

## General Employment Conditions for Non-Award Employees

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**IMPORTANT NOTICE:** The information outlined below applies to employees and employers who are under State industrial relations jurisdiction. Since the commencement of the federal government's workplace relations laws on 27 March 2006, employers who are constitutional corporations (including a financial or trading corporation – generally Pty Ltds or Limiteds) and their employees are now covered under federal industrial relations jurisdiction. These employees and employers should contact the Queensland Workplace Rights hotline on **1300 737 841** or visit [www.workplacerrights.qld.gov.au](http://www.workplacerrights.qld.gov.au) for further information and assistance on the laws.

One of the objectives of the *Industrial Relations Act 1999* (the Act) is to ensure that wages and employment conditions provide fair standards in relation to living standards prevailing in the community.

Prior to the introduction of the Act Queensland's industrial relations system prescribed wages, hours of work and some leave provisions for employees whose employment was covered by an award or agreement made by the Queensland Industrial Relations Commission. However statistics have shown that the employment of approximately 17% of the workforce is not covered by any award or agreement.

From its introduction on 1 July 1999, the Act prescribed a set of general employment conditions that included (among other issues) entitlements to a range of leave provisions for all employees regardless of whether or not their employment was covered by an award or agreement. More recently the Act was amended to provide for the declaration by the Queensland Industrial Relations Commission at least once yearly of a Queensland minimum wage applicable to employees whose employment is not otherwise covered by any award or agreement.

The rates of pay in the Queensland minimum wage general ruling combined with the leave entitlements, protections against unfair dismissal and other industrial relations entitlements already provided for in the Act ensure a broad safety net of wages and conditions for all Queensland's workers.

**This publication is aimed at outlining basic information on the industrial relations entitlements and obligations applicable to employment that is not covered by any award or agreement (for employment that is covered you should refer to the relevant award or agreement).**

In this publication we have not attempted to outline every rule and regulation relating to all entitlements and obligations. Readers wishing to obtain more detailed explanation of industrial relations rights and obligations should contact one of the organisations listed in the 'More Information' section of this publication.

This publication contains information on:-

- The Queensland Minimum wage;
- Leave entitlements including sick leave, annual leave, public holidays, parental leave, carers leave, bereavement leave, cultural leave, long service leave and covers continuity of service and employment;
- Dismissal laws;
- Time and wage records and pay advice notices;
- Payment of wages;
- Compliance; and
- Other general information.

### The Queensland Minimum Wage

Queensland's *Industrial Relations Act 1999* provides for a minimum rate of pay for all employees whether or not they are covered by an award or agreement.

All employees (subject to certain exclusions below) have a legally enforceable entitlement to a minimum rate of pay no matter what sort of work they do.

In the 2009 State Wage Case General Ruling effective from 1 September 2009 the Queensland Industrial Relations Commission has ordered a Queensland Minimum Wage (QMW) weekly rate for full time employees of \$568.20 (previously \$552.00).

### Employees not covered by an award or agreement

Minimum wages for employees not covered by an award or agreement are to be calculated in accordance with the following arrangements:

- **Full-time adults** - employees 20 years of age and over working on a full time basis are entitled to the QMW weekly rate of \$568.20 from 1 September 2009.
- **Juniors** - employees under 20 years of age are entitled to a rate of pay calculated as a percentage

of the QMW based on either their age or experience (whichever gives the higher rate).

- **Part-time and casuals** - employees engaged on a part time or casual basis are entitled to the QMW weekly rate divided by 40 for each hour worked.
- **Hours exceeding 40 per week** - employees (whether full time, part time or casual) are entitled to the QMW weekly rate divided by 40 for any hours worked in excess of 40 per week.

The table below sets out the rates of pay resulting from the 2009 State Wage Case General Ruling.

Age	Percentage %	From 1 September 2009	
		Full time per week	Part time or Casual per hour
17 years and under or 1st year of experience*	55%	\$312.50	\$7.8125
18 years or 2nd year of experience*	65%	\$369.30	\$9.2325
19 years but less than 3rd year of experience	75%	\$426.20	\$10.6550
3rd year of experience	85%	\$483.00	\$12.0750
20 years and over	100%	\$568.20	\$14.2050

\* Whichever gives the higher rate

**Note:** The QMW is not applicable to the following employees:

- A disabled person or a person working in supported employment services;
  - **Note:** This exclusion only applies to persons working in a supported employment service;
- A person whose services are paid wholly by commission or percentage rewards;
- A piece rate worker;
- A volunteer;
- An apprentice or trainee under the *Vocational Education, Training and Employment Act 2000* (their rates are prescribed in awards, agreements or orders); and
- Employees who, at the 20 December 2002, were covered by a certified agreement, Queensland workplace agreement, industrial agreement, enterprise flexibility agreement or an order setting wage rates for apprentices or trainees during the currency of that agreement or order.

## Leave Entitlements

The *Industrial Relations Act 1999* (the Act) provides that the following minimum leave entitlements apply to all Queensland employees regardless of whether or not their employment is covered by an award or agreement. Excluded from this are casuals and pieceworkers unless entitlements are specifically provided in the Act for such employees.

In the case of annual leave, sick leave and public holiday provisions, these entitlements only became available or commenced to accrue to employees from 1 July 1999 (where employers and employees had agreed on such entitlements before that date, the employee also retains that agreed entitlement).

### Sick leave

- Sick leave is paid leave granted by an employer to an employee for a period of time during which the employee is unable to attend work due to any illness or incapacity.
- An employee is entitled to 8 days paid sick leave per year. For each completed period of employment of less than a year, the employee shall be entitled to at least one day sick leave on full pay for each completed 6 weeks of employment. Sick leave can be taken for part of a day.
- For employees who are paid on the basis of the number of hours worked (e.g. part-time employees), a day means one-fifth of the number of hours that the employee would ordinarily have been required to work in a week averaged over each 6 weeks of employment. For example, an employee averaging 25 hours worked each week would accrue 5 hours sick leave for each 6 weeks of employment.
- Employees are required to promptly notify their employer of any sickness and the length of absence.
- If an absence is longer than 2 days an employee must give their employer a doctor's certificate about the nature of the illness or other evidence of the illness to the satisfaction of their employer.
- Sick leave accumulates with the unused portion from any year of employment being carried over as an available entitlement in subsequent years.

There is no limitation on the amount that accumulates.

- Accumulated sick leave that has not been taken does not have to be paid out on termination.

### Annual leave

- Annual leave is paid holiday time that employees receive for each completed year of employment.
- Employees are entitled to a minimum of 4 weeks paid annual leave per year. A shift worker (i.e. an employee who works on a rotating roster that includes each of the shifts in employment where shifts are worked 24 hours a day, 7 days a week) is entitled to 5 weeks paid annual leave per year.
- Annual leave is exclusive of public holidays.
- Annual leave does not accrue periodically throughout the year. The full yearly entitlement becomes available to the employee only at the end of each year of employment. For example, an employee who commenced employment on the 3 June 2001 is not entitled to take any annual leave until 3 June 2002. The employee will be entitled to take 4 weeks (or 5 weeks if they are a shift worker) annual leave from that date.
- It is considered that part-time employees would still accrue 4 weeks leave per year. Payment for each week of that annual leave should be calculated on the average number of hours worked per week over the 12 months preceding the leave.
- Annual leave accumulates with the unused portion from any year of employment being carried over as an available entitlement in subsequent years. There is no limitation on the amount that accumulates.
- Once the entitlement to annual leave has accrued, an employee and employer may agree when annual leave is to be taken. If agreement cannot be reached the employer may decide when leave is to be taken and must give the employee 14 days notice of the starting date of the leave.
- An agreement can also be made that annual leave is taken before the employee becomes entitled to it. An employer cannot insist that an employee take annual leave before the entitlement has accrued.
- Annual leave must be paid at the rate the employee is receiving immediately before the leave is taken. The legislation does not require the payment of

additional holiday pay loading to employees who are not covered by an award or agreement.

- Accumulated annual leave that has not been taken is paid out on termination.
- If an employee is terminated after any period of less than one year they are entitled to proportionate annual leave (pro rata holiday pay) for the period.
- Example of calculation of holiday pay on termination of employment:

An employee commences work with their employer on 3 February 2004 and terminates their employment 11 April 2005. They have taken no annual leave during their employment. At the time of their termination their weekly rate of pay is \$484.40. On termination of employment their annual leave owing is calculated as follows –

1)		
For the period 3.2.04 – 3.2.05	=	4 weeks pay at their current rate
	=	4 x \$484.40
	=	\$1937.60
PLUS		
2)		
For the period 4.2.05 – 12.4.05	=	(Number of calendar days ÷ 365) x 4 weeks pay
	=	(68 ÷ 365) x 4 x \$484.40
	=	0.1863 x \$1937.60
	=	\$360.98

- From 1 April 2005, the Act provides a formula for those employees who receive a commission component as part of an annual leave payment.
- Notice of termination of employment can be given by an employer to an employee whilst on annual leave but the period of notice cannot form part of annual leave.

### Public holidays

- The *Industrial Relations Act 1999* provides that the following days are public holidays - New Year's Day (1 January), Australia Day (26 January), Good Friday, Easter Saturday (the day after Good Friday), Easter Monday (the Monday after Good Friday), Anzac Day (25 April), Labour Day (the first Monday in May), Sovereign's birthday (the second Monday in June), Christmas Day (25 December), Boxing Day (26 December), or a day appointed under the *Holidays Act 1983* to be a

substitute holiday for any of the above days or a show holiday.

- In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.
- An employee who is normally required to work on a day which is a public holiday is entitled to a day off on full pay for that day.
- For part-time employees payment for a public holiday not worked should be the amount received for the hours normally worked on that day.
- An employee (full-time or part-time) who is rostered off on the public holiday and does not work is not paid for the day.
- An employee who works on a public holiday (including a casual employee) is paid ordinary rates for that day. The legislation does not require that employees not covered by an award or agreement who work on a public holiday are to be paid additional penalty rates.

### Family leave

Family leave covers various types of leave that employees can use to balance their work and family responsibilities. It consists of **parental leave, carer's leave, bereavement leave and cultural leave**. For the purposes of the family leave provisions the following definitions are applicable:

- a long-term casual employee is defined as a casual employee who has been engaged by an employer on a regular and systematic basis for at least one year.
- a short term casual employee is a casual employee, other than a long term casual employee, and
- members of the immediate family are defined as the employee's spouse (including a former spouse, de-facto spouse and spouse of the same sex as the employee), and a child, ex-nuptial child, stepchild, adopted child, ex-foster child, parent, grandparent, grandchild or sibling of the employee or the employee's spouse.

### Parental leave

- Parental leave is leave for the:
  - birth of a child to a pregnant employee,
  - birth of a child to an employee's spouse, and
  - adoption of a child.

- Employees, including long term casuals, are entitled to a maximum of 52 weeks unpaid parental leave.
- Employees must have had at least 12 months continuous service with their employer before they can take parental leave.
- Both the employee and their spouse are entitled to parental leave provided that the combined total does not exceed 52 weeks.
- Upon becoming aware of a pregnancy or impending adoption involving an employee or their spouse, employers are required to inform employees of their entitlements and obligations in relation to family leave.
- Employees are entitled to return to their former position upon returning from parental leave.
- Employees can make an application to extend parental leave.

### Carer's leave

- Carer's leave is leave for employees to care and support members of their immediate family or household when they are ill.
- An employee may use up to ten days per year on full pay from their accrued sick leave as carer's leave
- Long term casual employees are entitled to ten days unpaid carer's leave per year.
- Short term casual employees are entitled to leave work or be unavailable to attend work for up to two days each time they qualify for carers leave.

### Bereavement leave

- Bereavement leave is leave to assist employees when a member of their immediate family or household dies.
- An employee is entitled to at least two days leave on full pay on the death of a member of their immediate family or household.
- Long term casual and short term casual employees are entitled to at least 2 days unpaid bereavement leave on each such death.

### Cultural Leave

- Cultural leave is leave for an employee who is required by Aboriginal tradition or Island custom

to attend an Aboriginal or Torres Strait Islander ceremony.

- An employee may take up to 5 days unpaid cultural leave in each year.

### Long service leave

- Long service leave is a period of paid leave granted to an employee in recognition of a long period of service to an employer.
- All employees (including casuals and pieceworkers) are entitled to long service leave on the basis of 8.6667 weeks after 10 years continuous service.

*Comparison with previous entitlements* - Service prior to 3 June 2001 accumulated an entitlement of 13 weeks for 15 years service. Service prior to 11 May 1964 accumulated an entitlement of 13 weeks for 20 years service.

- For those employees employed with their current employer as at 3 June 2001, the legislation provides for the 'phasing in' of the entitlement to take leave on full pay. This means that only two-thirds of an employee's continuous service completed before 3 June 2001 counts as continuous service for the purposes of working out when long service leave may be taken.
- To calculate long service leave under these 'phasing in' provisions, service before 3 June 2001 is reduced to 2/3 of its total. The difference between this reduced service and 10 years is the period after 3 June 2001 that must be worked before leave is due to be taken. This subsequent period of service is added to the **actual** service before 3 June 2001 and the total is multiplied by 0.86667 weeks leave for each year (and fraction of a year) to calculate the amount of leave owing.

**Example** - An employee has completed 9 years service immediately before 3 June 2001. The 9 years count as 6 (i.e.  $2/3 \times 9$ ) years continuous service for working out when the employee may take long service leave. The employee may take leave after completing another 4 ( $6 + 4 = 10$ ) years continuous service. This means they will be entitled to take leave only after they have achieved a total of 13 (i.e.  $9 + 4$ ) years continuous service. The employee's entitlement at that time will be 11.2667 weeks (i.e.  $13 \times 0.86667$  weeks).

- An employee is entitled to take further long service leave 5 years after they have achieved their first entitlement.

- Casual and regular part-time employees achieve a long service leave entitlement on the same basis as outlined above. However, the amount of leave and payment for it is calculated on an employee's actual hours of service. This entitlement is calculated as:

$(\text{number of hours worked} \div 52) \times (8.6667 \div 10)$ .

Therefore, a casual employee who worked 15,600 hours over a 10 year period would be entitled to 260 hours of long service leave. This same method of calculation is used if an employee has been casual or regular part-time at any time during their period of employment (i.e. the employee's employment has changed from full-time to casual or regular part-time employment or vice versa).

- Employees are entitled to receive proportionate payment of long service leave on termination of employment after completing 7 years continuous service. This payment is often called pro rata long service leave. However, employees who have completed 7 but less than 10 years continuous service are entitled to pro rata long service leave only if:
  - The employee's service is terminated by their death;
  - The employee terminates their service because of their illness or incapacity or because of a domestic or other pressing necessity;
  - The employer dismisses the employee for a reason other than the employee's conduct, capacity or performance; or
  - The employer unfairly dismisses the employee.
- For an employee who has 10 years continuous service or more, the payment of pro rata long service leave on termination of employment is not subject to the above listed criteria. The 'phasing in' provisions are not used in the calculation of pro rata long service leave – the total of all actual service is used to calculate the entitlement.

### Continuity of Service and Employment

The leave entitlements in the Act are based on continuous service or completed years of employment achieved by the employee.

The Act also determines that certain absences by reason of how they occur or by their duration will break the continuity of service. This applies to absences on leave as well as certain absences arising from the termination and subsequent rehiring of an employee. Should one of these absences occur, the leave that an employee has accrued but not taken at the

time of the absence are not carried over when the employee recommences work.

In addition to this the Act provides that periods of absence from work (unless on paid leave or certain other specifically prescribed reasons) do not count as service for the purpose of working out when leave becomes due.

Specific provisions are also made for leave entitlements to transfer from one employer to another as a result of a 'transfer of calling'. For example, where an employer purchases a business and retains the employees of that business after the purchase then the accrued leave entitlements of those employees become the obligation of the new employer.

For further enquiries on continuity of service issues please refer to one of the organisations listed in the 'More Information' section of this publication.

## Dismissal

The *Industrial Relations Act 1999* (the Act) includes provisions about dismissal that aims to ensure a system that balances fairness to employees with the needs of employers to dismiss employees when there is a good reason.

All employees have the right to make an application to the Queensland Industrial Relations Commission (the Commission) if they feel they have been unfairly dismissed.

### When is a dismissal unfair?

A dismissal is unfair if it is –

- **harsh, unjust or unreasonable** (i.e. the procedure was unfair), or
- for an **invalid reason** (i.e. the reason itself was unfair or discriminatory).

There are certain classes of employees who are excluded from the unfair dismissal provisions including:

- probationary employees
  - all employees are considered to be on probation for the first 3 months of their employment. An employer and employee may make a written agreement before employment starts to have a longer period of probation - provided that period is reasonable in relation to the circumstances of the employment.

**Note** - probationary employees are **not** excluded from the unfair dismissal provisions if they are dismissed for an invalid reason (see below).

- short-term casuals
  - this is a casual who has been employed for less than 12 months, is not employed regularly and systematically and has no reasonable expectation of continued employment

**Note** - short term casual employees are **not** excluded from the unfair dismissal provisions if they are dismissed for an invalid reason

- employees engaged for a specific period or task

**Note** - such employees are not excluded from the unfair dismissal provisions if the main purpose of engaging the employee in that way at the time of engagement was to avoid the unfair dismissal provisions

- employees earning wages of more than \$106,400 per year

- An employee who is not employed under an industrial instrument and who is not a public service officer employed on tenure under the *Public Service Act* and whose annual wages immediately before the dismissal are more than \$106,400 is excluded from the unfair dismissal provisions.

- apprentices or trainees.

- Apprentices and trainees are excluded from the unfair dismissal provisions. All training contracts for apprentices and trainees are subject to the *Vocational Education Training and Employment Act 2000*. For more information, refer to the Department of Education and Training website for information on the training contract.

### Harsh, unjust or unreasonable dismissals

In considering whether a dismissal was harsh, unjust or unreasonable the Commission will take the following matters into account –

- was the employee notified of the reason for the dismissal, and
- whether the dismissal related to
  - the operational requirements of the employer's business (i.e. position no longer required), or
  - the employee's conduct, capacity or performance (i.e. the employee is not working

- or acting in the way required by the employer); and
- if the dismissal is related to their conduct, capacity or performance, was the employee given
  - a warning, or
  - an opportunity to respond to allegations, and
- any other matters considered relevant by the Commission.

Even if a dismissal is carried out in accordance with the above considerations, it might still be regarded as harsh, unjust or unreasonable if there was not a good enough reason to justify dismissal.

### Invalid reasons for dismissal

The legislation lists a number of specific issues as invalid reasons for dismissal including:

- temporary absence from work because of illness or injury (i.e. any period of paid sick leave or unpaid sick leave not exceeding 3 months in any one year)
- pregnancy, adoption or birth of a child
- absence on, or application for, parental leave
- discrimination on the basis of sexual preference or family responsibilities or which contravenes the *Anti-Discrimination Act 1991*
- seeking office, or acting, or having acted as an employee's representative
- membership or non membership of a union or taking part in union activities
- filing a complaint or taking part in legal proceedings against an employer
- failing to comply with conditions of employment that stipulate how, where or with whom wages are to be spent.

### Remedies for unfair dismissal

If the Commission considers that an employee has been unfairly dismissed they may make the following orders:

- reinstatement of the employee to their former position, or
- re-employment of the employee in another position considered suitable, or
- compensation to the employee if reinstatement or re-employment is not practical - up to a maximum of 6 months wages.

### Notice of dismissal

Another requirement in relation to dismissal is that an employee is to be given prior notice of dismissal or the equivalent payment in lieu. This requirement does not apply to employees dismissed for reasons of serious misconduct.

The following classes of employees are also excluded from the notice of dismissal provisions in the Act:

- all casual employees
- employees engaged by the hour or by the day
- employees engaged for a specific period or task
- employees on probation (as defined in Act)
- employees not employed under an industrial instrument whose annual wages are more than \$106,400
- apprentices, trainees or employees in labour market programs

The minimum amount of notice of dismissal to be given to employees is based on the employee's length of continuous service and is prescribed in the Act as follows:

Period of continuous service	Notice
Not more than 1 year	1 week
More than 1, but not more than 3 years	2 weeks
More than 3, but not more than 5 years	3 weeks
More than 5 years	4 weeks

An employee over 45 years of age who has more than 2 years service with the same employer receives an additional 1 week notice.

An employer may prefer to give an employee wages instead of having the employee work out the notice period. If the employer chooses this option the amount payable in lieu of notice must equal the amount the employee could have expected to earn if they had worked throughout the prescribed notice period. This would include payment for -

- ordinary hours worked by the employee;
- allowances, loading and penalties the employee could have expected to earn;
- other amounts payable under the employee's employment contract.

For those employees not covered by any award or agreement the amount of notice for resignation must be agreed on with their employer.

### Redundancy

Redundancy may be defined as a dismissal for the reason that:

- the employer has made a definite decision that they no longer wish the job the employee has been doing to be done by anyone, and
- this is **not** due to the ordinary and customary turnover of labour.

It is considered that “ordinary and customary turnover of labour” includes dismissals due to conduct or capacity of the employee or any other dismissal due to recurring or normal features of the business.

Where an employee is to be dismissed due to their position being made redundant, their employer may have to comply with severance allowances and other separation benefits that are additional to all other dismissal requirements.

While the Act is not specific on the amount of those allowances and benefits it provides for them to be defined in accordance with national law and practice. An employee or their union may make application to the Queensland Industrial Relations Commission for an order to determine what those allowances and benefits should be.

In this regard it should be noted that the standard amount of redundancy severance pay in most awards and agreements is as follows:

Period of continuous service	Severance Pay
1 year or less	nil
1 year but not more than 2 years	4 weeks pay
More than 2 years but not more than 3 years	6 weeks pay
More than 3 years but not more than 4 years	7 weeks pay
More than 4 years but not more than 5 years	8 weeks pay
More than 5 years but nor more than 6 years	9 weeks pay
More than 6 years but not more than 7 years	10 weeks pay
More than 7 years but not more than 8 years	11 weeks pay
More than 8 years but not more than 9 years	12 weeks pay
More than 9 years but not more than 10 years	13 weeks pay
More than 10 years but not more than 11 years	14 weeks pay
More than 11 years but not more than 12 years	15 weeks pay
More than 12 years	16 weeks pay

It should also be noted that the standard redundancy clause in most awards and agreements provides that the following classes of **employees** are excluded from entitlements to severance pay:

- employees terminated for misconduct
- employees engaged for a specific period of time or specific task,
- employees engaged on a casual or seasonal basis,
- employees engaged by the hour or by the day, or

- employees who have been employed for less than 1 year.

Additionally, the standard redundancy clause in most awards and agreements also exempts **employers**, who in the last 12 months, employed workers for a total of fewer than 550 hours on average per week.

### Dismissal of 15 or more employees

If an employer intends to dismiss 15 or more employees for **economic, technological or structural** reasons the Act requires certain steps to be taken in relation to all employees.

Before such dismissals take place, the employer is required to notify:

- each union of which any of their employees is a member, and
- the Commonwealth department/agency whose primary function is helping unemployed people find work (currently Employment National)

and provide the following details:

- the number and categories of employees to be dismissed; and
- the reasons for the dismissals; and
- the time when, or the period over which, the employer intends to carry out the dismissals.

Each union of which any affected employee is a member should also be given an opportunity to consult with the employer on ways to:

- avoid or minimise the dismissals; and
- minimise the adverse effects of the dismissals.

### Time & Wages Records and Pay Slips/Envelopes

The *Industrial Relations Act 1999* (the Act) requires employers to keep time and wages records and give written statements of wages paid (e.g. pay slips/envelopes) to all employees. The Act sets out the details which must be included in the records and pay slips/envelopes.

Experience has shown that complaints or disputes about payment of wages are more easily resolved if accurate and detailed records and pay slips/envelopes are maintained by the employer. Information such as this protects the interests of both the employee and the employer.

The Act requires that all time and wages records must be kept:

- for 6 years after the date to which the record refers. For example, all records which relate to a period of employment terminated in June 1998 must be kept until June 2004. If the period of employment was 8 years then 8 years of records must be kept for at least 6 years after the date of termination;
- in the English language; and
- at a workplace of the employer in Queensland.

### Employees not covered by an award or agreement

The records required to be kept for employees not covered by an award or agreement are as follows:

- the employee's full name, address and date of birth
- for each pay period:
  - the employee's designation;
  - the number of hours worked by the employee each day and each week
  - the employee's wage rate;
  - the gross and net wages paid to the employee;
  - details of any deductions made from the wages; and
- the total ordinary hours worked by each casual employee since the start of a period to which a long service leave entitlement relates, calculated up to 30 June in each year.

The time and wages records must also clearly state the employer's full name.

Records of the employee's date of birth and number of hours worked are not required to be kept for employees excluded from the operation of the Queensland minimum wage general ruling (e.g. employees paid on piece rates or wholly by commission).

### Access to time and wages records

The Act provides for employees to have access to the time and wages records of their own employment. Employees are permitted to inspect time and wages records pertaining to their own employment for the 12 months prior to their inspection. At the employer's discretion, the particulars may be supplied to the employees in writing. Unless the employer otherwise consents, the inspection is limited to once every 12 months and may only be carried out during the employer's business hours and outside the employee's working time.

The Act requires that employers make time and wages records available to inspectors employed by the Department of Justice and Attorney-General. Inspectors are authorised under the Act to inspect and copy time and wages records.

The Act also requires that employers make time and wages records available to authorised industrial officers. These are officers of a union who are issued an authority by the industrial registrar. During the employer's business hours, an authorised industrial officer may enter a workplace at which work covered by the officers union is carried on. Employers must allow authorised industrial officers to inspect and make copies of the time and wages records of employees who are or were members or who are eligible to be members of that officer's union.

### Pay slips/envelopes

Each time wages are paid to an employee the employer must give the employee a **written** statement showing how the payment is made up. The information on the pay slip or pay envelope should be sufficient to allow the employee to independently calculate their own entitlements for the pay period.

The information required to be given to an employee may be written on a pay envelope or pay advice slip and must include certain specific details as follows:

- the date of payment;
- the period covered by the payment;
- the number of hours covered by the payment at the ordinary wage rate and at the overtime wage rate;
- the ordinary hourly rate and the amount paid at that rate;
- the overtime hourly rate and the amount paid at that rate;
- the gross wages paid;
- the net wages paid;
- details of any deduction made from the wages; and
- the amount of contribution paid to a superannuation fund.

All pay slips or pay advice statements must also clearly state the employer's full name.

### Certificate of employment on termination

If requested by an employee, an employer must provide a certificate of employment at the time of termination. The certificate is quite important to those employees whose wage rates are determined by years of experience.

This certificate must include:

- the full name and address of the employee,
- a description of the trade or occupation in which the employee was engaged,
- the dates on which the employee commenced and ceased employment in each of the trades or occupations, and

- the address of the workplace at which the employee was engaged.

The certificate must be signed and dated by the employer.

## Payment of Wages

The *Industrial Relations Act 1999* (the Act) prescribes a number of rules about how wages are to be paid to employees.

### Payment without deductions

An employer must pay wages to their employees without deduction – except if those deductions are authorised by the employee **in writing** or if the deduction is authorised by the Act.

The Act gives the right to an employer to make deductions from an employee's wages only where the employee has been paid an amount to which they are not entitled because of absence from work (e.g. an overpayment resulting from leave taken when no entitlement exists).

The employer can commence deductions within 1 year of the date of overpayment with deductions extending up to 6 years after the overpayment. A deduction cannot be made that would reduce the amount received by the employee to less than three-quarters of the wages payable for each pay period.

The Act does not limit the employer's right to commence legal proceedings where they believe they have a legal right to recover any amounts from an employee.

### Paying wages

The requirements for payment of wages in the Act include the following:

- wages must be paid at least monthly. Once the pay period has been set it is good business practice to consult with employees before changes are made to those arrangements.
- wages must be paid in Australian currency, or by one of the following methods but only with the employee's written consent:
  - into an account nominated by the employee, or
  - by cheque, draft, money order or electronic fund transfer.
- if wages are paid in cash the payment may be rounded off to the nearest multiple of 5c.

- wages paid other than in cash are to be paid without any deduction for charges because of the way payment is made (e.g. no deductions for bank fees or payroll processing charges).
- cheques must be payable to a bearer on demand and must not be crossed except with the employee's written consent (i.e. the cheque must be easily negotiable).
- employees must be paid all wages within 3 days of termination.

## Compliance

The *Industrial Relations Act 1999* (the Act) prescribes that employees must be paid their wages without deduction (other than deductions authorised by law or by the employee's written consent).

The definition of the term "wages" includes:

- an amount payable to an employee for:
  - work performed, or to be performed, by the employee; or
  - a public holiday; or
  - leave the employee is entitled to; or
  - termination of employment; or
- a salary; or
- an amount payable from wages for the employee, with the employee's written consent (e.g. a deduction).

The Act prescribes that an employee is entitled to a wage that is not less than the Queensland minimum wage.

For employment not covered by any award or agreement the Act also provides that where an employer and employee have agreed on a rate of wages greater than the Queensland minimum wage, then it is that agreed wage rate that must be paid to the employee.

Employees who believe that they have not received all the industrial relations entitlements due to them may lodge a complaint for investigation by an industrial inspector of the Department of Justice and Attorney-General. Inspectors are also active in conducting audits of businesses in respect of industrial relations entitlements. Employees who are union members may also call on their union to investigate their claims.

Employees may also apply to the Queensland Industrial Relations Commission for amendment of their contract of employment (i.e. the arrangements under which they work) on the basis that the contract is unfair.

Employers who fail to comply with the laws in respect of payment of wages and other industrial relations entitlements may ultimately have legal proceedings instituted against them to recover underpayments and/or impose fines. Employers should also be aware that the Act provides for the issuing of infringement notices (i.e. on the spot fines) for offences such as failing to pay wages or failing to keep time and wages records.

## Where can I get more information?

If you have any enquiries to make about any of the topics discussed in this publication there are a number of organizations from which you can get more detailed advice.

### Department of Justice and Attorney-General Industrial Inspectorate – Industrial Relations Services

This Department has the role of providing information about and ensuring compliance with industrial relations laws in Queensland.

The Department's **Wageline** service provides a diverse range of industrial relations information services to clients – both employees and employers - throughout the state. This information is provided through telephone enquiries, correspondence, an extensive internet website and detailed publications. **Wageline** can also organise for experienced Departmental officers to visit individual workplaces to provide information on industrial relations laws.

#### Contact:

##### Wageline

4<sup>th</sup> Floor, Centro Lutwyche  
543 Lutwyche Road, Lutwyche Q. 4034  
(or) PO Box 820, Lutwyche Q. 4030

- Wageline Information Centre: Ph: 1300 369 945\*
- Facsimile: (07) 3872 0519
- Web site: [www.wageline.qld.gov.au](http://www.wageline.qld.gov.au)
- Telephone Interpreter Service: Ph: 131 450

\* Local call cost (mobiles & payphones may be extra)

### Unions and employer industrial organisations

These organisations can help employees and employers with information on all aspects of industrial relations laws. However, their information is usually given only to their members. Refer to 'Organisations – Business

and Professional' in the Telecom Yellow Pages for contact details.

### Community language information

If you need help in interpreting information in this publication contact the Telephone Interpreter Service listed in your area or telephone 131 450.

### Taxation and Superannuation

Enquiries in relation to rules and regulations relating to taxation and superannuation should be directed to the Australian Taxation Office. Contact details can be found at [www.ato.gov.au](http://www.ato.gov.au) or in the Telecom Yellow Pages.

#### Disclaimer

The information in this fact sheet is provided on the basis that readers will be responsible for making their own assessment of the matters discussed and are advised to verify all relevant representations, statements and information.

Any information or advice given to you by Industrial Relations Services or its inspectors and advisors is given only to assist you to discharge your obligation under relevant state Acts where Industrial Relations Services has an information or compliance role. e.g. Industrial Relations Act 1999. Compliance with this information or advice does not relieve you of your obligation under the Act. Any information or advice is given based on circumstances that you have outlined and/or is given on the basis that you will make your own independent assessment of what action is necessary to ensure your compliance with the Act.

Whilst all care will be taken in providing information or advice to you, the Department of Justice and Attorney-General and its inspectors and advisors will not be liable for any errors or omissions or for any loss or damage suffered by you or any person which arises (directly or indirectly) from your reliance on this information or for any breach by you of your obligations under the Act. Additionally, this advice does not purport to be in place of legal professional advice. If you wish to obtain such advice you should contact an independent professional consultant.

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