



## AUSTRALIA

# Navigating the Employment and Labour Laws in Australia

The employer and employee relationship under the Australian labour law is regulated by a complex statutory and regulatory framework, which includes legislation, regulations and industrial instruments such as modern awards and enterprise agreements. There have been many significant changes to the state and federal regulatory frameworks, particularly over the past decade. As strong penalties are awarded for non-compliance, it is important that you as an employer, get familiarised with the rights and obligations under Australian employment law.

### Salary

The National Minimum Wage was increased to AUD694.90 per week (before tax), or AUD18.29 (before tax) per hour from 1 July 2017. Each year, the Fair Work Commission reviews modern award minimum wages, and sets a national minimum wage order for employees who are not covered by enterprise agreements or modern awards.

Failure to comply with the National Minimum Wage or any minimum wages provided for in a modern award or an enterprise agreement may result in prosecution and penalties by the Fair Work Ombudsman, who handles complaints regarding compliance with workplace laws

and investigate if they suspect there is a breach.

### Working Hours and Overtime

Under the Fair Work Act, the maximum weekly working hours of full time employees should not exceed 38 hours per week. If a request to work overtime is reasonable, the employee will generally be required to work such overtime.

Overtime requirements are generally regulated by a combination of the employment contract, any applicable award or agreement and legislation in some industries. The employer may offer some additional remuneration such as higher annual salaries, time off-in-lieu, and payment via premium hourly rates to compensate for additional working hours.

### Holidays

Under the National Employment Standards (NES), full-time employees are entitled to four weeks of paid annual leave per year. This is pro-rated for part-time employees and increased to five weeks for shift workers (as defined in modern awards). Casual employees are generally not entitled to annual leave. Annual leave that is not taken each year accrues from year to year and is paid out on termination.

Public holiday entitlements vary between the states in Australia although, in most cases, approximately ten paid days per year are declared public holidays. As businesses (particularly the retail and hospitality industries) often open for trade on public holidays, employers may be required to pay workers a premium in exchange for giving up the day.

Employees are entitled to 10 days of paid personal leave per year (pro-rata for part-time employees), which includes sick leave and carer's leave, which can be used to provide care for family members who are ill, injured or affected by an unexpected medical emergency.

### Notice of Termination and Redundancy

To lawfully terminate employment, an employee must receive a period of notice or payment of wages in lieu of notice. Typically, an employee's contract of employment will specify the period of notice of termination of employment and provide that a payment can be made in lieu of notice. The notice period will vary, depending on the length of service

of the employee and the employee's age. The following table details the minimum periods of notice prescribed in the Fair Work Act:

Period of Continuous Service	Notice Period
Less than 1 year	1 week
More than 1 year, but less than 3 years	2 weeks
More than 3 years, but less than 5 years	3 weeks
More than 5 years	4 weeks

The NES provides an involuntary right to severance pay upon redundancy to most employees in Australia. There are several exclusions from this entitlement, including those who:

- a) are employed in small workplaces with fewer than 15 employees (on a simple head count basis including casual employees who are employed on a regular and systematic basis)
- b) are fixed term employees
- c) are casual employees or
- d) have less than 12 months' service with an employer.

Period of Continuous Service on Termination	Redundancy Pay Period
1 year but less than 2 years	4 weeks
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years but less than 5 years	8 weeks
5 years but less than 6 years	10 weeks
6 years but less than 7 years	11 weeks
7 years but less than 8 years	13 weeks
8 years but less than 9 years	14 weeks
9 years but less than 10 years	16 weeks
At least 10 years	12 weeks*

\*The entitlement to severance pay reduces after 10 years because at this stage, employees become entitled to long service leave.

### Termination of Employment

Terminating an employee is heavily regulated in Australia. There are a number of legal remedies available to employees on termination of employment, including:

- a) Unfair dismissal (this jurisdiction is only available to employees who have completed a minimum employment period of six months (or 12 months for small businesses) and who earn less than the

high-income threshold, which is increased on 1 July each year, or employees who are covered by an award or enterprise agreement)

- b) Discrimination / general protections action (that is, the termination was for an unlawful reason such as age, sex, race, trade union membership or because the employee exercised a workplace right)
- c) Breach of any applicable employment contract.

Adequate compensation, money damages or reinstatement to employment may be awarded in the event of a successful legal challenge from an employee. When considering termination of employment, it is

necessary to evaluate employment rights, obligations, and entitlements as they may arise under the employment contract, applicable awards, enterprise agreements and legislation.

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