

Fact sheet – Minimum conditions at work

1. What are minimum conditions?

Minimum conditions of employment are minimum entitlements that all employees have under the law. Minimum conditions are implied into every award, agreement and contract of employment.

Minimum conditions are set out under both the national system and the state system. Employees who are not in the national system will be covered by the state system and vice versa. If you are unsure whether you are covered by the national or state system, see ELC Fact Sheet – “national system employee or state system employee”.

2. Minimum conditions in the national system

In the national system, minimum conditions are set out in the National Employment Standards (**NES**) contained in the *Fair Work Act 2009* (Cth) (**FW Act**). The NES apply to all employees covered by the FW Act from 1 January 2010.

Employees will be covered by the FW Act if they are employed by a constitutional corporation or the Commonwealth Government, amongst other things.

All employees under the national system – whether casual or permanent – are entitled to the minimum conditions of employment. However, casual employees are not entitled to annual leave or paid personal, carer’s or compassionate leave.

The minimum conditions cover:

- rates of pay and casual loading;
- hours of work;
- public holidays;
- annual leave;
- sick and carer’s leave;
- compassionate leave;
- parental leave;
- requests for flexible working arrangements;
- community service leave;
- long service leave;

- notice of termination and redundancy pay; and
- the provision of the Fair Work Information Statement.

2.1 Rates of pay and casual loading

Minimum rates of pay are determined by the Fair Work Commission (**FWC**) and are reviewed annually. From 1 July 2019, the national minimum wage for permanent adult employees is \$19.49 per hour or \$740.80 per week. If there is a modern award or registered agreement that applies to you then you may be entitled to a higher minimum rate.

Employees under 21 years of age, apprentices, trainees and employees who have a disability that reduces their ability to work may get a lower rate of pay. Casual employees covered by the national minimum wage are entitled to a loading of 25% to compensate for a lack of leave entitlements and job security.

2.2 Hours of work

Under the NES, ordinary hours of work are an average of 38 hours per week over a period of up to 26 weeks plus reasonable additional hours.

2.3 Public holidays

Under the NES, employees are entitled to a day off on a public holiday. An employee may refuse a request from an employer to work on a public holiday if the employee has reasonable grounds for doing so. If an employee is absent from work on a public holiday, he or she is entitled to be paid for the ordinary hours that he or she would have worked if the day was not a public holiday.

2.4 Annual leave

Under the NES, a full-time permanent employee is entitled to 4 weeks' paid annual leave each year. Continuous shift workers who regularly work a roster that includes shifts over 24 hours per day, 7 days a week, are entitled to 5 weeks' paid annual leave per year. Casual employees are not entitled to annual leave.

2.5 Sick and carer's leave

Under the NES, full-time permanent employees are entitled to 10 days' paid sick and carer's leave each year. They may have to give their employer a medical certificate or other evidence. Casual employees are not entitled to paid sick leave.

2.6 Compassionate leave

Under the NES, a permanent employee is entitled to 2 days of paid compassionate leave when a member of the employee's immediate family or household is seriously ill or dies. Casual employees are not entitled to paid compassionate leave.

2.7 Parental leave

The NES provides an entitlement to unpaid leave for leave associated with:

- the birth of a child of an employee or the employee's spouse or de facto partner; or
- the placement of a child under 16 with the employee for adoption.

The right to parental leave is available for permanent employees who have completed at least 12 months' service immediately before the expected birth of the child. Long term casual employees are also entitled to parental leave, providing they have a reasonable expectation of continuing employment on a regular and systematic basis. Parental leave is also available to same sex couples.

Eligible employees and their spouse or de facto partner are entitled to separate periods of up to 12 months' parental leave or alternatively, an employee can request an extension to his or her period of leave for a further 12 months. The employee will be required to provide their employer with 4 weeks' notice and the employer may only reject the request if there are reasonable business reasons to do so. The employer must give written reasons within 21 days if it rejects an employee's request.

An employer must consult with employees on unpaid parental leave where the employer makes a decision that will have a significant impact on the status or pay of the employee's pre-leave position. An employee is also entitled to return to their pre-parental leave position or, if that position no longer exists, to an available position for which the employee is qualified and is nearest in status and pay to the former position.

In relation to adoption, an employee is entitled to up to 2 days of unpaid pre-adoption leave to attend any interviews or examinations required in order to obtain approval for the employee's adoption of a child.

The NES only provides a right to take parental leave, and NOT a right to be paid while on parental leave. The right to parental leave pay comes under a different law. For more information on parental leave pay, see ELC Fact Sheet - "Paid parental leave".

2.8 Requests for flexible working arrangements

Under the NES, some employees can ask their employer for flexible work arrangements such as varying work hours or working from home. This entitlement is available to permanent employees who have completed 12 months of continuous service. Casual employees are also entitled to request flexible working arrangements, but only if they are long term casuals and have a reasonable expectation of continuing employment on a regular and systematic basis.

Employees who have the right to request flexible work arrangements include employees who:

- care for a child of school age or younger;
- are carers under the *Carer Recognition Act 2010* (Cth);
- have a disability;
- are 55 or older;

- are experiencing family violence; or
- provide care or support to an immediate family or household member who is experiencing family violence.

An employer can only refuse a request for flexible work arrangements if the refusal is on reasonable business grounds and given in writing.

2.9 Community service leave

Under the NES, permanent and casual employees are entitled to unpaid leave for certain voluntary emergency management activity, such as firefighting. Permanent employees are also entitled to 10 days' paid leave for jury service.

2.10 Long service leave

The NES preserve all long service leave entitlements existing under current awards and Western Australian law. Some casual employees may have an entitlement to long service leave if they have worked for their employer continuously for some time without a break in their service.

2.11 Notice of termination and redundancy pay

Under the NES, employees are entitled to a minimum period of notice prior to termination, or payment in lieu of notice. Employees also have a right to redundancy pay if their employment is terminated either:

- at the employer's initiative, because the employer no longer requires the employee's job to be done by anyone, or
- because of the insolvency or bankruptcy of the employer.

The right to redundancy pay only applies to employees working for an employer with more than 15 employees. Casual employees are generally not entitled to a minimum period of notice prior to termination. Some other employees are excluded from the entitlement to redundancy. See ELC Fact Sheet – “Redundancy” for further information.

2.12 Fair Work Information Statement

Under the NES, employers must provide all new employees with a Fair Work Information Statement, which includes information regarding the NES, modern awards, agreement-making under the FW Act, the right to freedom of association and the role of the FWC and the Fair Work Ombudsman.

2.13 Other national system minimum conditions

Equal opportunity – it is unlawful to terminate employment on certain grounds, including union membership, race, sex, sexual preference, gender history, age, disability, marital status, pregnancy (including breastfeeding), religion, national extraction and having a spent conviction.

Equal pay for work of equal value – the FWC can make orders to ensure equal remuneration for male and female workers performing work of equal value.

Employee records – employers must record the name of employer and employee, the date on which employment commenced and whether it is full-time, part-time, temporary or casual. Where there is an agreement about average hours, a written copy of that agreement must be kept.

Pay slips – these must be issued within a day of the payment of wages.

Superannuation – employers are required to make minimum contributions to employees in order to avoid a levy. The contribution is 9.5% of an employee's salary.

Workers' compensation – both permanent and casual employees fall within the definition of 'worker' found in workers' compensation legislation and therefore are covered for work related claims for injury.

Termination of employment – as well as being entitled to a minimum period of notice, employees have access to a range of remedies upon the termination of their employment. The remedies may be sought by alleging breach of contract, unfair dismissal, unlawful termination or discrimination (depending on the circumstances).

3. Minimum conditions in the state system (Western Australia)

If an employee is not covered by the national system, their minimum conditions will be determined under the state system.

The minimum conditions of employment for employees covered by the state system are set out in the *Minimum Conditions of Employment Act 1993 (WA)*.

The minimum conditions cover:

- rates of pay;
- hours of work;
- annual leave;
- sick leave;
- carer's leave;
- bereavement leave;
- public holidays;
- parental leave;
- notification of changes to employment with significant effect and redundancy; and
- job interview leave.

3.1 Rates of pay

From 1 July 2020 to 31 December 2020, the minimum wage rates for employees are as follows:

Age	Full-time or part-time employee		Casual employee
	Weekly	Per hour	Per hour
Adult (21 years or older)	\$746.90	\$19.66	\$23.59
20 years	\$672.30	\$17.69	\$21.23
19 years	\$597.60	\$15.73	\$18.87
18 years	\$522.90	\$13.76	\$16.51
17 years	\$448.20	\$11.79	\$14.15
16 years	\$373.50	\$9.83	\$11.79
<16 years	\$298.80	\$7.86	\$9.44

From 1 January 2021, the minimum wage rates for employees are as follows:

Age	Full-time or part-time employee		Casual employee
	Weekly	Per hour	Per hour
Adult (21 years or older)	\$760.00	\$20.00	\$24.00
20 years	\$684.00	\$18.00	\$21.60
19 years	\$608.00	\$16.00	\$19.20
18 years	\$532.00	\$14.00	\$16.80
17 years	\$456.00	\$12.00	\$14.40
16 years	\$380.00	\$10.00	\$12.00
<16 years	\$304.00	\$8.00	\$9.60

If there is an award or registered agreement that applies to you then you may be entitled to a higher minimum rate. Apprentices, trainees and employees who have a disability that reduces their ability to work may be subject to a lower minimum wage.

3.2 Reasonable hours of work

Generally, an employee is only required to work 38 hours per week plus reasonable additional hours. If an employee is covered by an award or agreement, the employee's ordinary hours will be dictated by the award or agreement.

3.3 Annual leave

Full-time and part-time permanent employees are entitled to up to 4 weeks' paid annual leave per year, calculated according to the number of hours the employee is ordinarily required to work over a 4-week period. For example, a full-time permanent employee who is ordinarily required to work 38 hours per week is entitled to the maximum 4 weeks' (152 hours) paid annual leave per year. A permanent employee who is ordinarily required to work 19 hours per week is entitled to 4 weeks' (76 hours) paid annual leave per year.

3.4 Sick leave

Full-time and part-time permanent employees are entitled to paid sick leave for the number of hours they are ordinarily required to work in a 2-week period, up to 76 hours, per year. This means a full-time employee who is ordinarily required to work 38 hours per week accrues 10 days' sick leave per year.

3.5 Carer's leave

Full-time and part-time permanent employees can use their entitlements under sick leave as paid carer's leave for the purposes of caring for and supporting a member of their family or household who is ill, injured or affected by an unexpected emergency.

Members of an employee's family include parents, grandparents, grandchildren, children or siblings. An employee is not allowed to take paid carer's leave if they have already taken more than their annual sick leave entitlement as paid carer's leave in the past 12 months.

All employees, including casual employees, may take 2 days' unpaid carer's leave per year.

3.6 Bereavement leave

All employees are entitled to a maximum of 2 days' paid bereavement leave on the death of a member of their family or household. This includes the death of a child, parent, spouse, de facto partner, grandparent, grandchild or any other person who, immediately prior to that person's death, lived with the employee as a member of the employee's family.

3.7 Public holidays

Full-time and part-time permanent employees are entitled to be paid for public holidays that they do not work. If an employee is required to work on a public holiday, the employee receives the normal rate of pay, unless a specific rate has been agreed to.

Public holidays in Western Australia are:

- New Year's Day;
- Australia Day;
- Labour Day;
- Good Friday;
- Easter Monday;
- Anzac Day;
- Western Australia Day;
- Queen's Birthday;
- Christmas Day; and
- Boxing Day.

3.8 Parental leave

An employee who has completed 12 months of continuous service with the same employer is entitled to 52 weeks of unpaid parental leave after the birth of a child to the employee or the employee's spouse or de facto partner. This also applies to the adoption of a child. An employee may request a maximum extension of this leave for a further 52 weeks if they give their employer 4 weeks' written notice.

An employee is generally not entitled to take parental leave at the same time as the employee's spouse or de facto partner, although there can be a total of 8 weeks of "concurrent leave" or overlap between parental leave periods. These 8 weeks do not have to be taken in one period, although each period should be no shorter than 2 weeks. Generally, concurrent leave can only be taken after the birth (or placement in the case of an adoption) of the child.

Concurrent leave can be taken in periods of shorter than 2 weeks or before the birth or placement of the child if the employer agrees to this.

Employees must give their employer 10 weeks' written notice of their intention to take parental leave.

A female employee must begin parental leave 6 weeks before her due date, unless a medical certificate is presented that deems her fit to continue work.

On finishing parental leave, an employee is entitled to the position he or she held immediately before starting parental leave. If that position is not available, the employee is entitled to an available position for which he or she is qualified and capable of performing that is most comparable in status and pay to his or her former position.

As mentioned above, the federal government has introduced a paid parental leave scheme. For more information, see ELC Fact Sheet – “Paid parental leave”.

3.9 Notification of changes to employment with significant effect and redundancy

An employer must notify an employee as soon as reasonably practical after they have made a decision which will have a significant effect on:

- the employee’s position;
- the employee’s ongoing employment prospects;
- the employee’s hours or location of work;
- the employee’s training and skill requirements;
- the composition, size or operation of the workforce;
- job restructures; or
- redundancies.

Employees must be given a chance to discuss the potential effects of these decisions and steps that could be taken to minimise those effects. See ELC Fact Sheet – “Redundancy” for further information.

4. Job interview leave

An employee who is going to be made redundant is entitled to a maximum of 8 hours’ paid leave to attend interviews for a new job.

5. Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111
Web www.elcwa.org.au

Wageline

Tel 1300 655 266 or 08 6251 2100
Web www.dmirs.wa.gov.au/wageline

Fair Work Commission

Address Level 16, 111 St George’s Terrace, Perth 6000
Tel 1300 799 675
Web www.fwc.gov.au
Email perth@fwc.gov.au

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