



Foreign workers – Know your workplace rights!

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, investigate workplace complaints, and enforce relevant Commonwealth workplace laws.

All people working in Australia, including foreign workers, are entitled to basic rights and protections in the workplace. Foreign workers are people who are not Australian citizens or permanent residents, and may include 'backpackers', seasonal workers, or international students. In order to work in Australia, they must have a temporary long stay or permanent visa.

Workplace laws in Australia generally apply equally to all workers employed in Australia. Employers engaging foreign workers must ensure that they comply with both Australian workplace laws and immigration laws.

Australian immigration laws – including applying for and understanding the rules of valid work visas, as well as the obligation to pay market salary rates for Subclass 457 visa holders – are enforced by the Department of Immigration and Citizenship. For information on all visa requirements, contact the Department of Immigration and Citizenship on **13 18 81** or visit www.immi.gov.au.

Commonwealth workplace laws, including the payment of minimum rates of pay and conditions under awards and agreements, are enforced by the Fair Work Ombudsman. All references to an award or agreement in this fact sheet include modern awards, enterprise agreements, and award or agreement-based transitional instruments.

What are my minimum rights and conditions at work?

From 1 January 2010, all employees in the national workplace relations system receive 10 basic minimum entitlements known as the National Employment Standards (NES).

The NES include:

- Maximum weekly hours of work
- Requests for flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal/carer's leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Provision of a Fair Work Information Statement

For more information on the NES, please see the *Fair Work Ombudsman Fact Sheet – Introduction to the NES*.

Your minimum rights and conditions at work may be set by a legal document like an award, an agreement, or a contract of employment. Ask your employer which one applies to you to find out how you are affected.

If an award or agreement does not apply, all employees in the national workplace relations system will receive basic minimum pay, conditions and protections under Commonwealth workplace laws.

If you are asked to sign any type of document agreeing to specific work conditions, make sure you read it very carefully and understand it before signing. Keep a copy for your records. You should not feel undue pressure to sign any agreement with your employer. If you do, contact the Fair Work Infoline on **13 13 94**.

Am I an employee or independent contractor?

Employees work for another person under a contract of employment in return for regular pay. They will usually also be subject to an award or agreement.

Independent contracting is where one business works for another business. Generally, independent contractors will use their own equipment, choose the hours they work, and decide how the work is done.

Some employers disguise employment relationships as an independent contracting arrangement to avoid paying legal minimum rates of pay, tax, and entitlements like annual leave and sick leave. This is called 'sham contracting' and it is against the law.

For more information on independent contractors, please see the *Fair Work Ombudsman Fact Sheet – Independent Contractors*.

Minimum rates of pay

Under Commonwealth workplace laws, no employee over the age of 21 in the national workplace relations system can be paid less than the minimum wage. The national minimum wage order is determined by the Minimum Wages Panel within Fair Work Australia, and is intended as a safety net.

An employee's minimum wage will generally be contained within an award or agreement, establishing a basic rate of pay for ordinary hours. It may also contain additional rates for overtime hours, or penalty rates for certain shifts outside ordinary working hours.

Employers must pay the correct rate of pay (according to the appropriate award or agreement) for all hours that the worker is required to attend work, including for work meetings and training.

For more information about awards and agreements, go to www.fairwork.gov.au.

If you are a primary Subclass 457 visa holder, your sponsor must ensure that the terms and conditions of employment provided to you are no less favourable than those they provide to Australian citizens/permanent residents performing equivalent work in your workplace. This means that all primary Subclass 457 visa holders should be paid market salary rates by their sponsors.

For more information about market salary rates, contact the Department of Immigration and Citizenship on **13 18 81** or visit www.immi.gov.au.

Can my employer deduct money from my wages?

Generally, an employer cannot deduct any money from your wages unless the deduction is:

- for your benefit, and you agree to it in writing or
- authorised under a term of an award, agreement or Fair Work Australia order or
- authorised under Commonwealth, State or Territory law, or by an order of a court.

This means that an employer generally cannot take money from your wages unless you agree and the deduction benefits you, or unless your industrial instrument permits it. For example, if you accidentally break something, the employer cannot deduct money from your wages. Further, an employer cannot force you to agree to a deduction.

Even if the deduction is authorised under a term in an award or agreement, the term has no effect if the deduction is directly, or indirectly, for the employer's benefit, or if the deduction is unreasonable.

All deductions, regardless of the circumstances, from the wages of an employee under the age of 18 must be authorised in writing by the employee's parent or guardian.

If you are concerned about deductions from your wages, contact the Fair Work Infoline on **13 13 94**.

Can my employer pay me in cash?

Your employer may choose to pay you using cash, cheque, money or postal order, or through electronic funds transfer into your bank account.

It is acceptable for your employer to pay you in cash as long as tax has been taken from your earnings and sent to the Australian Taxation Office (ATO). Generally, you should also be receiving superannuation. You should check your pay slip each time you are paid to make sure this is being done.

'Cash in hand' is a term used to describe cash payments where tax has not been taken out – this is against the law.

Contact the Fair Work Infoline on **13 13 94** if you are unsure about your pay arrangements.

My employer wants me to sign an individual flexibility arrangement, what do I do?

Employers and employees can enter into individual flexibility arrangements (IFAs) which alter the way a modern award or enterprise agreement applies to an employee. This can change the way some entitlements, such as penalty rates or allowances, apply in your employment.

An employer cannot force you to enter into an IFA. If you feel that you are being pressured to do so, you should contact the Fair Work Ombudsman.

In order to create an IFA, the employer is required to ensure that you are better off overall than you would be normally under the award or agreement. This may mean that you receive additional benefits in one area to compensate for those changed in another area. If you believe that you are not better off overall, you should not enter into the IFA.

If you wish to seek further information, contact the Fair Work Infoline on **13 13 94**.

Unlawful workplace discrimination

The *Fair Work Act 2009* protects employees against unlawful workplace discrimination. Unlawful workplace discrimination occurs when an employer takes adverse action against a person who is an employee or prospective employee because of the following attributes of the person:

- race
- colour
- sex
- sexual preference
- age
- physical or mental disability
- marital status
- family or carer's responsibilities
- pregnancy
- religion
- political opinion
- national extraction or social origin.

Where an investigation finds that the employer has (or had) discriminatory practices that are linked to adverse actions for employees or prospective employees, the Fair Work Ombudsman may take enforcement action.

Adverse action taken by an employer includes doing, threatening or organising any of the following:

- dismissing an employee
- injuring an employee in their employment
- altering an employee's position to their detriment
- discriminating between one employee and other employees
- refusing to employ a prospective employee
- discriminating against a prospective employee on the terms and conditions in the offer of employment.

For more information on unlawful workplace discrimination, please see the *Fair Work Ombudsman Fact Sheet – Unlawful workplace discrimination*.

Industrial activities

Under Commonwealth workplace laws, all employers, workers and independent contractors are free to take part in certain industrial activities. This includes the right to become, or not to become, members of an industrial association (such as a union), or the right to participate in lawful activities organised by a union.

It is unlawful for an employer to take adverse action against an employee because they are engaging in lawful industrial activities. For example, an employer cannot alter an employee's position because they are not a member of a union.

For more information on adverse action and other rights protected from certain unlawful action, please see the *Fair Work Ombudsman Fact Sheet – General Workplace Protections*.

Further Information

For further information visit www.fairwork.gov.au or contact Fair Work Online **13 13 94**.

For information on all visa requirements or market salary rates, contact the Department of Immigration and Citizenship on **13 18 81** or visit www.immi.gov.au.

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94