

Minimum Conditions at Work

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.

Western Australian employees can be employed by either a state system or a national system employer. It is important for an employee to be clear which system of employment law they are covered by as there can be different minimum entitlements in each system.

If you are unsure or need to check whether you are covered by the national or state system, see Circle Green's Fact Sheet – "[National system employee or state system employee: which one are you?](#)".

This fact sheet will first go through minimum conditions for national system employees and then minimum conditions for state system employees.

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).

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

The NES generally apply to permanent employees. Some, but not all conditions in the NES apply to casual employees.

The minimum conditions cover:

- Rates of pay and casual loading;
- Hours of work;
- Public holidays;
- Annual leave;
- Sick and carer's leave;
- Compassionate leave;
- Unpaid family and domestic violence leave (changing to paid leave as of February 2023);
- 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.

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 2022, the national minimum wage for permanent adult employees is \$21.38 per hour or \$812.60 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.

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.

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.

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.

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.

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.

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, you can [visit the website for Services Australia](#).

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.

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.

FAMILY AND DOMESTIC VIOLENCE LEAVE

The NES currently provides for an entitlement for both permanent and casual employees to 5 days unpaid family and domestic violence leave each 12 months. The full 5 days are available from the start of each 12 month period of employment and do not accumulate year on year.

This entitlement will soon be replaced with an entitlement to 10 days of paid family and domestic violence leave each 12 months. As was the case with the previous entitlement, the 10 days will apply to both permanent and casual employees, be available up front, and will not accumulate year to year.

The paid leave will be available from 1 February 2023 for employees of non-small business employers (i.e. employers with 15 or more employees as of 1 February 2023).

For employees of small businesses (i.e. less than 15 employees) the paid leave will be available from 1 August 2023.

LONG SERVICE LEAVE

The NES preserves long service leave entitlements under certain pre-modernised awards. However, the majority of national system employees in Western Australia will be covered by the state long service leave act. If you are unsure, you can call the Fair Work Ombudsman Infoline on 13 13 94 or Wageline on 1300 655 266. Some casual employees may have an entitlement to long service leave.

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 15 or more 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 Circle Green's Fact Sheet – "[Redundancy](#)" for further information.

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.

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 primarily set out in the *Minimum Conditions of Employment Act 1993 (WA)*.

The minimum conditions cover:

- Rates of pay;
- Hours of work;
- Annual leave;
- Personal Leave (Sick Leave and Carer's Leave)
- Bereavement leave;
- Public holidays;
- Parental leave;
- Unpaid family and domestic violence leave
- Notification of changes to employment with significant effect and redundancy; and
- Job interview leave.

RATES OF PAY

From 1 July 2022, the minimum wage rates for state system employees is \$21.58 per hour or \$819.90 per week. 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.

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.

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.

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.

PERSONAL LEAVE

Full-time and part-time permanent employees are entitled to paid personal 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' personal leave per year. This entitlement carries over to the next year.

Personal leave may be taken where an employee experiences:

- An illness or injury;
- A need to provide care or support to an ill or injured member of the employee's family or household; or
- An unexpected emergency affecting a member of the employee's family or household.

There is no longer a cap on the amount of paid leave that can be taken for caring purposes each year.

The definition of a member of the employee's family or household in the MCE Act will not change – a member of the family or household means any of the following people:

- a child, step child or grandchild of the employee (including an adult child, step child or grandchild);
- a parent, step parent or grandparent;
- a sibling;
- the employee's spouse or de facto partner; and
- any other person who, at or immediately before the relevant time, lived with the employee as a member of the employee's household.

All employees, including casual employees, may take 2 days' unpaid carer's leave for each occasion that a family member requires care.

If an employee has accrued paid personal leave then they must use paid personal leave before taking unpaid personal leave.

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.

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 Sunday;
- Easter Monday;
- Anzac Day;
- Western Australia Day;
- Queen's Birthday;
- Christmas Day; and
- Boxing Day.

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 and

you can access more information on this at the [website of Services Australia](#).

FAMILY AND DOMESTIC VIOLENCE LEAVE

All employees (full-time, part-time, casual, those covered by an award or agreement) are entitled to five days' unpaid family and domestic violence leave each 12-month period, from the start of each 12-month period. The five days of leave do not accrue annually.

To be able to access family and domestic violence leave:

- one must be experiencing family and domestic violence (as defined in the *Restraining Orders Act 1997*); and
- be needing to do something to deal with the impact of the family and domestic violence; and
- it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

The five days can be taken continuously, in separate periods of one or more days or in periods of less than 1 day as agreed with the employer.

An employee who claims to be entitled to unpaid family and domestic violence leave needs to provide evidence that would satisfy a reasonable person of the entitlement (for example a document issued by the police, court, family violence support service, a medical practitioner, a lawyer, a counsellor, a refuge service, a financial institution or a statutory declaration).

Employers have a duty to ensure confidentiality regarding such information although disclosure of information may be permitted where it is required by law or is necessary to protect the life, health or safety of the employee or another person.

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 Circle Green's Fact Sheet – "[Redundancy](#)" for further information.

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.

LONG SERVICE LEAVE

Most employees in the state system are covered by the *Long Service Leave Act 1979 (WA)* which provides an entitlement to 8 and 2/3 weeks of long service leave after 10 years of employment. If you leave employment after 7 years, you may be entitled to have it paid out pro-rata. Some industries are covered by a different scheme and there are further rules around when and how you can take the leave when you are entitled to it. For further questions on long service leave you can call Wageline on 1300 655 266.

OTHER NATIONAL AND STATE 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 (national system) or WAIRC (state system) 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, either in electronic or hard copy. The payslip must include details such as the employer's name and ABN (if any), the employee's name, the pay period, the payment date, the gross and net payments, any bonuses, loadings and/or deductions, the applicable rate of pay and details of any superannuation contributions.

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 (state system), general protections (national system), protection of employee rights (state system) or discrimination (depending on the circumstances).

FURTHER INFORMATION

Circle Green Community Legal

Address:	Ground Floor 445 Hay Street Perth WA 6000
Intake Phone Line:	(08) 6148 3636 (for people with literacy or web accessibility issues)
Web:	circlegreen.org.au/get-help/

Fair Work Commission

Address:	Level 16 111 St Georges Terrace Perth WA 6000
Telephone:	1300 799 675
Email:	perth@fwc.gov.au
Web:	www.fwc.gov.au

Wageline

Telephone:	1300 655 266
Web:	/labour-relations/contact-wageline

This information kit is current as at 12 January 2022.

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