800 688 919
- English Language Courses are available from the NSW Government. The first 150 hours of course work are free. For more information about the courses available contact the Adult Migrant English Program on 1800 114 707 or visit their website www.ames.edu.au/ or the Institute of languages at UNSW www.lang.unsw.edu.au/

OVERSEAS SKILLS RECOGNITION

- A major problem for migrant workers in Australia is having skills they may have gained overseas recognized by Australian employers
- Often Australian employers prefer workers with local work experience and prefer local qualifications
- If you have overseas qualifications you may need to have your documents translated into English – translating services can be obtained from the Community Relations Commission (02 8255 6767), the Department of Immigration, and Multicultural and Indigenous Affairs (call 1300 655 808) or from private accredited translators
- There are directories that compare overseas qualifications with their Australian equivalent, you will need to have a look in the National Office of Overseas Skills Recognition Booklet, you can also contact them on 1800 020 086.
- For advice about recognition of overseas skills and qualifications, contact the Overseas Qualifications Advisory Service on (02) 9269 3518 or (02) 9793 5916.
- For assistance with the English Language please phone Translating and Interpreter Service on 13 14 50.

VISAS AND EMPLOYMENT

- Different classes of Visas exist for migrant workers
- Some of these visas place restrictions on the type of work you can do
- Regardless of your visa, when you work you are entitled to minimum rates of pay, workers compensation if you are injured and superannuation. Your employer must also pay taxation.
- Some important Visas are:

- 457 Visa (long stay, temporary residence)
 - a person must remain in full-time work with the sponsoring employer
 - your employer is **not** entitled to hold your passport at any time
 - you are entitled to be paid the greatest of the following rates: your award/agreement, above \$35, 828 exclusive of allowances, or typical remuneration for what is paid in Australia.
 - Some migrants (from particular countries) are entitled to health care benefits, contact Medicare on 13 12 02 to find out
- Bridging Visas
 - There are restrictions on your ability to work
- Temporary Protection Visas:
 - You are entitled to work in the place of your choice
- For more information about Visas you should contact your union for assistance

LEAVING A JOB

RESIGNING

- Where you wish to leave a job you need to give notice to your employer
- Awards and agreements usually set out how much notice you have to give
 - Two weeks notice is very common but sometimes it is longer
- Notice can be in writing or verbal
- An employer may require you to work during the notice period or may ask you to leave straight away. In either case you will get paid for the notice period.
- If you don't give notice or don't turn up to work during the notice period you are not entitled to be paid for that period
- You are also entitled to be paid any outstanding pay and accrued leave entitlements

GETTING THE SACK

- Employers can dismiss workers by giving notice
- The period of notice is usually set out in the award or agreement
- The employer has to pay you for the period of notice even if they don't want you to continue working during that time
- A worker who believes they have been dismissed unfairly can take action against the employer in the Commission

UNFAIR DISMISSAL

- Where it is found that the employer dismissed someone unfairly the Commission can order that the worker be reinstated
 - This means they get their job back
 - Reinstatement is only available where it is practical to do that
 - The job (or another suitable job) is still available
 - The trust between the employer and worker can be re-established
- Where reinstatement is not possible the Commission can award the worker compensation up to a maximum of 6 months pay
- Sometimes workers are dismissed because their job is no longer needed. This is called redundancy

- There are laws that set out payments to be made to workers who are made redundant
 - These only apply to workplaces with 15 or more workers
- Awards and agreements may also set out payments for redundant workers

THE ROLE OF UNIONS

- Trade unions are organizations of workers who have joined together to improve their pay and conditions at work
- They are legal organisations recognised by the government and employers that all workers are free to join
- Trade Unions are democratic organisations whose officials are elected by their members
- In Australia trade unions are separate from the government and do not work for the government
- Trade unions negotiate on behalf of their members for improvements to their members wages and conditions
- Trade unions appear before the courts representing their members interests and are parties to awards and enter into agreements on behalf of their members
- Trade unions provide advice about workplace issues to members and represent them in court hearings and with their employers
- Trade unions also lobby governments to improve laws protecting workers rights

OTHER SOURCES OF ASSISTANCE

- The best source of information for any question in relation to your work is your union – contact your union via the Labor Council on 1800688 919
- Government Departments can provide advice and information but cannot represent workers in tribunal matters, for information about:
 - Awards and legislation: ph 131 628
 - For questions about unfair dismissals: NSW Industrial Registry: (02) 9228 7766
 - For information about anti-discrimination: the Anti-Discrimination Board: (02) 9268 5555
 - For information about workplace injuries, workers compensation and Occupational Health and Safety, contact your union solicitor or Workcover on 13 10 50.
- Lawyers can provide advice and represent workers in court matters
- Legal Centres can also provide advice and represent workers, details can be found in the phone book.
- Working Women's Centre is a help line for women about their rights at work, their number is 02 9559 3221.

LABOR COUNCIL HAS A HOTLINE FOR
INFORMATION ABOUT UNIONS AND YOUR
RIGHTS AT WORK, YOU CAN CALL:

1800 688 919