

Quick Guide:

HR Legislation in Australia

Inspired learning = power.
Enjoy this resource from



HR Framework

In this guide, we cover foundational human resource areas on which to build a great business.

- Your legal obligations as an employer
- Policies - Your HR framework

Why this is important

- Employment law in Australia is complex and frequently changes.
- There are significant penalties for employers for getting it wrong.

Your legal obligations as an employer

Ensure you are up to date on legislation that applies to your organisation as an employer.

Fair Work Act

The **Fair Work Act (FWA)** 2009 is a comprehensive legal framework for employee rights which covers all aspects of employing staff.

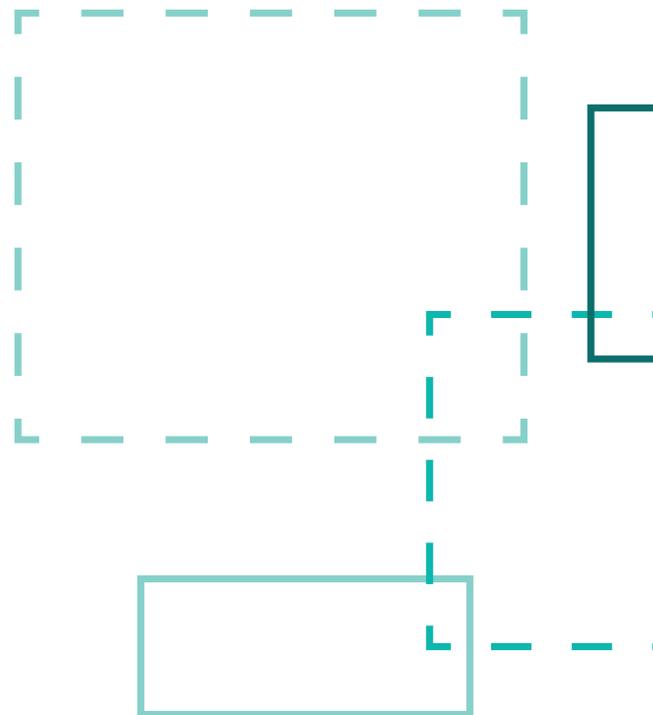
The [Fair Work Ombudsman](#) upholds the FWA by:

- Education
- Investigating Breaches
- Taking Companies to Court

The [Fair Work Commission](#) is the national workplace relations tribunal.

- They hear cases brought by either the Fair Work Ombudsman or by individual employees.

Browse their websites for a wealth of information on employer and employee rights and obligations.



National Employment Standards

Most employers are covered by the National Employment Standard. In Western Australia, employers who are not constitutional corporations (e.g. sole traders and partnerships) are still covered by the state workplace relations laws.



There are ten National Employment Standards (NES)

1. **Fair Work Information Statement** - employers have to give the Fair Work Information Statement to all new employees.
2. **Maximum weekly hours of work** - 38 hours per week, plus reasonable additional hours.
3. **Requests for flexible working arrangements** - some employees have the right to ask for flexible working arrangements, which can only be refused for certain reasons.
4. **Parental leave** and related entitlements
5. **Annual leave** - 4 weeks paid leave per year, plus an extra week for some shift workers.
6. **Personal / carer's leave** and compassionate leave.
7. **Community service leave** - up to 10 days paid leave for jury service (after 10 days is unpaid) and unpaid leave for voluntary emergency work.
8. **Long service leave** - entitlements are carried over from pre-modern awards or from state legislation.
9. **Public holidays** - paid days off on public holidays unless it's reasonable to ask the employee to work.
10. **Notice of termination and redundancy pay** - Notice and redundancy is calculated on a sliding scale and dependent on the size of your company – ask your HR consultancy for further information.

Modern Awards

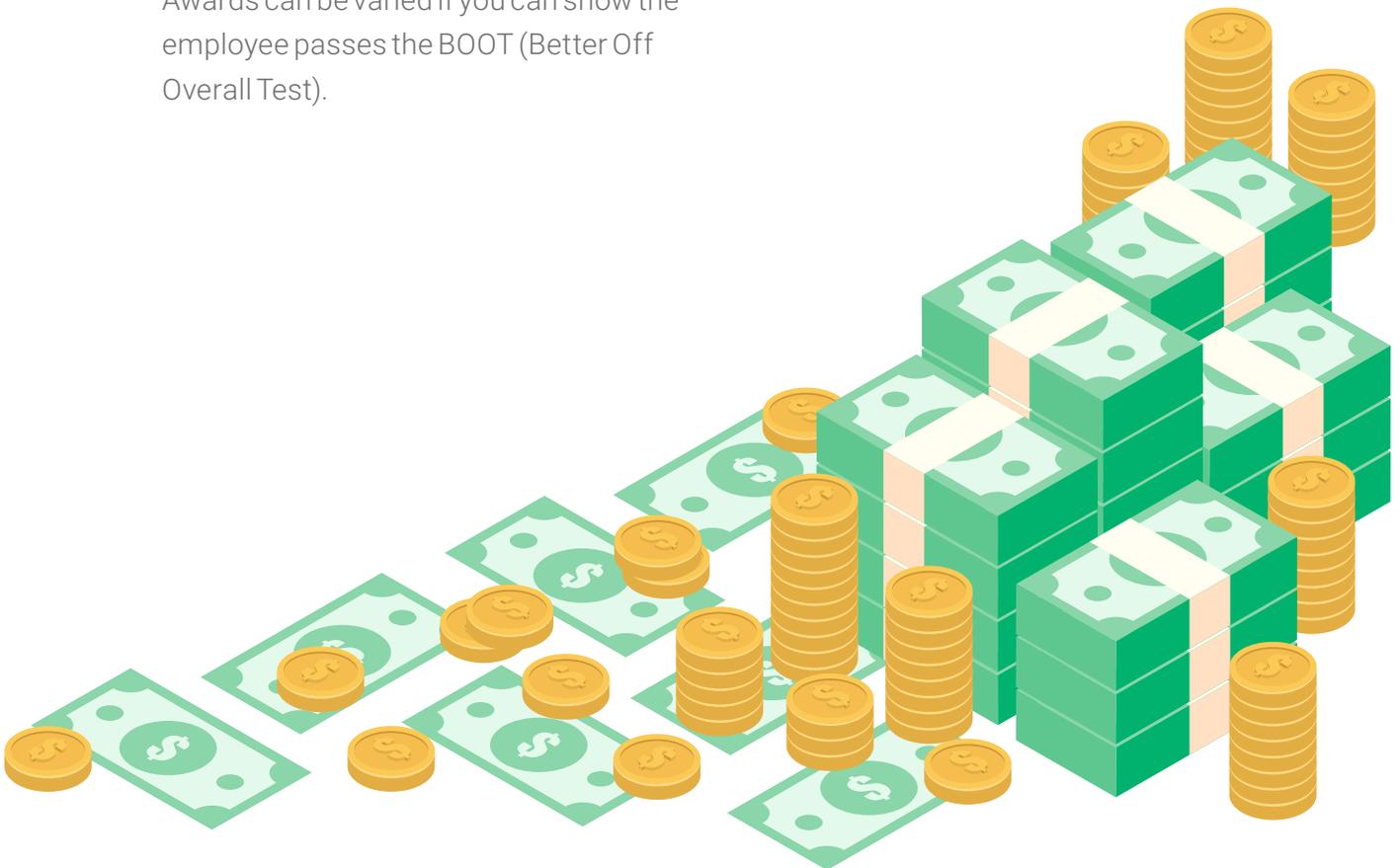
Modern Awards replaced a myriad of State and National Awards for all sorts of occupations and industries.

There are currently 122 Modern Awards. Most employees are covered but not all occupations are subject to a Modern Award. Modern Awards specify minimum standards such as:

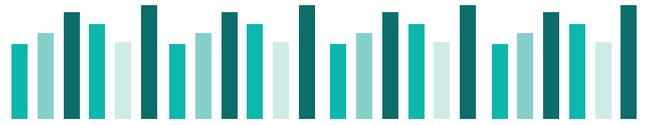
1. Hourly pay
2. Hours of work
3. Overtime and penalties

Some minimum standards in the Modern Awards can be varied if you can show the employee passes the BOOT (Better Off Overall Test).

- Employees can opt out of the certain parts of the Modern Award if they agree to an Individual Flexibility Arrangement (IFA).
- Employers can negotiate an Enterprise Bargaining Agreement (EBA) to vary the
- Modern Award covering all or a section of employees.
- Interpretation of Modern Awards is a complex area that a HR consultancy can help you to navigate.



Safe Work Australia



[Safe Work Australia](#) is a tripartite national policy body (representing the interests of the Commonwealth, workers, and employers) with primary responsibility to lead the development of policy to improve **work health and safety** and **workers' compensation** arrangements across Australia.

As a national policy body Safe Work Australia does not regulate work health and safety laws; that is done by The Commonwealth, states and territories within their own jurisdiction.

Model Workplace Health and Safety Laws

The Model Work Health and Safety (WHS) Act 2011 is a national framework for Health and Safety. At the time of writing (February 2017) it still has not been adopted by Western Australia.

Until the new WHS laws are passed and take effect, the principal Occupational Safety and Health (OSH) law in Western Australia consists of the Occupational Safety and Health Act 1984 (WA), supported by the Occupational Safety and Health Regulations 1996 (WA). This legislation applies in all WA workplaces and should be checked for details of requirements.

Workers Compensation (Western Australia)

Under the Workers Compensation and Injury Management Act 1981, employers are obliged to:

- Have Workers Compensation Insurance Cover for all employees
- Send claim forms and Certificates to your Insurer within 5 days of an employee being injured at work
- Pay employees according to the directions of your Insurer
- Have an Injury Management system
- Implement a Return to Work Program for an injured employee

These obligations are onerous and important.

For further information see www.workcover.wa.gov.au.

Types of Workers

There is some confusion about the classification of workers, which has frequently been debated in the Fair Work Tribunal. Getting the classification wrong could put employers at risk of not fulfilling their obligations, or put employees at risk of not being compensated as entitled.

VELPIC TIP!

The information that employees need to know about your company, legal obligations and policies can potentially be dry, long, and complex. Velpic's eLearning options provide excellent ways to chunk information down into bite-size pieces and serve it up with dynamic audiovisual training that captures attention, improves recall and keeps accurate records of training.

Casual vs Permanent or Fixed Term

The simple test is: does this employee have a regular pattern of work?

Fixed term or Permanent workers have a regular pattern of work, usually of at least 6 months.

Casual employees would be asked by the employer each and every time they require them to work.

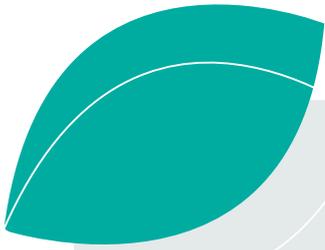
- They would have the opportunity to say 'yes' or 'no' to taking on the work.
- They are often employed for holiday cover, or to cover peaks in workload.
- As they are not paid when on leave or during holidays, they are entitled to a 25% pay loading to make up for it.
- Casual employees are not entitled to notice and cannot claim redundancy pay or unfair dismissal.

Contractor vs Employee

Similarly, deciding whether someone is a contractor or an employee is a complex area:

- Employees work in your business and a part of your business.
- Contractors run their own business and provide services to your business.

The ATO website provides a [decision tool](#) to distinguish between employees and contractors.



Visit
Velpic.com/human-resources-industry
to find out how we can
help you better manage
your workforce.

Try Velpic for free
velpic.com

