

NSW Employment Conditions

All employers have certain legal obligations to their employees including:

- ❑ Paying correct wages.
- ❑ Ensuring a safe working environment.
- ❑ Supporting an anti-discriminatory and anti-harassment workplace.
- ❑ Taking out workers compensation insurance.
- ❑ Paying superannuation contributions.
- ❑ Paying a range of employee related taxes.

Employees may be entitled to:

- ❑ A range of leave entitlements.
- ❑ Notice of termination and severance pay.
- ❑ Protection from unfair dismissal or unlawful termination.

Employee or contractor?

The relationship between business operators and their workers depends on the terms of the contract. To ensure that you are aware of your obligations, you need to distinguish between employees and contractors.

An employee is bound by a *contract of service*, employed for or in the business. An independent contractor is bound by a *contract for service*, working as a self-employed person, on their own account.

If you have employees, then you have certain obligations that you need to be aware of. Because of their complex nature, you may want to seek legal advice regarding employee and contractual arrangements.

Awards and agreements

Many jobs are covered by Federal or State industrial awards. Others are covered by Enterprise Agreements or individual agreements. Awards and agreements are legal documents setting out the rights and obligations of employers and the minimum wage rates and employment conditions for employees in particular workplaces, industries or occupations.

Award-free employees have minimum entitlements under Federal and State legislation. Employer and individual employees may also agree to terms and conditions of employment that form common law contracts of employment in some cases.

If you are an incorporated business (Pty Ltd or Ltd company) carrying out commercial activities to earn revenue, you are most likely covered by federal legislation. As an employer, you will need to determine what legislation affects you and what you need to comply with. Visit the federal Workplace Authority website, www.workplaceauthority.gov.au or phone 1300 363 264.

If you are a sole trader or partnership, you will probably be covered by the State industrial relations system administered by the NSW Office of Industrial Relations (OIR). Visit the OIR website www.industrialrelations.nsw.gov.au or phone 131 628.

Enterprise Agreements

An Enterprise Agreement is an agreement voluntarily negotiated between an employer and employees (or a union on behalf of the employees) setting out the minimum employment conditions at that particular workplace.

An Enterprise Agreement may prevail over an award or vary award conditions. NSW agreements are approved by the NSW Industrial Relations Commission to ensure employees are not disadvantaged when compared to the appropriate award.

Employer obligations

Employers have certain obligations to their employees. The list below is not exhaustive, but outlines some of the key areas to be aware of:

Paying correct wages

Awards and agreements provide for legally binding minimum wage rates and employment conditions for employees. An employer can choose to pay higher than the minimum wage, but can't pay below it. For information about pay rates, visit www.industrialrelations.nsw.gov.au if you are covered by a NSW award or www.workplaceauthority.gov.au if you are covered by the federal system.

Occupational Health and Safety (OH&S)

Every employer has a duty of care for the health and safety of their employees at work. Under the NSW Occupational Health and Safety (OHS) legislation, employers have responsibilities to undertake appropriate safety measures in the workplace.

Under the legislation, there is a duty for all employers to consult with employees on workplace safety issues. Details on the process of when and how consultations should be undertaken are outlined in the legislation. The legislation also expands upon the provision for employers, controllers of premises and manufacturers of plant to undertake hazard identification, risk assessment and implement risk control measures.

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State or Federal coverage?

Laws regarding employment conditions will differ depending on whether your business is covered by the NSW industrial relations system or the Federal industrial relations system.

If your business is incorporated

Most incorporated businesses (with the exception of some charities and not-for-profit organisations) are automatically covered by the Federal industrial relations system.

If your business is unincorporated

The NSW industrial relations system covers most unincorporated businesses (such as sole traders and partnerships) as well as some incorporated businesses operating in NSW (such as some charities and not-for-profit organisations).

WorkCover provides a Small Business Safety Checklist for checking out the safety of your workplace. For this and other publications and information regarding occupational health and safety legislation in NSW, contact WorkCover on 131050 or visit www.workcover.nsw.gov.au.

Harassment and discrimination

Harassment is unwelcome conduct that humiliates, offends or intimidates people. Under Federal and NSW anti-discrimination law an employer, regardless of size, may be legally responsible for discrimination and harassment which occurs in the workplace. Employers must actively implement precautionary measures to minimise the risk of discrimination and harassment occurring.

As an employer, you should be aware of the legal risks associated with harassment and bullying and the steps that can be taken to minimise their potential liability. Visit the Federal Human Rights and Equal Opportunity Commission website www.hreoc.gov.au or the NSW Anti-Discrimination Board www.lawlink.nsw.gov.au/adb for more information.

Workers compensation

It is a legal requirement for every employer in NSW to take out workers compensation insurance with a licensed insurer. A workers compensation policy insures the employer against compensation claims for workplace injuries. In some cases, contractors are deemed to be employees for the purpose of workers compensation. In this case, the employer needs to take out appropriate insurance.

Employers have many obligations under workers compensation and it is important that you are aware of these obligations. For further information, contact WorkCover NSW on 131050 or www.workcover.nsw.gov.au.

Superannuation

As an employer, you are generally required to make regular superannuation contributions for your employees. For further information on your superannuation obligations, contact the Australian Taxation Office on 13 10 20 or www.ato.gov.au/employers

Pay as you go (PAYG), Fringe Benefit Tax (FBT) and pay-roll tax

For information on PAYG and pay-roll tax, see the **Taxation** fact sheet. For further information on PAYG withholding and FBT taxes you can contact the Australian Taxation Office on 13 28 66 or www.ato.gov.au/employers. Contact the Office of State Revenue on 1300 139 815 or www.osr.nsw.gov.au for information on pay-roll tax.

Employment records

Both NSW and Federal industrial relations laws require employers to provide employees with pay slips. You must also keep accurate and complete time, wage and leave records for each employee for at least six years (NSW) or seven years (Federal). These records should be in plain English and easy to read.

For more information regarding record keeping and payslip requirements please contact the NSW Office of Industrial Relations on 131628 or www.industrialrelations.nsw.gov.au, or the Workplace Authority on 1300 363 264 or www.workplaceauthority.gov.au.

Copy of awards

All employers under NSW jurisdiction are required to comply with, and exhibit a copy of, all relevant awards applicable to their workplace.

Business Advisory Services
1300 650 058



Department of
State and Regional
Development



**NSW WE MEAN
BUSINESS**
Department of State and Regional Development

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Details of the wage book and payslip

Wage book: There should be a record for each employee detailing all wages, deductions and 'take home' net amounts

Pay slips: These must include the name and Australian Business Number (ABN) of the employer, employee's name and classification, date of payment, dates relating to pay period, gross pay (including overtime), tax deductions and particulars of all deductions, including employee superannuation contributions and net pay.

More Information

SOURCES OF INFORMATION

For more information regarding the NSW industrial relations system contact the NSW Office of Industrial Relations on 131628 or www.industrialrelations.nsw.gov.au

For more information regarding the Federal system of industrial relations contact the Federal Workplace Authority on 1300 363 264 or www.workplaceauthority.gov.au

Visit the NSW Department of State and Regional Development's small business website at www.smallbiz.nsw.gov.au

WHO SHOULD I TALK TO?

Contact your local Business Advisory Service to talk over employment issues.
Call 1300 650 058

Employee entitlements

Leave entitlements

Leave entitlements are prescribed by the relevant NSW award or agreement covering the particular employee. If employees are covered by federal legislation, they receive minimum leave entitlements set out in the Australian Fair Pay and Conditions Standard, though in most cases, interim arrangements will preserve current award entitlements which are more generous than this standard. Sick leave, parental leave, personal carers' leave, bereavement leave and jury leave are some examples of leave allowed under awards or agreements.

Please refer to the appropriate award or agreement to determine leave entitlements. For assistance with this, contact the NSW Office of Industrial Relations or the federal Workplace Authority.

Annual holiday leave

Both the *NSW Annual Holidays Act 1944* and federal legislation provides all full-time and part-time workers in NSW with four weeks paid annual leave. Shiftworkers receive additional leave entitlements.

Every employer has the responsibility to pay their workers at the start of the annual holiday period.

Different rules may apply across the two industrial relations systems currently operating in NSW. For clarification of the rules that apply to your workplace, contact the NSW Office of Industrial Relations or the federal Workplace Authority.

Long service leave

The *NSW Long Service Leave Act 1955* states that full-time, part-time and casual workers are entitled to be paid long service leave after working ten years continuously with an employer. In certain circumstances there may also be a partial entitlement after five years of continuous service.

After 10 years of continuous service the employee is entitled to leave, and for each additional five years they will accrue additional leave on a pro-rata basis. For information on how long service leave is paid please contact the NSW Office of Industrial Relations. Under federal legislation preserved award terms providing for long service leave will apply for an interim period.

Notice of termination and severance payments

Awards or agreement may include notice requirements when the employment relationship comes to an end. Often a period of notice is required to be given, or paid in lieu. Again, refer to the relevant award or agreement to determine the appropriate notice period.

Unfair dismissal

Employees who may have been unfairly dismissed may be eligible to lodge an unfair dismissal claim to seek re-instatement or compensation. An employer should not dismiss an employee in a harsh, unreasonable or unjust manner. In the event the employee would be eligible to lodge an unfair dismissal claim, the matter would be heard by the NSW Industrial Relations Commission. For further information regarding unfair dismissal please contact the NSW Office of Industrial Relations.

If the business is operating in the Federal industrial relations system, it is unlawful for an employer to terminate an employee on discriminatory grounds. For further information, contact the federal Workplace Authority.