

Workplace information for WA visa holders

A Circle Green Community Legal resource

Introduction

It is general information only and not intended to be a substitute for legal advice. By using the information on this page, you agree to our full [disclaimer](#).

This page summarises information that is relevant to visa holders who work in Western Australia. There are more detailed resources for these and other general workplace issues here: <https://circlegreen.org.au/resources/workplace/>

If you can't find the answer to your question, or if you are having trouble understanding our resources, you can contact us for legal help.

- You can complete the form on our website <https://circlegreen.org.au/get-help/>; or
- you can call us instead on (08) 6148 3636. You can ask for an interpreter if you need one.

We cover the following topics and more

- I have been fired or left my job
- I'm not getting paid correctly
- I have an issue with my contract
- My issue is with my visa work conditions
- I am being treated differently to other non-visa workers
- I am not being treated respectfully

For other issues see here: <https://circlegreen.org.au/resources/workplace/>

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Do Australian workplace laws apply to me?

In most circumstances, visa holders have the SAME RIGHTS as Australian citizens.

Visa workers include all people who are working in Australia and hold a visa.



If you work in Western Australia, you are likely an employee or a contractor.

Most workers will be employees and your employer should tell you at the beginning of employment.

For more information, you can also see our publication [Q&A: Contractor or employee for WA workers.](#)

All employees have workplace rights, even if you are:

- working while holding a visa; or
- have only worked for a short time (even one day of work is long enough to be protected in most situations).

Workplace laws can help to make your job safe, happy, and fair.

You may not be covered by this information if you:

- own your own business;
- are an independent contractor; or
- work for the gig economy (e.g you work as an Uber/DiDi/Ola driver).

To find out whether you are an employee or not you can ask us for free legal advice <https://circlegreen.org.au/get-help/>.

If you are an employee in Western Australia, there are two different groups of laws that could apply to you. These groups are known as “systems”. You could be in the:

National System

State System

You can't be in both systems. It's important to know which system you are in because different laws will apply.

[You can also watch a video on the different systems on the Wageline website here: https://vimeo.com/844772912](https://vimeo.com/844772912)

If you are having trouble figuring out if you are an employee, or which system you are in, you can contact us to make a request for legal advice here <https://circlegreen.org.au/get-help/>.

We have more information about these systems here [Q&A: State or national for WA employees](#)

If you aren't sure, you can still read the information below, as most of it applies in both systems. However, you need to know which system you are in if you want to make a legal claim.

What are the workplace laws in Australia?

Australia has strong protections and rights for employees. These include:

- correct pay;
- no bullying or discrimination;
- safe and healthy workplace;
- fair treatment;
- sick and holiday leave; and
- protection if you lose your job unfairly.

For a more detailed information on these issues you can see here

<https://circlegreen.org.au/resources/workplace/>.

There might be rules and rights for you that are in certain documents like:

- awards,
- agreements; or
- your employment contract.

For most employees, there is a contract that sets out the rules for your workplace, an award that sets out rules for the type of work that you do (industry), and general workplace rights that apply to all employees.

Whether you are covered by these documents will depend on where you work and what your job is. To find out if you are covered by an award or agreement, contact the Fair Work Ombudsman or Wageline.

Is it legal for me to work?

If you have entered Australia on a visa, then you need to check whether your visa gives you permission to work.

Some visas have what is called a 'no work' condition meaning you cannot work at all while you are on that visa, or a 'work limitation' meaning you are limited in the work you are allowed to do.

The work rights you have on your visa can be found on your visa grant notice or by a VEVO check.

If you haven't started working yet and you are unsure if you have work rights, you can contact the Department of Home Affairs for help about your visa conditions. You can call them on 131 881 or visit their website here: <https://immi.homeaffairs.gov.au/>

You can also get help from a [migration lawyer](#) or a [migration agent](#). Be aware that you may need to pay for this help.

Can my employer hold my passport?

Your employer should not be asking to hold your passport.

If you think that your employer is holding your passport you can contact us for free legal advice here: <https://circlegreen.org.au/get-help/>

If you or someone is in imminent danger, call 000 for police.

If your employer is holding your passport or other identification documents (e.g birth certificate) and refusing to hand them back to you, this could be an indication of modern slavery.

If you get legal advice from us:

- we will not share your details with anyone unless you give us your permission;
- your appointment will be private; and
- we will not contact the government or your employer.

There are more support resources available here:

- Anti-Slavery Australia: <https://antislavery.org.au/>
- Red Cross: <https://www.redcross.org.au/migration/support-for-trafficked-people/>
- Australian Federal Police: <https://www.afp.gov.au/about-us/contact-us>

What is modern slavery?

If you feel you are being exploited at work, or your employer is taking your freedom away, this may be modern slavery.

Modern slavery is a serious criminal activity.

Some examples of modern slavery are:

- You are being forced to work for no pay.
- You are being forced to pay off a debt.
- You are not allowed to leave your job.
- Your passport is being held and you can't access it.

If you or someone is in imminent danger, call 000 for police.

For more information see the Anti-Slavery Australia website <https://antislavery.org.au/>. To report modern slavery, the Australian Federal Police can be contacted on 131 237.

These situations are not okay and you can access help.

Red Cross supports individuals harmed by modern slavery. This support includes financial, health, accommodation and counselling. For more information, see <https://www.redcross.org.au/migration/support-for-trafficked-people/>

How much should I be paid?

If you are an employee in Australia, there is a minimum amount you should be paid for your work. This is known as your minimum wage. You can be paid above the minimum wage if you agree with your employer.

Your minimum wage can change depending on:

- your age;
- whether you are an apprentice or trainee;
- the type of employer you work for;
- the type of work that you do (the industry you are in);

- the type of job that you have; and
- your level of experience.

You cannot be paid below your minimum wage even if:

- you agree to be paid less;
- your boss tells you that you are training and you will be paid more in the future; or
- you get free items in exchange for less pay (e.g staff lunch and drink).

If you are covered by:

- an award;
- agreement; or
- written contract;

You should read these for any special rules, allowances, bonuses, special rates (known as penalty rates) that can make your pay higher.

There are places you can call that can help if you want to know what your minimum wage is, or which award or agreement applies to you. You can either call Wageline or the Fair Work Infoline. They can provide information on:

- pay; and
- awards or agreements.

I've been fired (dismissed) – what do I do?

A dismissal can happen when your boss says you are fired, where you stop receiving work shifts, where you are demoted to a lower paid role or where you feel you are forced to resign.

I think it was fair

If you don't have any issues with your dismissal, you don't have to do anything under workplace laws. There are rules on what you should be paid when you are dismissed, so if you aren't sure if you were paid correctly you might want to look into this further.

You should check your contract, award or agreement to make sure you have been paid all of your entitlements. This can include unused annual leave and notice (if you do not work during the notice period). If you aren't sure

- You also need to consider if you have to do anything under the rules in your visa. In some situations you may need to tell Home Affairs that your circumstances have changed. If you are unsure you should speak to a Migration Agent.

What if my dismissal wasn't fair?

You may be able to make a legal claim to get your job back or compensation (money) if:

- you weren't given a good reason (or any reason) for your dismissal;
- the reason given to you was not true;
- you weren't given a warning before you were dismissed;
- you were dismissed in a very humiliating or distressing situation;
- You were dismissed for making a complaint or inquiry about your work; or

- You were dismissed for taking sick leave or exercising another type of workplace right.

Not all employees can make these claims.

For more information to see if you are eligible, see [Q&A: Dismissals for WA employees](#) or request for legal advice here <https://circlegreen.org.au/get-help/>

It's very important to remember that the limitation period for a dismissal claim can be as short as 21 days from the date your dismissal took effect.

You may also have an obligation to inform Home Affairs about a change in your circumstances.

If you are unsure about what you need to do about your visa after your job finishes, you can get help from a [migration lawyer](#) or a [migration agent](#).

I have an issue with my pay

My employer is not paying me on time

If you are not getting paid on time or receiving payslips, the first step is to tell your employer. You can email them to make them aware of the issue and ask for it to be corrected. If it continues to happen, you should make a request for free legal advice: <https://circlegreen.org.au/get-help/>.

[You may also want to speak to the Fair Work Ombudsman or Wageline for help.](#)

As an employee, you should be getting paid at least once a month. Sometimes there are rules that say you should be paid more often than once a month (e.g every week or every fortnight).

You can check the following documents to see if there are any rules about when you should be getting paid:

- award;
- agreement; or
- written contract.

What should be on my payslip

You should be getting a payslip within one working day of being paid. You should be getting payslips even if you are paid in cash. The pay slip should have information on:

- how much you get paid;
- tax and superannuation details;
- penalty rates (if you should be getting them);
- employer's details; and
- allowances

I am getting paid less than my coworkers

It's normal for employees to be paid different wages. However, if you are being paid less than your co-workers for doing the same job, it might be an indication that something unlawful is happening.

It may be unlawful if:

- you are paid less because of your race or the country you come from, or another discriminatory reason;
- you should be paid more under an award or agreement; or
- you are paid less than the minimum wage.

Generally, your employer can't pay you a lower wage just because you are on a visa or come from a different country. However, you may be paid lower if you are doing a different role or have less experience than your coworkers.

You can contact the Fair Work Ombudsman or Wageline to check that your classification level is correct and you are paid the correct amount.

You should be getting paid at least your minimum wage. See 'how much should I be paid?' for more information on what your minimum wage is.

Generally, it is unlawful for your employer to stop you sharing information about your pay and speaking to your coworkers about your pay.

I have been told to work unpaid because I am still learning how to do the job

Your employer may be allowed to assess your job skills in a short unpaid trial.

Unpaid trials should only be as long as what is necessary to test whether you can do the job. If the unpaid trial is longer than a couple of hours then you should get legal help.

You should be paid at least your minimum wage, even when you are just starting your job.

My employer took money out of my pay

Generally, your employer is not allowed to take money from your pay.

Your employer can only take money from your pay in very limited situations, and it needs to be for your benefit. Generally, this means your employer should not take money out of your pay if you make mistakes at work or are not working quickly enough.

Generally, your employer also can't ask you to spend your pay or give it back to them.

If you are unsure, you can contact us for free legal advice here: <https://circlegreen.org.au/get-help/>.

Do I get holiday pay and sick pay?

Casual employees are employees that have no commitment to ongoing work or agreed pattern of work. Casual employees don't receive holiday or sick pay but receive extra pay. Generally casual employees are paid per hour and can refuse shifts.

Casual employees don't get holiday pay or sick pay, and get a "casual loading" instead. You can see more information on casual employees in the section below. You can also see our publication [Q&A: Employee types for WA employees](#).

If you are not a casual employee, you are likely to be a permanent employee or fixed term employee which means you should get some paid holidays and paid sick leave.

In Australia, holiday pay is called "annual leave" and sick pay is called "personal leave".

Being a visa holder does not stop you from getting holiday pay (annual leave) and sick pay (personal leave). If you are not a casual employee and you are working full time (38 hours a week or more) then you should get:

- at least 4 weeks of paid holidays per year; and
- 10 days per year of sick pay.

Personal leave (or sick pay) can be used when you are unwell and can't go to work. It can also be used if you need to take care of a family or household member. Your employer is allowed to ask you to provide reasonable evidence, including a doctor's note.

For more information on these entitlements, see our [Q&A: Minimum conditions of employment for WA employees](#).

Should I get lunch breaks, and should they be paid or unpaid?

Most employees should be getting breaks.

To see what type of breaks you get and whether they are paid you should check your:

- award;
- agreement; or
- contract

It is best to check with the Fair Work Ombudsman or Wageline to ask them if you are entitled to lunch breaks under an award or agreement.

If you should be getting lunch breaks and have not been taking them, then you may be able to make a legal claim.

Can my employer pay me in cash?

Yes, your employer can pay you in cash. You should check that you are still being paid the correct amount. Your employer cannot pay you less because they are paying you in cash.

Your employer must keep records of your pay and give you a payslip every time you are paid.

If you aren't getting any payslips, your employer may not following the law and it could be a sign that they are not following other laws.

How do I leave my job?

This may depend on why you have decided to leave. It may be different if you are choosing to leave or if you are forced to leave.

If you are choosing to leave, then you should:

- tell your employer that you are resigning, it is usually best to write a letter or email; and
- if you are a permanent employee, then you should give notice.

Notice is telling your employer in advance that you are planning to leave and letting them know when your last day is. Usually, you will have to work till your last day. Generally, the minimum amount of notice a permanent employee will have to give is 1 week.

To find out how much notice you will need to give, you can check:

- your employment contract;
- your award; or
- your agreement.

You can check with the Fair Work Ombudsman or Wageline to see how much notice you would have to give according to your award or agreement.

If you are a casual employee, then you do not have to give notice.

If you are forced to leave – then this may mean that you can make a dismissal claim. For more information, please read: [Q&A: Dismissals for WA employees](#). Time limits for to make a dismissal claim can be as short as 21 days from the date of dismissal.

I've been told I'm a casual employee – what does this mean?

How can you find out?

Your payslip or employment contract should show you if you are a casual employee:

- if you are permanent or on a task/ time period contract, it should show the amount of annual leave and personal leave that you have; and
- if you are a casual it should show the amount of casual loading you are receiving.

What is the difference between casual and permanent work?

Most employees in Australia will be either “permanent”, “casual” or have a fixed term contract.

Casual employees work only when the employer needs them. This means you may not have guaranteed shifts each week. For example, a casual employee might be given lots of work when it's busy, but not be given much work when it's a quiet period.

Casual employees have a casual loading which means they are paid an extra amount above the minimum – normally between 20% and 25%.

Permanent employees and employees on fixed term contracts have:

- regular hours and work on an ongoing basis. This means that they can expect to work every week;
- must be paid for the hours in their employment contract, even when it is quiet; and
- paid holiday leave and sick pay.

My employer says I am a contractor and I need an ABN – what does this mean?

Generally, workers in Australia may be contractors or employees.

Generally, the protections outlined in this resource are only available to employees. Contractors have less rights and protections.

Contractors are generally running their own small business and have a lot of control over how they work. They normally decide when to do their work and how to do their work, and they can do work for many different people. Contractors are normally paid when they finish a job. An employee is more likely to work for one person or business, to have set hours, to be supervised in their job and to be paid by the hour.

It's not against the law to have an ABN and work as a contractor.

However, if you believe you are an employee and your employer is saying you are a contractor, this may be “sham contracting”. An employer may do this to avoid paying you the minimum wage, or to avoid other laws that apply to employees.

Generally, this is unlawful and you may be able to make a claim.

You can find further information in our publication [Q&A: Contractor or employee for WA workers](#).

I'm worried my employer will fire me if I make a complaint, what can I do?

There are laws that may protect you if you are treated badly for making a complaint about your work.

If you think you need to make a complaint, you may wish to get legal advice first, to help you figure out the best way to proceed. You may contact us to make a request for legal advice here: <https://circlegreen.org.au/get-help/>.

Losing your job may also have consequences for your visa. This is an issue that falls under migration law, rather than workplace law. So if this is a concern you should look into the matter and consider seeking advice from a [migration lawyer](#) or a [migration agent](#).

I think my workplace is unsafe – what can I do?

Everyone should be safe at work. You do not need to work if there is a risk to your health. This includes physical safety and mental safety.

If you think your work is unsafe you have options. An unsafe workplace can include:

- machinery not being used correctly;
- unsuitable protective equipment or clothing;
- bad or no safety procedures;
- bullying from coworkers, managers or members of the public;
- no protection from dangerous members of the public; and
- working long hours without breaks or in dangerous temperatures.

More information can be found about bullying here: <https://circlegreen.org.au/resource/bullying-for-wa-workers/>

Step 1

If you feel comfortable you can make a complaint to your employer, they may have a policy or process you can follow.

You can also look at the WorkSafe codes of practice here <https://www.commerce.wa.gov.au/worksafe/approved-codes-practice>

Step 2

If you have made an internal complaint or don't feel comfortable you can also make a complaint to WorkSafe.

WorkSafe is a part of the government that is in charge of workplace safety in Western Australia. WorkSafe may choose to investigate the issue to see if there has been a breach of law.

You can [visit WorkSafe's website](#) or call them on 1300 307 877.

If you have been attacked by someone or you feel you are in physical danger, you may need to call the police to report a crime. If you are in danger call the WA police on 000.

To ask for free legal advice on criminal law issues you can call LegalAid on 1300 650 579.

I am being treated differently to my coworkers in my workplace

In Australia, there are laws that stop you being treated differently because of something about you or your situation. When you are treated differently, we call this discrimination.

It can be unlawful to treat you differently in the workplace because of your race, or the colour of your skin, or the country that you come from.

It can also be unlawful to treat you differently because of your:

- sex;
- sexual orientation;
- age;
- disability;
- marital status;
- family or carer's responsibilities and pregnancy; and
- religion or political opinion.

For more information on possible claims see [Q&A: Workplace discrimination for WA workers.](#)

I'm being treated badly in my workplace

Bullying

Workplace bullying involves repeated, unwanted treatment that create a risk to your health and safety. This means the bullying must:

- happen more than once; and
- you must be able to show how it has affected your health or how it could affect your health in future.

Your employer is allowed to warn or talk to you if you have make a mistake or if you are doing the wrong thing. However, this should be reasonable. If your employer is often punishing you for very small errors, it may be bullying behaviour.

Bullying can include:

- abusive or insulting words or language;
- threatening to hurt you or actually hurting you;
- comments about your family and lifestyle;
- practical jokes or people messing with your property;
- constant threats to dismiss you; and
- being ignored or isolated.

For further information, see our publication [Q&A: Bullying for WA workers.](#)

I am expecting a baby soon – am I allowed to have time off from work?

Permanent employees are able to take time off work following the birth or adoption of a child. This is known as parental leave. Generally, you must have worked at least 12 months to get parental leave.

Parental leave can be taken when:

- you give birth;
- your spouse or de facto partner gives birth; or
- you adopt a child under the age of 16 years old.

If you can take parental leave, you can have up to 12 months away from work (unpaid) and you can request an additional 12 months.

You also have a right to return to your same job when your leave finishes. There are some exceptions to this rule and if you are having issues with returning to work you should contact us to seek legal advice.

If you are a casual employee and want to take parental leave you would need:

- to have been working regular shifts for at least 12 months; and
- have an expectation that you would have continued to work (if you had not been expecting a child).

For more information on parental leave you can call the Fair Work Infoline or Wageline.

I have to go to a meeting because of my performance at work – what do I do?

Sometimes an employer will ask you to attend a meeting.

Your employer should tell you what the meeting is about. If they don't you should ask.

You can then prepare what you would like to say at the meeting. You can respond to allegations that are raised about your work or behaviour.

You may want to ask your employer if you can bring a support person to sit with you and help you take notes. This can be a friend or family member.

Generally, if you feel comfortable, you should attend meetings with your employer. If you don't attend a meeting, there may be negative impacts on your employment.

For more information on meetings at work see [Q&A: Meetings and other internal processes for WA employees](#).

Can my employer ask me to repay visa costs or other costs if I leave employment?

You should check the conditions of your visa. These can outline what you and your employer are responsible for. This can include whether you or the employer should pay for certain visa costs.

You should also read your employment contract. In some situations, you will be responsible for paying visa, training, and work-related costs.

Your employment contract may include a requirement that you pay for training costs and other costs if you leave the employment.

Your employer may be able to ask you to repay training costs, but it can depend on:

- what training you received;
- how much money your employer is asking for;
- whether the amount is reasonable; and
- how long you have been employed for.

Examples of costs that your employer may not be able to seek, include where:

- your employer is asking you to pay an amount that is a lot more than they spent in bringing you to Australia; and
- your employer is asking you to pay training costs because you're leaving, but the amount is more than the cost of the training.

It is difficult to say whether you need to repay these costs or not. You may want to contact us to make a request for free legal advice here: <https://circlegreen.org.au/get-help/>

Further information and assistance

Circle Green Community Legal

WA employees can request free and confidential legal assistance with employment and workplace discrimination issues from Circle Green Community Legal.

Complete an online request: circlegreen.org.au/get-help

Telephone enquiries: 08 6148 3636 (Please note that we do not provide on demand legal advice)

For further information on our Workplace law services, please visit:
circlegreen.org.au/workplace

Courts and Commissions	Government departments & other supports
<p>Fair Work Commission</p> <p>Phone: 1300 799 675 Email: perth@fwc.gov.au (enquiries only) Email: melbourne@fwc.gov.au (to lodge a claim form) Web: https://www.fwc.gov.au</p> <p>Federal Circuit and Family Court of Australia</p> <p>Phone: (08) 9268 7100 Email: waregistry@fedcourt.gov.au Web: https://www.fcfoa.gov.au/</p> <p>Federal Court of Australia</p> <p>Phone: 1300 720 980 Email: perth.registry@fedcourt.gov.au Web: https://www.fedcourt.gov.au/</p>	<p>Fair Work Ombudsman Info Line</p> <p>Phone: 13 13 94 Web: https://www.fairwork.gov.au/</p> <p>Wageline</p> <p>Phone: 1300 655 266 Web: https://www.dmirs.wa.gov.au/contactwageline</p> <p>WorkSafe</p> <p>Phone: 1300 307 877 Web: http://www.dmirs.wa.gov.au/worksafe</p> <p>Anti-slavery Australia</p> <p>Web: https://antislavery.org.au/</p> <p>Red Cross Support for Trafficked People Program</p> <p>Web: https://www.redcross.org.au/migration/support-for-trafficked-people/</p>

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This factsheet only contains general information. This factsheet is not legal advice and should not be relied on as a substitute for legal advice. You may wish to seek advice from a lawyer regarding your own particular circumstances. We are not responsible for any consequences arising from your use of, or reliance on, the information contained in this factsheet.

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