



# Employment problems – spot the signs

Read this factsheet to find out if your work, pay or leave conditions are unfair and what you can do about it.

## What's an award?

Awards are made by the Fair Work Commission and set out the minimum pay and conditions for the industry you work in. The Fair Work Ombudsman (FWO) can give information about awards, rates of pay, overtime, breaks and other entitlements.



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[www.fairwork.gov.au](http://www.fairwork.gov.au)

## I am paid less than \$23.23 an hour (as at 1 July 2023)

The national minimum wage is \$23.23 per hour. All workers should be paid at least this amount. Casual employees covered by the national minimum wage should also get at least a 25% casual loading. It is lawful to get paid less than this if you are a 'junior', this is usually 20 years of age or less. Most minimum rates in awards are higher than the minimum wage. The minimum wage is updated each year from July.

## I am paid 'cash in hand' and don't get a payslip

It is legal for you to be paid cash in hand – but your employer must give you a payslip. If you get cash without a payslip there is a real risk that your employer is not following the law.

For example, your employer may not be making superannuation contributions for you or paying income tax on your wages.

## I am working for a trial period with no pay

Some unpaid trials of a very short amount of time can be lawful, such as when an employer asks you to show your skills before hiring you. For example, if you are going for a job as a barista, it might take half an hour to demonstrate that you can make a range of different coffees using the coffee machine. For other jobs, it might take a bit longer to demonstrate your skills.

If your employer asks you to do training in preparation for work, you should be paid for this.

## I am doing unpaid work and I am not sure if I should be paid

People do unpaid work for different reasons, like volunteering or to get work experience. This can be legal, as long as you are not really an employee.

A volunteer is someone who works without expecting to be paid. For example, to help out a charity. If you are a volunteer, you are not entitled to be paid for the work you do.

You are not entitled to be paid for work if you are a student on a vocational placement arranged by an authorised educational or training institution in Australia and the unpaid work is part of your course.

It is more complex if you are doing unpaid work experience or an unpaid internship that is not part of your study. Some of these arrangements are lawful, some are not. For example, if you agree to do unpaid work for an employer to gain experience, but your work is not being supervised and you are given tasks like other employees that you do by yourself, then you might be considered an employee and be entitled to be paid for the work you do.

If you are not sure about whether your unpaid work is lawful, you should get legal advice.

## **I am unsure if I am employed as a casual or permanent employee**

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A permanent employee can work full time or part time. A casual employee can sometimes work full time hours and still be considered casual.

A permanent employee is entitled to paid annual leave, paid personal/carers leave, notice for the termination of their employment and sometimes redundancy. A casual employee is not entitled to these things but is normally entitled to 25% more than the minimum rates in the award, enterprise agreement, or the national minimum wage.

National Employment Standards (NES) are 11 minimum employment entitlements that have to be provided to all employees. All employees (including casuals and small business employees) are entitled to 10 days of unpaid domestic and family violence leave per year as part of the NES.

If you have agreed with your employer to work as a casual, then you probably are a casual. If you are not sure, you should get legal advice about your situation.

Casual employees who have worked for their employer for 12 months must be offered the option to convert to full-time or part-time (permanent) employment by their employer. This is known as 'casual conversion'. Certain eligibility requirements need to be met for this to occur.

For more information see the Fair Work Australia website: [www.fairwork.gov.au](http://www.fairwork.gov.au).

## **I am not paid extra when I work weekends or night shifts**

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Many awards have a higher hourly rate of pay for work on weekends, public holidays, at night or in the early morning. If you are covered by an award, you should check your award to see if you are entitled to extra pay for such work.

You can check your award on the Fair Work website: [www.fairwork.gov.au](http://www.fairwork.gov.au)

If you are not covered by an award, you are only entitled to a higher rate of pay for work on weekends, public holidays, at night or in the early morning if your contract says so.

## **I don't receive superannuation**

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Your employer must contribute an extra 11% of wages into your superannuation fund.

Before 1 July 2022, if you earned \$450 or less per month before tax, your employer didn't have to pay you superannuation. Since 1 July 2022, your employer has to pay you superannuation, regardless of how much you earn.

If you are under 18 and work 30 hours or less per week, your employer does not have to pay you superannuation.

If you are a contractor and you don't have employees of your own, you may be entitled to superannuation. If you are in this situation you should check with the Australian Taxation Office (ATO) or get legal advice.

## **I work long hours without any breaks**

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If you are covered by an award or enterprise agreement you are entitled to breaks. You should check your award or enterprise agreement for more details about your breaks.

You may also be entitled to a break in your contract of employment.

If you don't have a contract or it says nothing about breaks, you should still get a break. This is because work health and safety laws require a workplace to be safe and healthy. If your employer does not give you enough breaks it can increase the risk of accidents, tiredness, and mental illness.

## I am given board and lodging for the work I do

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Your employer must pay you in full and in money for the work you do. However, your employer can deduct rent or board from your wages if you have agreed to it in writing and the amount of the deduction is shown on your pay slip. The amount of money that is deducted should be reasonable.

Some awards expressly allow employers to deduct board from wages. For example, if you live and work at a motor inn, the hospitality award allows your employer to deduct set amounts for accommodation and meals from your pay. Working long hours for only accommodation is often exploitation. Workers who have been homeless or are at risk of homelessness sometimes find themselves in this situation.

## I have been dismissed and it's unfair

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Not all dismissals are unfair, but usually your employer must have a valid reason to terminate your employment and give you a chance to respond to that reason. If you think your dismissal was unfair you should get legal advice urgently. You only have 21 days from the date you were dismissed to start a case for unfair dismissal in the Fair Work Commission. If you are employed by the NSW Government or a local council in NSW, you normally have to go to the NSW Industrial Relations Commission.

For more information go to [www.fwc.gov.au](http://www.fwc.gov.au)

## I have been dismissed because I made a complaint to my boss

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The Fair Work Act protects workers who 'stand up' for their rights or complain about their employment. If you are dismissed for asking about your workplace rights or making a complaint, you can make a general protections dismissal application to the Fair Work Commission. There is a time limit of 21 days from the date you were dismissed to start this type of legal action. You should get legal advice because general protections dismissal applications are complex.

For more information go to [www.fwc.gov.au](http://www.fwc.gov.au)

## Where can I get more help?

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LawAccess NSW is a free information service run by Legal Aid NSW. Anyone who has a legal problem in NSW can contact LawAccess NSW for legal help. Click on the Chat with us icon at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au) or call **1300 888 529** between 9am to 5pm, Monday to Friday (excluding public holidays).

This brochure is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation. The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on 1300 888 529.

This factsheet is also available in Arabic, Chinese (Sim), Hindi, Nepalese, Spanish, Tamil and Vietnamese.



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