

Fact Sheet – National system employee or state system employee: which one are you?

1. Two systems

There are two different systems of employment law in Western Australia. There are laws created by the state government (**state system**) and there are laws created by the federal government (**national system**). These different systems are sometimes known as “jurisdictions”.

If you are an employee in Western Australia, you will fall under either the state system or the national system. It is important to know which system you fall under, as this will affect which laws apply to you (and your employer) and what you can do if your employer has breached those laws.

2. Who can tell you which system of laws is relevant to you?

You can call ELC’s Advice Line, Wageline and the Fair Work Infoline for assistance in determining which laws apply to you (see below for contact details). If you are having trouble accessing these services you may wish to consider the information below.

3. How can you work out which system of laws is relevant to you?

To work out whether you come under the state system or the national system, you need to know the legal nature of your employer. Your employer may be:

- an “incorporated” entity – for example, a company or an incorporated association;
- a sole trader;
- a partnership;
- a trustee; or
- an unincorporated association.

Generally an employee comes under the national system if his or her employer is incorporated and engages in significant or substantial trading (or financial) activities – i.e. the employer charges money for goods or services that it provides.

In most cases:

- If your employer is a company, you are in the national system;
- If your employer is a sole trader (an individual), a partnership, or an unincorporated association, you are in the state system;
- If your employer is a trust, then it depends on the nature of the trustee. If the trustee is incorporated, you are most likely in the national system. If the trustee is not incorporated you are most likely in the state system

To work out the nature of the trustee you may need to call Wageline, as they can access a database that is not available for free that may reveal the nature of trustees.

The situation is complicated where you are employed by a local government body or an incorporated not-for-profit organisation. The main question you need to ask is “Does my employer charge for any goods or services that it provides?” If the answer to this question is “yes”, and this forms a significant or substantial part of the employer’s overall activities, then it is likely that you are in the national system. If the answer is “no”, then it is likely that you are in the state system.

Working out whether or not an incorporated entity engages in significant financial or trading activity is a complex exercise that requires an in-depth analysis of the entity’s activities. It is likely to be difficult to find a definitive answer on the issue, even where you get advice from a lawyer. If you are unable to work out which jurisdiction is relevant to you, you should call ELC’s Advice Line for assistance with making a claim or taking other action when jurisdiction is unclear.

4. How do you find out the legal nature of your employer?

Your employer should be the organisation or other entity that appears on your payslips and group certificate. This may be a different name from the name of the business you are working for, but generally the organisation that pays your wages is your “employer” for the purposes of determining jurisdiction.

You may wish to visit www.abr.business.gov.au or www.asic.gov.au. These websites allow you to search for your employer on a public register by entering the employer’s name, Australian Business Number (ABN) or Australian Company Number (ACN). If you find a match, click on the link and a page should come up with some basic information including “entity type”.

If you cannot find your employer on the register, you may still be able to work out whether or not it is incorporated by looking at the name on your payslip. If the name ends with “Pty Ltd”, “Ltd” or “Inc” then the business is almost certainly incorporated.

5. Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111

Web www.elcwa.org.au

Fair Work Infoline

Tel 13 13 94

Web www.fairwork.gov.au

Wageline

Tel 1300 655 266

Web www.dmirs.wa.gov.au/wageline

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