



Employment Conditions

Employee or Contractor?

The relationship between a business operator 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 services*, 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 the complex nature, you may want to seek legal advice regarding employee and contractual arrangements.

Awards and Agreements

Awards: Awards are legal documents setting out minimum rates of pay and conditions, which apply to employees in particular workplaces, industries or occupations. They may set out hours of work, pay rates, penalty rates, loadings and leave entitlements.

Awards are made by one or more employers, employer organisations and unions (who represent employees) and approved by either the NSW or Australian Industrial Relations Commissions.

Most NSW awards are “common rule” awards, which mean they bind all employers in an industry or who have employees in particular occupations.

A federal award specifies the category of employee to which it applies, and names the employers bound by the conditions of the award, either individually or through their membership with an employer organisation. Employers may be bound by either a Federal or State award, or both.

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

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 are not governed by common law.

Enterprise Agreements: An Enterprise Agreement is an agreement voluntarily negotiated between the 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.

Enterprise agreements may occur at the Federal or State level. Certified Agreements and Australian Workplace Agreements (AWA) are made at the Federal level.

Federal Certified Agreements are certified by the AIRC and must be approved by the majority of employees in that workforce. AWAs are filed with and approved by the Office of the Employment Advocate. Certified Agreements are collective agreements whereas AWAs are individual agreements.

To make Federal agreements, you need to be a constitutional corporation, that is a registered company and the Federal agreement needs to pass a no-disadvantage test.

NSW agreements are approved by the NSW Industrial Relations Commission to ensure employees are not disadvantaged when compared to the appropriate award.

Leave Entitlements

Under any Award, there is a provision for the minimum leave entitlement employees are allowed to take. However, in the case of employees that do not come under the award, there are legislative provisions that determine the minimum leave entitlement.

Annual Holiday Leave: The *NSW Annual Holidays Act 1944* allows all full-time and part-time workers in NSW to have four weeks paid leave after each completed year of service.

Each employer has the responsibility to:

- ✓ Keep full records of their workers' annual holidays for a 6 year period;
- ✓ Give at least one month's notice requiring a worker to take annual leave or of an annual close-down;
- ✓ Pay the worker at the start of the annual holiday.

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.

The employee is entitled to two months paid leave after ten years continuous service with one employer and one month paid leave for each additional five years service.

Notice of Termination and Severance Payments: Awards also include requirements of the period of notice of termination and the level of severance payment based upon years of service.

The Workplace Relations Act also contains notice requirements. Employees unlawfully dismissed may be entitled to claim for reinstatement or compensation. It is therefore worthwhile to seek advice before proceeding with a dismissal.

Employer Responsibilities

1. Occupational Health and Safety

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 covered in the OHS Act 2000.

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.

The revised OHS legislation came into effect on 1 September 2001, however small businesses that employ no more than 20 employees have until 1 September 2003 to implement a risk management program in the workplace to identify, assess, control and/or eliminate risks.

New requirements relating to carcinogenic substances, lead risk work, registration of plant designs and certain plant equipment and appointment of a 'principal contractor' for certain construction work have also been included in the new OHS legislation.

For detailed information about the new legislation, a Small Business Safety Starter Kit is available from WorkCover to help small business understand their obligations. This can be obtained from the WorkCover Publications Hotline on 1800 658 134 or the WorkCover website at www.workcover.nsw.gov.au.

2. 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.

3. Superannuation

As an employer, you are required to make superannuation contributions for your employees as a percentage of their earning base.

A superannuation contribution equivalent to 9% of your employee's earning is required if your employee is aged between 18 and 70 and is paid \$450 or more in a month. However, there may be some variations of required superannuation contributions under certain award agreements. In this

event, you must comply with both the superannuation guarantee and the award system.

4. PAYG

For taxation purposes, employing businesses need to account for PAYG withholding payments. This is similar to the previous PAYE system for withholding taxes from employee's wages and salaries, as a credit for the employee's income tax liability.

You must register for PAYG withholding to receive a PAYG withholding number. PAYG withholding is reported and paid by completing your Business Activity Statement (BAS), if you are registered for GST, otherwise on your Instalment Activity Statement (IAS).

Even if you are not an employer, you may be required to withhold PAYG payments on behalf of your contractors if you enter into a Voluntary Agreement with your contractors.

5. Payroll Tax

Payroll tax is levied at the State level and is only payable if the total wages paid in Australia during the payroll tax year exceeds \$600,000 (as at July 2002). The payroll tax rate for 1 July 2002 and 30 June 2003 is 6%, levied on wages and other employee related expenses above the \$600,000 threshold. Contact the Office of State Revenue for more information.

6. Fringe Benefit Tax (FBT)

Fringe benefit tax is administered by the Australian Taxation Office (ATO) and is levied on fringe benefits, which are provided in place of or in addition to wages and salaries of employees.

Business operators with employees may be liable for FBT. Contact the ATO to establish whether you are liable for this tax.

Record Keeping

Wage Book: The law requires that every business must keep records of wages paid to its employees for at least 6 years (NSW *Industrial Relations Act*) and 7 years (Cth *Workplace Relations Act*). There should be a record for each employee detailing all wages, deductions and 'take home' net amounts.

Pay Slips: All employees must be provided with pay slips within one day of the payment of wages. 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.

Contacts

Awards

- NSW Awards: *Office of Industrial Relations, Award Enquiry Service*, phone 13 16 28. Alternatively visit the Office of Industrial Relations at www.dir.nsw.gov.au
- Federal Awards: *Department of Employment and Workplace Relations, WageLine Service* on 1300 363 264 or *WageNet* website at www.wagenet.gov.au.

Enterprise Agreements

- State Enterprise Agreements: *Office of Industrial Relations, Workplace Advice*, phone 1800 803 836 or e-mail win@dir.nsw.gov.au. Alternatively visit their website at www.dir.nsw.gov.au.
- Federal Certified Agreements: *Department of Employment and Workplace Relations WageLine Service* on 1300 363 264 or *WageNet* website at www.wagenet.gov.au.
- Australian Workplace Agreements: *Office of the Employment Advocate*, phone 1300 366 632 or *AWAonline* at www.awaonline.gov.au.

Workers Compensation and Injury Management: WorkCover, phone 13 10 50. Website: www.workcover.nsw.gov.au.

Superannuation

Superannuation Guarantee Help line ATO, phone 13 10 20. Website: www.ato.gov.au

Federal Business Taxes, including PAYG and FBT: Business Info line at the Australian Taxation Office: phone 13 28 66. Website: www.ato.gov.au.

Payroll Tax: Office of State Revenue: phone (02) 9685 2188 or 1800 673 402. Website: www.osr.nsw.gov.au.

For More Information:

Contact your local Business Advisory Service on 1300 650 058 to talk over business management issues or visit the Department of State and Regional Development's Small Business Website at www.smallbiz.nsw.gov.au.